

IN THE SUPREME COURT OF OHIO

State of Ohio, Ex Rel. Estate of Miles, et al. :

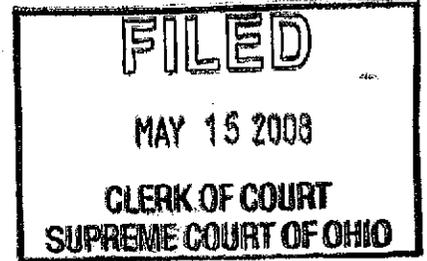
Case No. 08-0782

Relator, :

v. :

Village of Piketon, et al., :

Defendants. :



**ANSWER OF RESPONDENTS VILLAGE OF PIKETON, MAYOR,
CLERK-TREASURER AND CHIEF OF POLICE TO
RELATORS' COMPLAINT FOR WRIT OF MANDAMUS**

For their Answer to Relator's Complaint for Writ of Mandamus, Respondents Village of Piketon, Ohio, Mayor Spencer, Clerk-Treasurer Nelson and Chief of Police Nelson state as follows:

1. Respondents deny the allegations contained in Relator's Introductory Statement.
2. Respondents admit paragraph 1 of the Complaint.
3. Respondents admit paragraph 2 of the Complaint.
4. Respondents admit paragraph 3 of the Complaint.
5. Respondents admit paragraph 4 of the Complaint.
6. Respondents admit paragraph 5 of the Complaint.
7. Respondents deny paragraph 6 of the Complaint and aver that the Village of Piketon was never named in the Complaint; never served with a Complaint or Summons in Case No. 519 CIV-01 as required by Ohio Civil Rule 4.2(M), aver that former Police Chief Booth was served with the underlying Complaint at his personal address long after he left the employ of the Village of Piketon, aver that the purported Judgment was entered into against Booth in his individual capacity based upon O.R.C. 2744.03(A)(6), aver

that the January 2, 2003 purported Judgment Entry only references Nathaniel Booth, was only served on Booth at his personal residence and not the Village of Piketon and aver that the purported Judgment Entry dated September 9, 2002 granting summary judgment was also a judgment against Booth in his individual capacity that specifically referenced O.R.C. 2744.03(A)(6) which encompasses immunity or liability of an employee and not an Ohio governmental entity such as the Village of Piketon for which liability is governed under O.R.C. 2744.02.

8. Paragraphs 7 and 8 of the Complaint allege conclusions or interpretations of law for which no responsive pleading is required. To the extent these paragraphs allege facts, those facts are denied.
9. Respondents admit paragraphs 9 and 10 of the Complaint.
10. Respondents deny paragraphs 11 and 12 of the Complaint to the extent Respondents allege that these Respondents owe a legal duty to pay a Judgment entered against Booth.
11. Respondents deny paragraph 13 of the Complaint.
12. Paragraphs 14, 15 and 16 state conclusions or interpretations of law for which no responsive pleading is required.
13. Respondents deny paragraphs 17, 18, 19, 20 and 21 of the Complaint.
14. Respondents deny paragraph 22 of the Complaint and aver that Relators had an adequate remedy of law and in fact, in Case No. 171 CIV 03 filed a supplemental petition against the Village of Piketon and its governmental risk sharing pool in the Pike County Common Pleas Court to enforce said judgment. (Exhibit "A"). Respondents further aver that on April 24, 2004, Relators dismissed said supplemental petition to

enforce the judgment pursuant to Ohio Civil Rule 41(A)(1) and failed to re-file said petition such that this action and any further actions to enforce said judgment are time barred pursuant to Ohio Civil Rule 41(A), Ohio Revised Code Sections 2305.19 and 2744.04(A). (See Respondent's Exhibit "B").

15. Respondents admit paragraph 23 of the Complaint.
16. Respondents deny paragraph 24 of the Complaint and aver that Relators' action to enforce the judgment is time barred.
17. Respondents deny paragraph 25 of the Complaint.
18. Respondents admit paragraph 26 of the Complaint.
19. Respondents deny every remaining allegation of Relator's Complaint not herein specifically admitted to be true.

FIRST AFFIRMATIVE DEFENSE

20. Relators' Writ of Mandamus should be denied pursuant to O.R.C. 2731.05 as Relators had adequate remedy at law which Relators asserted in Case No. 171 CIV 03, Pike County Common Pleas Court (Exhibit "A") to wit a supplemental petition against the Village of Piketon to enforce said judgment, which was dismissed by Relators on April 24, 2004 and not re-filed. (Exhibit "B").

SECOND AFFIRMATIVE DEFENSE

21. Relators' Complaint for Mandamus is barred by applicable statute of limitations including Ohio Revised Code Section 2744.04(A) which required that any original action against an Ohio Political Subdivision be filed within two (2) years after the cause of action accrues.

