

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
HATTIESBURG DIVISION**

**ANDRE D. COOLEY**

**PLAINTIFF**

**VERSUS**

**CIVIL ACTION NO. 2:10-CV-246-KS-MTP**

**FORREST COUNTY SHERIFF'S  
DEPARTMENT; BILLY MCGEE  
in his individual and official capacity  
as Forrest County Sheriff; CHARLES  
BOLTON, in his individual and  
official capacity as Chief of Corrections;  
and DONNELL BRANNON in his  
individual and official capacity as  
Staff Sergeant of Jail Operations**

**DEFENDANTS**

**ANSWER TO COMPLAINT**

COME NOW the Defendants, **FORREST COUNTY SHERIFF'S DEPARTMENT,  
BILLY MCGEE in his individual and official capacity as Forrest County Sheriff,  
CHARLES BOLTON, in his individual and official capacity as Chief of Corrections,  
and DONNELL BRANNON in his individual and official capacity as Staff Sergeant of Jail  
Operations**, by and through their counsel of record and for answer to the complaint filed by the  
Plaintiff would say unto the Court the following, to-wit:

**FIRST DEFENSE**

The Complaint filed herein fails to state a cause of action upon which relief can be  
granted and should be dismissed pursuant to Rule 12(b)(6) of the Federal Rules of Civil  
Procedure.

**SECOND DEFENSE**

Any and all claims asserted by this Plaintiff are filed without statutory authority in that there is no federal or state statute that grants authority for a civil action of this nature. Actions regarding termination or specific rights based upon sexual orientation have not been enacted nationally and specifically by the State of Mississippi in that this is a States' Rights issue.

**THIRD DEFENSE**

Equal protection claims are only subject to strict scrutiny where the Plaintiff alleges that the government infringes on the fundamental right of a class of people. The Plaintiff is not a member of a protected class. Inasmuch homosexuality is not a suspect class in this circuit.

**FOURTH DEFENSE**

Defendants specifically reserve and invoke all other rights and defenses available unto them, including but not limited to those set forth in Rules 8(c), 12(b), 12(c), and 19 of the Federal Rules of Civil Procedure, the Mississippi Code Annotated of 1972, as amended, including the Mississippi Tort Claims Act, the United States Code, and/or common law, for which a good-faith legal and/or factual basis exists in their favor.

**FIFTH DEFENSE**

That at all times relevant to Plaintiff's claims, these answering Defendants acted in a reasonable manner and in good faith while in the course and scope of their employment and in the execution of their official duties, and therefore, these answering Defendants are immune from liability.

**SIXTH DEFENSE**

Defendants hereby specifically and affirmatively assert and invoke all defenses available to them as set forth in M.R.C.P. 12(b)(1) through 12(b)(7) for which a good faith legal and/or

factual basis exists or may exist on their behalf or in their favor. Defendants reserve the right to further supplement these preliminary defenses via separate motion.

**SEVENTH DEFENSE**

Defendants hereby affirmatively assert all substantive and procedural defenses available to them or unto any of them for which a good faith legal and/or factual basis exists or may exist in their favor as set forth in Miss. Code Ann. §11-46-1 et seq., specifically including Miss. Code Ann. §11-46-5, 11-46-7, 11-46-9, 11-46-11, 11-46-13 and 11-46-17. Included in these defenses are Defendants' rights to a non-jury trial by the Court on all State law issues, which is hereby prayed for. To the extent that Plaintiff's Complaint or any subsequently filed pleading, may seek a trial by jury on state law claims, Defendants move the Court to strike any such jury demand on the basis that the same is prohibited by the aforesaid statutes.

**EIGHTH DEFENSE**

Defendants possess immunity herein from suit and/or liability and/or damages, including as proper, whether sovereign immunity, qualified immunity, or public official(s)' immunity and/or absolute immunity/judicial immunity.

