

IN THE CIRCUIT COURT OF WASHINGTON COUNTY, ARKANSAS  
CIVIL DIVISION

GEORGE E. BUTLER, JR.  
Individually, and on behalf of  
himself and all Washington County,  
Arkansas, taxpayers

VS.

NO. 72CV17-800-1  
(Jury Trial Demanded)

JOSEPH K. WOOD, et al

2017 JUN 29 PM 5:44  
PLAINTIFF  
DEFENDANT  
TO RECORD

ANSWER

Comes now the Separate Washington County Defendant, Washington County, Arkansas, and Defendants Joseph K. Wood, Carl Gales, Brian Lester, Julie Harris, Jim Kimbrough, Sharon Lloyd, Dwight Gonzales, and Josh Medina, in their official capacities only (referred to collectively herein as "Separate Defendant Washington County")<sup>1</sup>, and for their Answer to Plaintiff's "Complaint for Declaratory Judgment, Illegal Exaction, Mandamus and Injunctive Relief" (filed April 26, 2017 and referred to herein as "Plaintiff's Complaint"), states the following:

1. Separate Defendant Washington County admits the allegations in paragraphs 1, 2, 3, and 10 of Plaintiff's Complaint.
2. Separate Defendant Washington County affirmatively states that the allegations in paragraphs 4, 5, 6, 7, 8, and 9 are directed toward other Defendants and therefore require no response from Separate Defendant Washington County; to the extent that the allegations in paragraphs 4, 5,

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<sup>1</sup> It is well-settled that a suit against a county official or employee, in his/her official capacity, is the equivalent of a suit against the county itself. See *Liebe v. Norton*, 157 F.3d 574, 578 (8<sup>th</sup> Cir. 1998); see also *Hafer v. Melo*, 502 U.S. 21, 25 (1991). Official capacity suits represent "only another way of pleading an action against an entity of which an officer is an agent." See *Kentucky v. Graham*, 473 U.S. 159, 165-166 (1985) (quoting *Monell v. New York City Dept. of Social Services*, 436 U.S. 658, 690, n.55 (1978)). In short, "an official capacity suit is, in all respects other than name, to be treated as a suit against the entity." *Id.* At 166 (citing *Brandon v. Holt*, 469 U.S. 464, 471-472 (1985)). In fact, when officials of a county die or leave office, their successors automatically assume their roles in the litigation. See *Hafer*, 502 U.S. at 25 (citing Fed. R. Civ. Proc. 25(d)(1); Fed. Rule App. Proc. 43(c)(1); and S. Ct. Rule 35.3). **Furthermore, multiple official capacity claims against officials and employees of the same entity are legally identical and redundant, such that the dismissal of one precludes further litigation of any of the others.** See *Baker v. Chisom*, 501 F.3d 920 (8<sup>th</sup> Cir. 2007), cert denied, 554 U.S. 902 (emphasis added).

6, 7, 8, and/or 9 are directed toward this Defendant, Separate Defendant Washington County adopts and incorporates by reference, as if set forth word for word, the corresponding paragraphs (¶¶4, 5, 6, 7, 8, and 9) of the “Individuals Capacity Defendants” Answer, filed May 22, 2017, and denies, as pleaded, any remainder of the allegations paragraphs 4, 5, 6, 7, 8, and 9 of Plaintiff’s Complaint.

3. Separate Defendant Washington County admits that jurisdiction and venue are proper in this Court, but denies, as pleaded, the remainder of the allegations in paragraph 11 of Plaintiff’s Complaint.

4. Paragraphs 12, 36, 44, 52, 59, and 63 do not require a response; to the extent that a response is required, the deny the allegations in paragraphs 36, 44, 52, 59, and 63 for the reasons set out elsewhere in the responses to the referenced paragraphs in this Answer and adopt and incorporate by reference, as if set forth word for word, all of its responses in this Answer.

5. Separate Defendant Washington County admits that the named Plaintiff is a taxpaying citizen of Washington County and has been for a long period, but is without sufficient knowledge or information to admit or deny the remainder of the allegations in paragraph 13 of Plaintiff’s Complaint and, therefore, denies the same.

6. Separate Defendant Washington County admits the allegations in paragraph 14 of Plaintiff’s Complaint.

7. Separate Defendant Washington County affirmatively states that Arkansas law and the codified ordinances and policies of Washington County speak for themselves, but denies, as pleaded, the remainder of the allegations in paragraphs 15 and 16 of Plaintiff’s Complaint.

8. Separate Defendant Washington County admits that Judge Wood did not select the four county department heads identified in paragraph 17 of Plaintiff’s Complaint for employment in his administration (and notified them that they would not be selected), but denies, as stated, the remainder of the allegations in paragraph 17 of Plaintiff’s Complaint.

9. Separate Defendant Washington County admits that Judge Wood took no “affirmative steps” to rehire any county employees (because County systems are set up in such a way that affirmative steps are not needed unless a different employee is selected for the position), but denies,

as pleaded, the remainder of the allegations in paragraph 18 of Plaintiff's Complaint and adopts and incorporates by reference, as if set forth word for word herein, the affirmative pleadings in paragraph 18 of the "Individuals Capacity Defendants'" Answer, filed May 22, 2017.