THIRD AFFIRMATIVE DEFENSE

22. The Complaint for Mandamus should be denied for allowing an unreasonable time to lapse to file the petition for Writ of Mandamus to the prejudice of Respondents. *State Ex. Rel. Smith v. Witter* (1926) 114 Ohio St. 357.

FOURTH AFFIRMATIVE DEFENSE

23. Relator's Complaint for Writ of Mandamus should be denied on the basis of waiver, estoppel, laches, *res judicata* and claim preclusion.

FIFTH AFFIRMATIVE DEFENSE

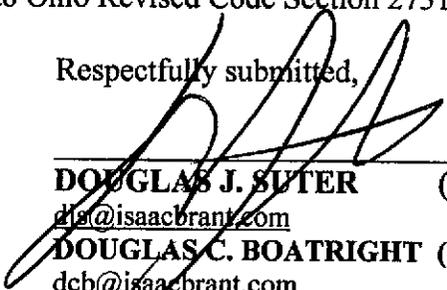
24. Relator's Complaint for Writ of Mandamus is barred by failure of service on the Village of Piketon Police Department in the underlying matter pursuant to Ohio Civil Rule 4.2(M).

SIXTH AFFIRMATIVE DEFENSE

25. Relator's claims are governed in whole or in part by Ohio Revised Code Chapter 2744.

WHEREFORE, Respondents Village of Piketon, Mayor, Clerk-Treasurer and Police Chief respectfully urge the Ohio Supreme Court to dismiss Relator's Complaint for Writ of Mandamus and for an award of costs against Relators pursuant to Ohio Revised Code Section 2731.12.

Respectfully submitted,



DOUGLAS J. SUTER (0040288)

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DOUGLAS C. BOATRIGHT (0042489)

dcb@isaacbrant.com

ISAAC, BRANT, LEDMAN & TEETOR, LLP

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Columbus, Ohio 43215

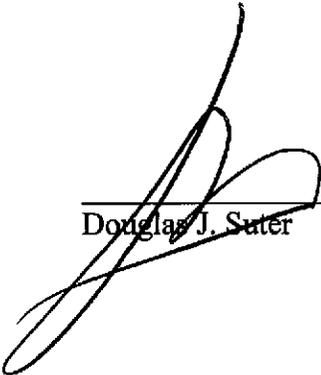
(614) 221-2121; Fax (614) 365-9516

Attorneys for Defendant Village of Piketon

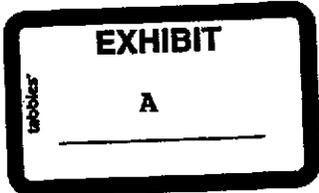
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served by regular U.S. mail, postage prepaid, this 15th day of May, 2008, upon the following:

Phillip M. Collins, Esq.
Allison K. Tracey, Esq.
Phillip M. Collins & Assoc.
21 East State Street, #950
Columbus, OH 43215
Attorneys for Relators



Douglas J. Suter (0040288)



IN THE COMMON PLEAS COURT,
PIKE COUNTY, OHIO

BETTY S. MILES, Individually
and as Administrator of the
Estate of Jerry D. Miles
175 SR 220
Piketon, OH 45661

CASE NO. 17101V03

JUDGE BOLT-MEREDITH

and

BILL S. MILES
175 SR 220
Piketon, Ohio 45661

and

JOSHUA R. MILES
175 SR 220
Piketon, OH 45661
Plaintiffs

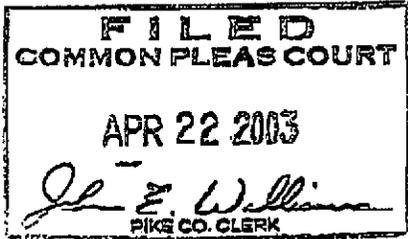
vs

VILLAGE OF PIKETON, OHIO
Serve: Rhonda Clemmons
Village Administrator
PO Box 547
Piketon, OH 45661

SUPPLEMENTAL PETITION
Pursuant to R.C. §3929.06

and

PUBLIC ENTITIES POOL OF OHIO
Serve: Accordia of Ohio LLC
PO Box 427
Dayton, OH 45401
Defendants



Come now the Plaintiffs and state the following to this Honorable Court:

1. Defendant, Village of Piketon, hereinafter Piketon, is a village organized under the laws of the State of Ohio and is and was at the time herein mentioned authorized and required by

State law to defend and indemnify its employees in certain lawsuits, including the suit referred to herein.