**NINTH DEFENSE**

Defendants hereby specifically plead that if the allegations of the Complaint are true, Plaintiff is or may be guilty of either contributory fault or affirmative conduct in connection with the events about which he complains. To the extent events that form the subject matter of Plaintiff's Complaint and Plaintiff's alleged damages, if any, were caused by the actions or omission of Plaintiff, any recovery by Plaintiff, if any, must be reduced accordingly under principles of comparative fault.

**TENTH DEFENSE**

Plaintiff's damages if any are the sole proximate result of actions or omissions of a person or persons or an entity or entities other than Defendants, and Plaintiff's claims for damages are barred in their entirety as to Defendants, or are subject as appropriate to apportionment under statute, inclusive of Miss. Code Ann. §85-5-7.

**ELEVENTH DEFENSE**

Defendants are entitled to either (1) qualified immunity, and (2) individual immunity.

**TWELFTH DEFENSE**

If the actions of this Plaintiff, which are the subject matter of this litigation are in violation of policy of the Forrest County Sheriff's Department then there should be no liability for these Defendants.

**THIRTEENTH DEFENSE**

The Plaintiff herein was an at will employee of the Forrest County Sheriff's Department and worked solely at the pleasure of the Forrest County Sheriff.

**FOURTEENTH DEFENSE**

Plaintiff failed to properly and fully comply with administrative guidelines and procedures, therefore this suit is improper and/or premature.

**ANSWER TO COMPLAINT**

And now, in response to the allegations of the Complaint, these Defendants answer, paragraph by paragraph, as follows:

1.

The Defendants are without sufficient information to either admit or deny the allegations in Paragraph 1. of the Plaintiff's Complaint and thus would deny.

2.

The Defendants are without sufficient knowledge to either admit or deny the allegations in Paragraph 2. of the Complaint filed herein and thus would deny.

3.

The Defendants admit Paragraph 3. of the Complaint filed herein.

4.

The Defendants deny any and all allegations contained in Paragraph 4. of the Complaint filed herein.

5.

The Defendants admit that Chief Bolton told Mr. Cooley to report to his immediate supervisor, but would deny any and all remaining allegations contained in Paragraph 5. of the Complaint filed herein.

6.

The Defendants deny any and all allegations contained in Paragraph 6. of the Complaint filed herein.

7.

The Defendants deny any and all allegations contained in Paragraph 7. of the Complaint filed herein.

8.

The Defendants deny any and all allegations contained in Paragraph 8. of the Complaint filed herein.

9.

The Defendants admit in paragraph 9. of the Complaint filed herein that the Sheriff's Department contested Mr. Cooley's application for unemployment benefits by alleging that Mr. Cooley was terminated because he "displayed inappropriate conduct and behavior while off duty, unacceptable for an officer." The Defendants would admit that after an evidentiary hearing, the administrative law judge in Mississippi's Department of Employment Security rejected the Sheriff Department's assertion and concluded that: "The claimant was discharged, but not due to misconduct. The Defendant would specifically deny in paragraph 9. that the employer has not provided substantial evidence that the claimant was involved in misconduct of any sort.

10.

The Defendants deny any and all allegations contained in Paragraph 10. of the Complaint filed herein.

11.

The Defendants admit Paragraph 11. of the Complaint filed herein.

12.

The Defendant admit Paragraph 12. of the Complaint filed herein.

13.

The Defendant admit Paragraph 13. of the Complaint filed herein.

14.

The Defendants deny that Forrest County is a municipality and would further admit the remaining allegations in Paragraph 14. of the Complaint filed herein.

15.

The Defendants admit Paragraph 15. of the Complaint filed herein.

16.

The Defendants admit Paragraph 16. of the Complaint filed herein.

17.

The Defendants admit Paragraph 17. of the Complaint filed herein.

18.

The Defendants are without sufficient knowledge to either admit or deny the allegations in Paragraph 18. of the Complaint filed herein and thus would deny.

19.

The Defendants are without sufficient knowledge to either admit or deny the allegations in Paragraph 19. of the Complaint filed herein and thus would deny.

