## IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF OKLAHOMA

MISTY DAWN BURKE,	1	
Plaintiff;		
v. )	Case No.:	CIV-25-174-GLJ
(1) JUDY ELLIOTT, individually;		
(2) JAMES EARL HANNING, individually;	JURY TRL	AL DEMANDED
(3) WAGONER COUNTY E-911; and		
(4) BOARD OF COUNTY COMMISSIONERS OF) WAGONER COUNTY; jointly and severally;		
Defendants.	, ,	

#### **DEFENDANTS' NOTICE AND PETITION OF REMOVAL**

Defendants Board of County Commissioners of Wagoner County ("Defendant Board"), Wagoner County E-911 ("Defendant E-911"), Judy Elliott, individually ("Defendant Elliott"), and James Earl Hanning, individually ("Defendant Hanning") (collectively "Defendants") hereby give notice of their removal of the action currently pending in the District Court of Wagoner County, State of Oklahoma, pursuant to 28 U.S.C. § 1441 *et seq.*, Fed. R. Civ. P. 81(c), and Local Rules 81.1 and 81.2 of the United States District Court for the Eastern District of Oklahoma. In support of their Notice and Petition of Removal, the above listed Defendants provide to the Court as follows:

1. The captioned proceeding was filed in the District Court of Wagoner County, State of Oklahoma, on March 6, 2025, and is styled: *Misty Dawn Burke, Plaintiff, v. Judy Elliott, individually; James Earl Hanning, individually; Wagoner County E-911, and Board of County Commissioners of Wagoner County; jointly and severally, Case No. CJ-2025-104.* 

- 2. Defendants Board and E-911, as well as Judy Elliott, were purportedly served with process on May 5, 2025. Defendant Hanning was purportedly served with process on May 6, 2025.
- 3. Plaintiff's First Amended Petition filed on April 17, 2025, in the above captioned proceeding alleges violations of Plaintiff's rights under several federal statutes, including the Fair Labor Standards Act, the Family Medical Leave Act, and 42 U.S.C. § 1983.
- 4. The United States District Court for the Eastern District of Oklahoma has original subject matter jurisdiction of this case pursuant to 28 U.S.C. § 1331.
  - 5. This Notice and Petition for Removal is timely filed.
  - 6. Pursuant to Local Rule 81.2, a copy of the following pleadings are attached:

Exhibit 1: State Court Docket Sheet;

Exhibit 2: Petition;

Exhibit 3: Issue of Summons to Defendants James Early Hanning, Judy Elliott, Board of County Commissioners of Wagoner County, and Wagoner County E-911;

Exhibit 4: Entry of Appearance for Brendan McHugh;

Exhibit 5: Order of Recusal by Judge Kirkley;

Exhibit 6: First Amended Petition;

Exhibit 7: Certificate of Service on Defendants Board of County Commissioners of Wagoner County, Wagoner County E-911 and Judy Elliott;

Exhibit 8: Certificate of Service on Defendant James Earl Hanning.

- 7. As stated above, a copy of the most-recently available docket sheet in the state court action, along with copies of all other documents filed in the state court action are attached hereto marked as Exhibits 1 8 and made a part hereof. At this time, no Defendants have filed any responsive pleadings to Plaintiff's Petition and OSCN reflects no pending motions.
- 8. By removal, Defendants hereby reserve and do not waive any rights to assert, or the protection of, any available constitutional, statutory, common law, or other provision that does,

might, or could limit the Court's jurisdiction of the allegations in the State Petition or any proposed amendment thereto, including allegations of entitlement to relief thereunder, including, but not limited to, the Tenth and Eleventh Amendment or any other sovereign immunity. *See Neiberger v. Hawkins*, 70 F.Supp.2d 1177 (D.Colo. 1999). This removal in no way waives the right to immunity from liability retained by Defendants with regard to all claims. *Trant v. Oklahoma*, 754 F.3d 1158 (10th Cir. 2014).

9. Pursuant to 28 U.S.C. § 1446(d), Defendants are providing notice of this Removal to the Plaintiff and filing a copy of the Notice of Removal with the Clerk of the District Court of Wagoner County.

WHEREFORE, Defendants Board of County Commissioners of Wagoner County, Wagoner County E-911, Judy Elliott, and James Earl Hanning respectfully request that this action be removed from the District Court of Wagoner County, State of Oklahoma, to the United States District Court for the Eastern District of Oklahoma, and for such other and further relief as this Court deems proper under the circumstances.