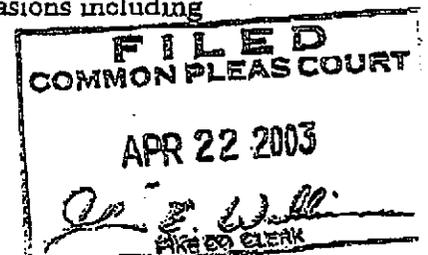
2. Defendant, Public Entities Pool of Ohio, hereinafter Pool, is an intergovernmental organization organized pursuant to an Intergovernmental Contract to defend and indemnify members of the Pool in certain lawsuits, including the suit referred to herein.

3. On or about January 5, 2000, Nathaniel Todd Booth, was the Chief of Police of Defendant Piketon. Both Defendant Piketon and Booth were members of the Defendant Pool as defined by the Legal Defense and Claim Payment Agreement entered into by both Defendants.

4. On January 5, 2000, and thereafter, while the aforesaid statutes and the aforesaid Legal Defense and Claim Payment Agreement were in full force and effect, Plaintiffs' decedent and the Plaintiffs suffered certain damages for injury and loss to persons or property caused by the wrongful acts of Nathaniel Todd Booth while acting within the scope of his employment or official responsibilities as an employee of Defendant Piketon and as a member of the Defendant Pool. Pursuant to State law and said Legal Defense and Claim Payment Agreement, Defendants had a duty to defend Booth.

5. Thereafter, on the 18th day of December, 2002, Plaintiffs recovered a judgment of \$837,518.22 against Nathaniel Todd Booth in an action in the Common Pleas Court of Pike County, Ohio styled Betty S. Miles, Individually and as Administrator of the Estate of Jerry D. Miles and Bill S. Miles and Joshua R. Miles, v. Nathaniel Todd Booth, Case No. 519-CIV-01, which judgment remains in full force and effect and wholly unsatisfied, although more than 30 days have elapsed since the rendition thereof. (Exhibit A).

6. Defendants received notice of the fact of said suit on several occasions including

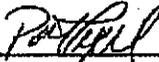


service by mail of the complaint on the Village Attorney, Anthony Moraleja, and upon the Defendant, Nathaniel Booth, by certified mail. Said service constituted notice to both Defendants.

7. Defendants' failure to defend Booth makes each liable for said judgment rendered against him.

WHEREFORE, Plaintiffs pray judgment against the Defendants jointly and severally for the amount of the judgment rendered in case No. 519-CIV-01 which is a sum in excess of \$25,000.00, plus the stated interest on 10% per annum from December 8, 2002, and the costs of this proceeding.

Respectfully submitted,
APEL & MILLER


PAT APEL (0067805)
MARGARET APEL MILLER (0041912)
617 Fifth Street
Portsmouth Ohio 45662
740-353-2146
740-354-3148 (fax)

TO THE CLERK:

Please issue a certified copy of the foregoing for service upon Rhonda Clemmons for the Defendant, Village of Piketon, and Accordia of Ohio LLC, for Defendant, Public Entities Pool of Ohio, at the above addresses by Certified U.S. Mail, Return Receipt Requested.

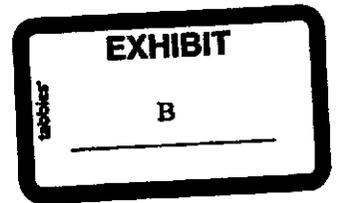


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FILED
COMMON PLEAS COURT
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PIKETON CO. CLERK

IN THE COMMON PLEAS COURT
PIKE COUNTY, OHIO



**BETTY S. MILES, Individually and
as Administrator of the Estate of Jerry D.
Miles, et. al.**

Plaintiffs

Case No. 171CIV03

JUDGE BOLT-MEREDITH

vs.

NOTICE OF DISMISSAL

**VILLAGE OF PIKETON, OHIO, et al.
Defendants.**

Now comes plaintiffs, by and through their counsel, and hereby gives notice of their dismissal without prejudice of their Supplemental Petition against the Village of Piketon, Ohio. This dismissal is pursuant to Civil Rule 41(A)(1).

Respectfully submitted,



Pat Apel (#0067805)
Margaret Apel Miler (#0041912)
APEL & MILLER
Attorneys at Law
617 Fifth Street
Portsmouth, Ohio 45662
740-353-2146

CERTIFICATE OF SERVICE

A copy of the foregoing has been forwarded via U.S. Mail to the following this 24th day of April, 2004.

Douglas J. Suter, Esq.
Isaac, Brant, Ledmon & Teetor
250 East Broad Street, Suite 900
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Attorney for the Village of Piketon

Jeffrey C. Turner, Esq.
Boyd W. Gentry, Esq.
Surdyk, Dowd & Turner Co., L.P.A.
130 West Second Street, Suite 900
Dayton, Ohio 45402
Attorneys for Defendant PEP



Pat Apel