20.

The Defendants admit Paragraph 20. of the Complaint filed herein.

21.

The Defendants are without sufficient knowledge to either admit or deny the allegations in Paragraph 21. of the Complaint filed herein and thus would deny.

22.

The Defendants deny any and all allegations contained in Paragraph 23. of the Complaint filed herein.

23.

The Defendants are without sufficient knowledge to either admit or deny the allegations in Paragraph 23. of the Complaint filed herein and thus would deny.

24.

The Defendants are without sufficient knowledge to either admit or deny the allegations in Paragraph 24. of the Complaint filed herein and thus would deny.

25.

The Defendants admit in paragraph 25. of the Complaint filed herein that Chief Bolton responded to Mr. Cooley's emergency phone call. The Defendants would deny the remaining allegations in paragraph 25. of the Complaint filed here.

26.

The Defendants deny any and all allegations contained in Paragraph 26. of the Complaint filed herein.

27.

The Defendants deny any and all allegations contained in Paragraph 27. of the Complaint filed herein.

28.

The Defendants deny any and all allegations contained in Paragraph 28. of the Complaint filed herein.

29.

The Defendants deny any and all allegations contained in Paragraph 29. of the Complaint filed herein.

30.

The Defendants deny any and all allegations contained in Paragraph 30. of the Complaint filed herein.

31.

The Defendants deny any and all allegations contained in Paragraph 31. of the Complaint filed herein.

32.

The Defendants deny any and all allegations contained in Paragraph 32. of the Complaint filed herein.

33.

The Defendants deny any and all allegations contained in Paragraph 33. of the Complaint filed herein.

34.

The Defendants deny any and all allegations contained in Paragraph 34. of the Complaint filed herein.

35.

The Defendants admit Paragraph 35. of the Complaint filed herein.

36.

The Defendants deny any and all allegations contained in Paragraph 36. of the Complaint filed herein.

37.

The Defendants deny any and all allegations contained in Paragraph 37. of the Complaint filed herein.

38.

The Defendants deny any and all allegations contained in Paragraph 38. of the Complaint filed herein.

39.

The Defendants admit Paragraph 39. of the Complaint filed herein.

40.

The Defendants admit any and all allegations contained in Paragraph 40. of the Complaint filed herein.

41.

The Defendants admit Paragraph 41. of the Complaint filed herein.

42.

The Defendants admit Paragraph 42. of the Complaint filed herein.

43.

The Defendants deny any and all allegations contained in Paragraph 43. of the Complaint filed herein.

44.

The Defendants admit Paragraph 44. of the Complaint filed herein.

45.

The Defendants deny any and all allegations contained in Paragraph 45. of the Complaint filed herein.

46.

The Defendants deny any and all allegations contained in Paragraph 46. of the Complaint filed herein.

47.

The Defendants deny any and all allegations contained in Paragraph 47. of the Complaint filed herein.

48.

The Defendants deny any and all allegations contained in Paragraph 48. of the Complaint filed herein.

49.

The Defendants deny any and all allegations contained in Paragraph 49. of the Complaint filed herein.

50.

The Defendants deny any and all allegations contained in Paragraph 50. of the Complaint filed herein.

51.

The Defendants admit Paragraph 51. of the Complaint filed herein.

52.

The Defendants deny any and all allegations contained in Paragraph 52. of the Complaint filed herein.

53.

The Defendants deny any and all allegations contained in Paragraph 53. of the Complaint filed herein.

54.

The Defendants deny any and all allegations contained in Paragraph 54. of the Complaint filed herein.

55.

The Defendants deny any and all allegations contained in Paragraph 55. of the Complaint filed herein.

56.

The Defendants deny any and all allegations contained in Paragraph 56. of the Complaint filed herein.

57.

The Defendants deny any and all allegations contained in Paragraph 57. of the Complaint filed herein.

58.

The Defendants admit paragraph 58. of the Complaint filed herein.

59.