Respectfully submitted,

#### s/ Jordan L. Miller

Jordan L. Miller, OBA No. 30892 Scott R. Eudey, OBA No. 18050 COLLINS ZORN & WAGNER, PLLC 429 N.E. 50th Street, Second Floor

Oklahoma City, OK 73105

Telephone: (405) 524-2070
Facsimile: (405) 524-2078
E-mail: jlm@czwlaw.com

sre@czwlaw.com

ATTORNEYS FOR DEFENDANTS BOARD OF COUNTY COMMISSIONERS OF WAGONER COUNTY, WAGONER COUNTY E-911, AND JAMES EARL HANNING

s/ Jessica Dark

Jessica L. Dark, OBA No. 31236 PIERCE COUCH HENDRICKSON BAYSINGER & GREEN, L.L.P. 1109 North Francis Avenue Oklahoma City, Oklahoma 73106 Telephone: (405) 235-1611

Facsimile: (405) 235-2904 jdark@piercecouch.com

ATTORNEY FOR DEFENDANT JUDY **ELLIOTT** 

#### **CERTIFICATE OF SERVICE**

Document 2

I hereby certify that on May 23, 2025, I electronically transmitted this filing to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

Brendan M. McHugh P.O. Box 1392 Claremore, OK 74018 brendan@lawinok.com Attorney for Plaintiff

Jessica L. Dark, OBA No. 31236 PIERCE COUCH HENDRICKSON BAYSINGER & GREEN, L.L.P. 1109 North Francis Avenue

Oklahoma City, Oklahoma 73106 Telephone: (405) 235-1611

Facsimile: (405) 235-2904 jdark@piercecouch.com

Attorney for Defendant Judy Elliott

s/ Jordan L. Miller

Jordan L. Miller

The information on this page is NOT an official record. Do not rely on the correctness or completeness of this information. Verify all information with the official record keeper. The information contained in this report is provided in compliance with the Oklahoma Open Records Act, 51 O.S. 24A.1. Use of this information is governed by this act, as well as other applicable state and federal laws.

#### IN THE DISTRICT COURT IN AND FOR WAGONER COUNTY, OKLAHOMA

No. CJ-2025-00104

(Civil relief more than \$10,000: DAMAGES)

Page 1 of 3

BURKE, MISTY DAWN VS. ELLIOT, JUDY et al

Filed: 03/06/2025

Judge: KIRKLEY, DOUGLAS

#### **PARTIES**

BURKE, MISTY DAWN, Plaintiff ELLIOT, JUDY, Defendant HANNING, JAMES EARL, Defendant WAGONER COUNTY E-911, Defendant BOARD OF COUNTY COMMISSIONERS OF WAGONER COUNTY, Defendant JOINTLY AND SEVERALLY, Defendant

#### **ATTORNEYS**

**Attorney** 

MCHUGH, BRENDAN M PO BOX 1392 CLAREMORE, OK 74018 **Represented Parties** 

#### **EVENTS**

None

### **ISSUES**

1. DAMAGES

6:25-cv-00174-RAW-GLJ Document 2-1 Filed in ED/OK on 05/23/25 Page 2 of 3 DOCKET

nDate Code Description	
03/06/2025 [TEXT]	\$ 163.00
PETITION (\$10,001 OR MORE)	
Document Available (#1084366892) 🖺 TIFF 🚨 PDF	
(Entry with fee only)	\$ 6.00
(Entry with fee only)	\$ 7.00
OKLAHOMA COURT INFORMATION SYSTEM FEE - EFFECTIVE 07/01/04	\$ 25.00
LENGTHY TRIAL FUND FEE	\$ 10.00
OK COURT APPOINTED SPECIAL ADVOCATES	\$ 5.00
10% OF CASA TO COURT CLERK REVOLVING FUND	\$ 0.50
OK COUNCIL ON JUDICIAL COMPLAINTS REVOLVING FUND	\$ 1.55
10% OF COJC TO COURT CLERK REVOLVING FUND	\$ 0.16
COURTHOUSE SECURITY FEE	\$ 10.00
10% OF CHSC TO COURT CLERK REVOLVING FUND	\$ 1.00
STATE JUDICIAL REV. FUND INTERPRETER & TRANSLATOR SERVICES	\$ 0.45
15% TO DISTRICT COURT REVOLVING FUND	\$ 2.48
COURT CLERK PRESERVATION FUND	\$ 10.00
03/06/2025 [TEXT]	\$ 40.00
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Exhibit 1

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FIRST AMENDED PETITION				
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CERTIFICATE OF SERVICE				