10. Separate Defendant Washington County admits that Karen Beeks and Ron Wood retired on or about January 1, 2017, that Sharon Lloyd served as an appointed Justice of the Peace in 2015-16, that Defendants Gales, Lester, Kimbrough, Harris, Gonzalez, Lloyd, and Medina were not county employees or retirees when Judge Wood hired them, that none of them submitted an application, that the positions were not advertised, and that Washington County is an equal opportunity employer and affirmatively pleads that state and federal law and the official ordinances and policies of Washington County speak for themselves, but deny, as stated, the remainder of the allegations in paragraphs 19, 20, 21, 22, 23, 24 (including sub-paragraphs a, b, c, and d), 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of Plaintiff's Complaint.

11 Separate Defendant Washington County admits that County Judge Joseph Wood offered employment to Defendants Gales, Lester, Kimbrough, Harris, Gonzales, Lloyd, and Medina and that they accepted and have provided good an valuable services in exchange/compensation for their wages since that time, and Separate Defendant Washington County affirmatively states that Arkansas law and the codified ordinances and policies of Washington County speak for themselves, but deny, as pleaded, the remainder of the allegations, including but not limited to all legal conclusions, in paragraphs 37, 38, 39, 40, 41, 42, 43, 45, 46 (including sub-paragraph a, b, c, d, e, f, and g), 47, 48, 49, 51, 53, 54, 55, 56, 57, 58, 60, 61, 62, 64, 65, 66, 67, 68, and 69 of Plaintiff's Complaint.

**12. THERE IS NO PARAGRAPH 50 IN PLAINTIFF'S COMPLAINT.**

13. Separate Defendant Washington County denies Plaintiff's entitlement to any relief, including but not limited to the relief requested in the unnumbered "Wherefore clause" (including, but not limited to sub-clauses a, b, c, d, e, f, g, h, and i of Plaintiff's Complaint.

14. Separate Defendant Washington County denies each and every allegation of Plaintiff's Complaint not specifically and expressly admitted herein.

15. Separate Defendant Washington County asserts and reserves the right to file an Amended Answer or other responsive pleading(s) and/or to assert additional affirmative and other defenses after a chance to investigate the claims and allegations in Plaintiff's Complaint.

16. Separate Defendant Washington County respectfully demands a trial by jury on all genuine issues of material fact.

#### Affirmative Defenses

17. The Defendants assert the following affirmative defenses:
- A. Punitive damages immunity, *see City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 69 L.Ed.2d 616, 101 S.Ct. 2748 (1981);
  - B. Tort immunity, *see Ark. Code Ann. §21-9-301*;
  - C. Sovereign immunity;
  - D. Statutory vicarious liability/respondeat superior immunity, *see Ark. Code Ann. §21-9-301*;
  - E. The Defendants are not proper parties to a tort action in any event, *see Ark. Code Ann. § 23-79-210*
  - F. Justification;
  - G. Unjust Enrichment & Quantum Meruit;
  - H. Illegality, as disgorgement of wages earned violates would violate virtually every state and federal employment law;
  - I. Payment & Accord and Satisfaction  
Separation of Powers Doctrine;  
Common Defense Doctrine;
  - J. Mootness, as applicable;
  - K. Waiver/Estoppel/Laches;
  - L. The Plaintiff lacks standing as his claims do not present a justiciable case or controversy;
  - M. The Plaintiffs' claims for refund are moot and/or have been waived and/or are

subject to dismissal under the doctrines of laches and estoppel since he filed his taxes voluntarily and without written protest;

- N. Election of Remedies, as the Plaintiff cannot seek money damages and then assert that they are unavailable;
- O. The Defendants avail themselves of all applicable defenses under Rule 8(c) and 12 of the Arkansas Rules of Civil Procedure;
- P. The Plaintiff has failed to state a claim upon which relief can be granted;
- Q. The Defendants avail themselves of all statute of limitations defenses applicable to this claim, including, but not limited to Ark. Code Ann. 16-56-101, *et seq.*;
- R. The Defendants reserve and preserve the right to assert any available counterclaims and/or third-party claims under Ark. R. Civ. Proc. 13 & 14.

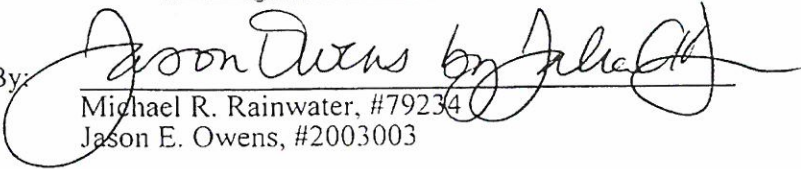
WHEREFORE, Separate Defendant Washington County respectfully requests that Plaintiff's Complaint be dismissed as a matter of law and for all other just and proper relief to which it is entitled.

Respectfully submitted,

Washington County, Arkansas, and Defendants Joseph K. Wood, Carl Gales, Brian Lester, Julie Harris, Jim Kimbrough, Sharon Lloyd, Dwight Gonzales, and Josh Medina, in their official capacities only,  
*Separate Defendant*

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By:

  
Michael R. Rainwater, #79234  
Jason E. Owens, #2003003

CERTIFICATE OF SERVICE

I, Jason E. Owens, do hereby certify that I have mailed a copy of the foregoing to the following the 29th day of June, 2017:

Mr. James G. Lingle  
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