The Defendants deny any and all allegations contained in Paragraph 59. of the Complaint filed herein.

The Defendants deny the Prayer for Relief, beginning with the word “WHEREFORE,” inclusive of paragraphs (1), (2), (3), and (4) and ending with the words, “the Court deems just and proper.”

And now having fully answered the allegations of Plaintiff's Complaint and having denied any liability or actionable conduct whatsoever in the premises, these Defendants would set forth the following Special Affirmative Matters to be shown and proven at the trial of this matter:

**FIRST AFFIRMATIVE DEFENSE**

Defendants invoke the provisions of §85-5-7, *Miss. Code Ann. of 1972* as amended, thus reserving any claims for apportionment, contribution and/or indemnity as to other named or unnamed tortfeasors.

**SECOND AFFIRMATIVE DEFENSE**

These Defendants plead all applicable privileges and immunities under both state and federal law, including but not limited to, the common law and statutory doctrines of sovereign immunity, absolute immunity, and qualified immunity against any claims for penalties, damages, punitive damages, attorney's fees or any other damages as requested in the Plaintiff's Complaint.

**THIRD AFFIRMATIVE DEFENSE**

To the extent the Complaint raises any claims under Mississippi law, these Defendants specifically plead all protections to which they are entitled pursuant to Section 11-46-1, et seq., of the Mississippi Code of 1972, commonly known as the Mississippi Tort Claims Act, including, but not limited to, all exemptions from the waiver of sovereign immunity; all notice provision; all statutes of limitations; the Defendants' right to a bench trial, to the extent applicable; and all limitations on liability contained therein.

**FOURTH AFFIRMATIVE DEFENSE**

Defendants would specifically deny each and every material allegation of the Complaint which has not been specifically admitted, regardless of paragraph number or lack thereof or paragraph letter or lack thereof.

**FIFTH AFFIRMATIVE DEFENSE**

That the damages allegedly sustained by Plaintiff are speculative and are not recoverable.

**SIXTH AFFIRMATIVE DEFENSE**

That the Defendants reserve their right to seek a setoff and/or credit for any sums paid or any other things of value given to or conferred upon Plaintiff arising out of or in any manner related or this incident, including any reduction in potential criminal penalties or which otherwise served to reduce or mitigate Plaintiff's alleged damages. In addition or in the alternative, Defendants would affirmatively show that Plaintiff failed to mitigate his damages and Defendants are therefore entitled to all appropriate set-offs or credits, or a reduction of Plaintiff's alleged damages, due to said failure to mitigate.

**SEVENTH AFFIRMATIVE DEFENSE**

That the acts or omissions of Plaintiff or third persons over whom these Defendants have no responsibility or liability in the premises constituted a superseding and sole proximate cause of the alleged incident and injuries, if any, sustained by Plaintiff.

**EIGHTH AFFIRMATIVE DEFENSE**

Defendants hereby specifically plead that if the allegations of the Complaint are true, Plaintiff is or may be guilty of either contributory negligence or affirmative conduct in connection with the events about which he complains. To the extent events that form the subject matter of Plaintiff's Complaint and Plaintiff's alleged damages, if any, were caused by the

actions or omissions of Plaintiff, any recovery by Plaintiff, if any, must be reduced accordingly under principles of comparative fault.

**NINTH AFFIRMATIVE DEFENSE**

That in the alternative, the acts or omissions of Plaintiff or third persons over whom these Defendants have no responsibility or liability in the premises constituted a proximate contributing cause of the alleged incident and injuries, if any, sustained by Plaintiff.

**TENTH AFFIRMATIVE DEFENSE**

Alternatively, Plaintiff's alleged injuries were caused, unforeseeably, by persons, forces or entities for whom/which these Defendants are neither liable nor responsible, such being intervening superseding causes, breaking any alleged causative link to these Defendants.