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## IN THE DISTRICT COURT OF WAGONER COUNTY STATE OF OKLAHOMA

	James E. Hight
Δ+	Court Clerk 17 M

MISTY DAWN BURKE,	)	
Plaintiff,	)	
	)	Case No. CJ-2025-104
v.	)	
	)	
JUDY, ELLIOTT, individually;	)	
JAMES EARL HANNING, individually,	)	
WAGONER COUNTY E-911, and	)	Attorney Lien Claimed
BOARD OF COUNTY COMMISSIONERS	)	•
OF THE COUNTY OF WAGONER COUNTY;	)	
jointly and severally,	)	
Defendants.	)	

#### **PETITION**

COMES NOW the Plaintiff Misty Dawn Burke (Plaintiff) and hereby submits her Petition against Defendants, individually, JUDY ELLIOTT (Judy), JAMES EARL HANNING (Hanning), individually, WAGONER COUNTY E-911 (E-911), and Board of County Commissioners of the County WAGONER COUNTY (Board). In support thereof, Plaintiff alleges and states as follows:

- 1. Plaintiff is an individual who resides in Wagoner County, Oklahoma and at all material times herein was employed with E-911.
- 2. Hanning is a Wagoner County Commissioner who was the chairman at the time of Plaintiff's termination.
- 3. Judy was Plaintiff's immediate supervisor and E-911 director.
- 4. Board is the governing body for Wagoner County public officials and is the proper party to be sued for claims against County officials not specified in 19 O.S. § 161. Pursuant to Oklahoma law, Board is a political

- subdivision and municipal corporation. Further, E-911 is a government entity.
- 5. E-911 is an entity operated by Wagoner County. It is responsible for dispatching, mapping and maintaining accurate 911 information. The E-911 employees are subject to the control of the Board to hire, fire, and appoint employees.
- 6. Plaintiff began working for E-911 in August of 2016. Plaintiff's immediate supervisor was Judy, the E-911 director.
- 7. On March 11, 2024, a public meeting was had by the Board and one item that was to be discussed in executive session was:
  - "the employment, hiring, appointment, promotion, demotion, disciplining or resignation, of E-911 Coordinator, E-911 Dispatchers and E-911 Staff to include salary and compensation."
- 8. At the March 11, 2024, meeting, the employment status of Judy was discussed. Specifically, numerous co-workers had submitted written complaints to HR regarding the hostile work environment created by Judy. This includes violations of the Fair Labor Standards Act, Family Medical Leave Act, and numerous violations of state and federal law. An emergency meeting was then held on March 12, 2024, after Judy retaliated against several people who made the complaints. The gist of the complaints were that Judy was not paying overtime, was verbally abusive to employees, was monitoring employees social media posts, telling some employees to take posts down etc. Plaintiff was one person who made a

- complaint, submitting a written complaint to HR that was supposed to be confidential.
- 9. Judy was Plaintiff's boss. Judy is the wife of Sheriff Chris Elliott.
- 10. About 3 years ago, Judy trained Plaintiff to be supervisor.
- 11. In March of 2024, Judy Elliott was informed by HR of the complaints which was put it on the agenda and was discussed at the March 11, 2024, Meeting. At this meeting, an executive session was held. In the session the complaint were discussed but the sources were not supposed to be revealed under Board Policy.
- 12. Hanning, during executive session, texted Judy the names of the people who complained against her. A flagrant violation of the Oklahoma Open Meetings Act as well as Wagoner County policy. James Hanning is beholden to the Elliotts because they have buried his numerous acts of criminal conduct through the years.
- 13. Immediately after the meeting, on March 11, 2024, Judy told Plaintiff the name of one of the employees that she thinks made a complaint about her, Judy was right because Hanning had told her. Judy instructed Plaintiff to change this employee's schedule from nights to days. Judy told Plaintiff that this would cause the employee to lose her second job. Plaintiff was a supervisor and the one who makes the schedule; Judy is director, the only one above Plaintiff. Plaintiff told Judy that she was not changing the employee schedule and was not going to be responsible for this employee

- losing her second job. Judy told Plaintiff that she had to because Judy was the boss.
- 14. On March 12, 2024 Judy called Plaintiff to meet her downstairs at the elevator. There, Judy told Plaintiff to get this employee's file and give it to her. Judy and Plaintiff went to Plaintiff's office and gave her this employee's file. Judy told Plaintiff to get the leads' files (3 co-workers) Judy said to get their laptops and radios and that Plaintiff was going to do all their work and that Plaintiff would not get paid overtime because she was exempt from overtime. Judy told Plaintiff that she was punishing her for running her mouth. Judy threatened to tell people falsely that Plaintiff was an addict. Plaintiff told Judy she was retaliating. Judy said, "sit your ass down, I can make it to where no one would ever hire you again." She further said she "can ruin you."
- 15. Based on Judy's conduct an emergency meeting was had that day, March 12, 2024.
- 16. During the meeting while Judy was in executive session, Sheriff Chris Elliott mistakenly sent Plaintiff a text intended for District Attorney Jack Thorp. Sheriff Elliott texted Jack Thorp "if they are going to retain Misty for Judy's position she will have control of personnel files, I would suggest your office take custody of the files or she will alter or destroy them." (while 2<sup>nd</sup> executive session going on). There is no mechanism for the DA to take control of personnel files of a separate county entity.