**ELEVENTH AFFIRMATIVE DEFENSE**

Defendants would show that the Complaint to the extent that it seeks punitive or exemplary damages, violated certain provisions of the Constitution of the United States and the Mississippi Constitution, including, but not limited to, the following:

It violates Defendants' protection from "excessive fines" as provided in the Eighth Amendment to the United States Constitution and Article 3, Section 28 of the Constitution of the State of Mississippi;

It further violates Defendants' right to substantive due process as provided in the Fifth and Fourteenth Amendments to the United States Constitution and the Constitution of the State of Mississippi;

It violates the Fourteenth Amendment as said Amendment guarantees Defendants equal protection of the law, and the Fourteenth Amendment would be violated by the imposition of

punitive damages in that such a sanction is discriminatory and arbitrary in penalizing Defendants on the basis of wealth.

To the extent Plaintiff's Complaint, with amendments, if any, seeks any award or assessment of punitive damages against Defendants, such award would be contrary to law, and would violate the Fifth, Eighth, and Fourteenth Amendments to the United States Constitution. Further, and more specifically, awarding and/or assessment of punitive damages would violate Article 3, Section 28 of the Constitution of the State of Mississippi as well as the Eighth Amendment to the Constitution of the United States, both of which prohibit the imposition of excessive fines.

Further, awarding and/or assessment of punitive damages would violate the Fifth and Fourteenth Amendments to the United States Constitution and/or Article 3, Section 14, of the Mississippi Constitution, all of which guarantee unto the citizenry due process of law.

Additionally, Plaintiff's claim for punitive damages of, from or against these Defendants is barred by Miss. Code Ann. Section 11-46-15 (Supp. 1993) and/or federal common law.

Also, standards, procedures and criteria utilized in the judicial decisional process with regard to the awarding and/or assessment of punitive damages are impermissibly vague, arbitrary, and inconsistent, and are therefore, void and otherwise contrary to the principles established by the United States Constitution and Mississippi Constitution.

#### **TWELFTH AFFIRMATIVE DEFENSE**

The Fourth, Fifth and Sixth Amendments form the basis for laws governing the process, convicting, and sentencing, of criminal Defendant and to the extent that Defendants are

subjected to criminal sanction through punitive damages, the burden of proof for imposing punitive damages is “beyond reasonable doubt.”

**THIRTEENTH AFFIRMATIVE DEFENSE**

None of the Plaintiff’s alleged injuries are the result of any policy, custom, or usage of the Forrest County Sheriff’s Office which led or could have led to the alleged constitutional deprivations of which Plaintiff complains, and therefore he cannot maintain a claim against these Defendants pursuant to 42 U.S.C. Section 1983. Defendants had in place adequate policies and procedures which would have allowed Plaintiff to resolve his complaints, but Plaintiff failed to mitigate his damages by failing to utilize said policies and procedures.

**FOURTEENTH AFFIRMATIVE DEFENSE**

Defendant would affirmatively show that, to the extent Plaintiff may have suffered any injury or damage, such was the result of Plaintiff’s own negligence or conduct, or was otherwise the result of unlawful, unforeseen, intervening or superseding causes over and for which these Defendants had no control or responsibility.

**FIFTEENTH AFFIRMATIVE DEFENSE**

Defendants specifically plead the doctrines of contributory and comparative negligence.

**SIXTEENTH AFFIRMATIVE DEFENSE**

Defendants would show that Plaintiff was afforded all protections due them under the United States Constitution and that any actions by Defendants were reasonable, proper, and complied with any and all constitutional standards and that there was no violation whatsoever of any of Plaintiff’s constitutional or other rights.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

These Defendants are entitled to immunity and to the extent any of its employees or officials may be joined herein, such persons would be entitled to public officials immunity, qualified immunity, and/or absolute immunity.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

Defendants possess immunity to Plaintiff herein and specifically assert all rights, defenses, privileges and immunities available unto them under applicable state and federal law. These Defendants invoke and assert all rights, privileges and immunities available unto them as set forth in the United States Constitution and/or Mississippi Constitution and supporting/interpretive federal or state common law.

**NINETEENTH AFFIRMATIVE DEFENSE**

These Defendants assert that they cannot be held liable for damages pursuant to 42 *U.S.C. Section 1983* or otherwise under principles of respondeat superior for the actions of any other party herein or other person whose actions/omissions are complained of.

**TWENTIETH AFFIRMATIVE DEFENSE**

Defendants have fulfilled any and all legal duties owed by it, it any, to Plaintiff.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

Plaintiff suffered no loss or deprivation of any rights, privileges, or immunities afforded him by the United States Constitution or applicable federal or state law.

**TWENTY-SECOND AFFIRMATIVE DEFENSE**

Additionally, and/or alternatively, any damage, loss or deprivation to Plaintiff, if any, was not proximately caused by any official policy, practice or custom of these Defendants or

employees of these Defendants, all of whom were engaged in operations as an arm of the State of Mississippi.

**TWENTY-THIRD AFFIRMATIVE DEFENSE**

Defendants would show that the factual allegations of Plaintiff's Complaint, and the conduct complained of, do not violate any clearly established statutory or constitutional rights of Plaintiff, determined by the standard of objective reasonableness measured by reference to clearly established law. Further, Defendants are not guilty of any deliberate abuse of inherently governmental power, but rather had probable cause for all actions undertaken by it or its employees.

**TWENTY-FOURTH AFFIRMATIVE DEFENSE**

Defendant specifically reserves and invokes all other rights and defenses available unto it, including but not limited to those set forth in Rules 8(c), 12(b), 12(c) and 19 of the Federal Rules of Civil Procedure, the Mississippi Code Annotated of 1972 (as amended), the United States code, and/or common law, for which a good-faith legal and/or factual basis exists in its favor. Defendant specifically, and without limitation, pleads to the extent applicable accord & satisfaction; arbitration & award; assumption of risk; estoppel; failure of consideration; fraud; illegality; injury by fellow servant; laches; payment; release; res judicata; statute of frauds; statute of limitations; and waiver.

**TWENTY-FIFTH AFFIRMATIVE DEFENSE**

Defendants would further reserve the right to amend and supplement this Answer and Defenses as discovery and investigation continue.

AND NOW, having fully answered and set forth their Answer, Defenses and Affirmative Defenses to the Plaintiff's Complaint, Defendants respectfully request they may be dismissed from this civil action with proper costs.

RESPECTFULLY SUBMITTED, this the 10th day of December, 2010.

Respectfully submitted,

**FORREST COUNTY SHERIFF'S DEPARTMENT,  
BILLY MCGEE in his individual and official capacity  
as Forrest County Sheriff, CHARLES BOLTON, in his  
individual and official capacity as Chief of Corrections,  
and DONNELL BRANNON in his individual and  
official capacity as Staff Sergeant of Jail Operations,  
Defendants**

BY: s/James K. Dukes, Jr.  
**JAMES K. DUKES, JR.**

**JAMES K. DUKES, JR.  
ATTORNEY FOR DEFENDANTS  
FORREST COUNTY, et al  
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(601) 544-4121  
(601) 544-4425  
jdukesjr@jdukeslaw.com**

**CERTIFICATE**

I, JAMES K. DUKES, JR., Attorney for the Defendants, do hereby certify that on December 10th, 2010, I electronically filed the foregoing with the Clerk of Court using the ECF system which sent notification of such filing to the following:

Bear Atwood

Acting Legal Director  
American Civil Liberties Union of Mississippi  
P. O. Box 2242  
Jackson, MS 39225  
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Joshua A. Block PHV  
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Union Foundation, Inc.  
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125 Broad Street, 18<sup>th</sup> Floor  
New York, NY 10004  
[lcooper@aclu.org](mailto:lcooper@aclu.org)

and I hereby certify that I have mailed by United States Postal Service the document to the following non-ECF participants:

s/ James K. Dukes, Jr.  
**JAMES K. DUKES, JR.**