  Likely, Elliott and Thorp wanted to purge the personnel files or even plant

- things. Plaintiff texted him back telling him he sent her the text in error and Sherriff Elliott responded and sent a text to Plaintiff accusing her of erratic behavior.
- 17. Just prior to the March 11, 2024, meeting (first meeting) Plaintiff overhead DA Jack Thorp tell Judy to secretly record executive session (illegal she is not secretary of the entity, only secretary can do this). Judy instructed an IT person to illegally record.
- 18. On March 12, 2024 Judy instructed the IT person to delete all files off of Judy's computer which was done. Chris Elliott and Mark Secrest, the undersheriff observed the IT person delete the files.
- 19. On or around March 13, 2024, Plaintiff was placed into the role of Interim Coordinator for Wagoner County E-911 following the placement of administrative leave of Judy. Judy was placed on leave due to multiple complaints against her, including allegations of creating a hostile work environment, bullying, discrimination, failure to play employees properly and emotional and mental abuse.
- 20. In June 2024, Plaintiff was informed that she required major spine surgery. Her condition became emergent the week of June 20, 2024, and she contacted Maria Rafloko from Human Resources to request that FMLA paperwork be sent to her doctor. She was admitted to the hospital on June 22, 2024, and underwent surgery on June 23, 2024. She was discharged on June 24, 2024, and was scheduled to return to work on a modified work schedule two weeks later.

21.

- On June 28, 2024, a special meeting of the Board was called by Hanning regarding Plaintiff's position as Interim Coordinator. Hanning retaliated against Plaintiff during this meeting, by placing her on speakerphone while she was at home recovering from surgery, on pain medication, and on FMLA approved leave. Hanning demanded to know who Plaintiff had informed about her surgery, when she would be returning to work, and who was covering her position during her absence. Plaintiff had been approved by HR and had advised Commissioner/Chairman Tim Kelley. Hanning asked her to send her correspondence with Chairman Tim Kelley about her surgery to the County Clerk, Lori Hendrix, via text message. The Board of County Commissioners voted to take no action during the meeting, leaving Plaintiff in the Interim Coordinator position.
- Plaintiff submitted an ORA request on December 6, 2024 and on
   December 13, 2024,. See ORA requests attached as Exhibits 1A and 1B.
- 23. On December 16, 2024 County Clerk<sup>1</sup> Lori Hendricks emailed Plaintiff's counsel inquiring into the status of ORA request.
- 24. On January 21, 2025 Plaintiff was fired. At the meeting wherein Plaintiff's employment status was discussed, Hanning was overheard in executive session alleging that Plaintiff had a character flaw because she used her position for special treatment. This assertion is an obvious pretext. It is false. Moreover, Hanning has used his position as Wagoner County

<sup>&</sup>lt;sup>1</sup> Plaintiff believes that the ORA requests have not been complied with and there has been minimal compliance with the request by the DA's office. It is anticipated that the propriety of the ORA claim will be addressed in a separate ORA case.

Commissioners numerous times to obtain special treatment. This includes numerous acts of criminal conduct being buried by DA Thorp. It also includes Hanning using his position to have criminal charges filed against individuals that he has a motive or agenda against, using his position of power to curry preferential treatment.

#### COUNT I-42 U.S.C. 1983 (First Amendment Retaliation)

Plaintiff incorporates by reference the foregoing paragraphs as though fully set forth herein. Additionally, Plaintiff asserts the following:

#### A. INDIVIDUAL LIABILITY of Hanning and Judy

- 1. That Plaintiff has a constitutional right of freedom of speech, as guaranteed by the First Amendment of the United States Constitution and as such public officials are forbidden from discharging or threatening to discharge employees for and from retaliating against them based on his speech.
- 2. Plaintiff engaged in protected speech by submitting a grievance regarding Judy and by submitting an ORA for the text messages. Hanning and Elliott violated Plaintiff's First Amendment rights, first by creating a hostile work environment then by terminating her.
- 3. Plaintiff's speech was protected by the First Amendment in that it involved a matter of public concern. Further, her speech was non-disruptive and did not impede or interfere with the E-911's ability to perform its functions nor was it within his job functions.
- 4. That Plaintiff sustained an adverse employment action as a result of his protected speech in that he was terminated and that a significant motivating factor was

expression of his political speech and as such termination of Plaintiff is in contravention of his First Amendment rights in violation of 42 U.S.C. § 1983. Plaintiff's speech was not part of his job duties.

- 5. That the conduct at issue herein was taken under color of law.
- 6. That as a result of the conduct of Elliot and Hanning, Plaintiff has sustained actual damages in excess of \$10,000.00.
- 7. Punitive damages should be assessed against Elliott and Hanning, as a result of their conscious disregard of the federally secured rights of Plaintiff.
- 8. Plaintiff should be reimbursed for his reasonable attorney fees and court costs.

#### **COUNT II FLSA-RETALIATION (All Defendants)**

Plaintiff incorporates by reference the foregoing paragraphs as though fully set forth herein. Additionally, Plaintiff asserts the following:

- 1. Plaintiff was employed with E-911 and Board as set forth above.
- 2. While employed with Defendant, Plaintiff was a covered employee within the Fair Labor Standards Act of 1938 (FLSA), 29 U.S.C. § 201 et seq. Defendants are employees within the FLSA.
- 3. Plaintiff complained about lack of overtime pay, including in her written grievance submitted March 10, 2024 that Hanning outed her to Judy. Further, Plaintiff refused to retaliate against other individuals as demanded by Judy. Accordingly, Plaintiff engaged in protected conduct, in good faith, under the FLSA.
- 4. Defendants retaliated against Plaintiff for her availment of her rights under the FLSA by terminating Plaintiff, and creating a hostile work environment and her

availment of her rights was a significant motivating factor in her termination. This termination contravenes the FLSA. Judy and Hanning attempted to dissuade Plaintiff to not exercise her rights and terminated Plaintiff for a sham reason.

- 5. As a result of Defendants' conduct, Plaintiff has sustained actual damages in excess of \$75,000.00.
- 6. Plaintiff should be reimbursed a reasonable amount of attorney fees and costs incurred herein.

### COUNT III FMLA (All Defendants) Retaliation and Interference

Plaintiff incorporates by reference the foregoing paragraphs as though fully set forth herein. Additionally, Plaintiff asserts the following:

- 1. That Plaintiff is a former employee of Defendants.
- 1. That Defendants were qualified employers under the Family and Medical Leave Act of 1993, 29 U.S.C., § 2601-2654 (FMLA et. seq.).
- 2. That Plaintiff was a qualified employee under the FMLA.
- 3. That Plaintiff applied for and was approved intermittent leave as a result of a serious health.
- 4. Defendant interfered with and retaliated against Plaintiff for availing herself of her rights under the FMLA.
- That Defendant has acted maliciously and willfully and as such liquidated damages should be assessed against it.

## COUNT IV-MALICIOUS INTERFERENCE WITH A CONTRACTUAL RELATIONSHIP- JUDY ELLIOTT and JAMES HANNING

Plaintiff incorporates by reference the foregoing paragraphs as though fully set forth herein. Additionally, Plaintiff asserts:

- 1. That Judy and Hanning interfered with Plaintiff's contractual relationship by terminating her, and otherwise retaliating against her.
- 2. Plaintiff had a contractual interest in her continued employment. Judy and Hanning interfered with his employment maliciously and without justification and Plaintiff suffered damages as a result.
- 3. As a result of the conduct of Judy and Hanning, Plaintiff has sustained actual damages in excess of \$10,000.00.
- 4. Judy and Hanning have acted for reckless disregard of the rights of Plaintiff and intentionally with malice and as such Plaintiff should be awarded punitive damages in excess of \$10,000.00.
  - 5. Plaintiff should be reimbursed his court costs incurred herein.

#### **CONCLUSION**

WHEREFORE, for all of the foregoing reasons, Plaintiff respectfully requests an award of actual damages in excess of \$75,000.00, an award of punitive damages in excess of \$10,000.00, the costs of this action, a reasonable amount of attorney fees and any other and further relief this Court deems proper.

Brendan M. McHugh, OBA #18422

Attorney for Plaintiff

P.O. Box 1392

Claremore, OK / 4018

(918) 343-1773

Fax: (918) 803-4910



#### IN THE DISTRICT COURT OF WAGONER COUNTY STATE OF OKLAHOMA

)
)
) Case No. CJ-2025- 104
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MONS

#### To: James Earl Hanning

You have been sued by the above-named Plaintiff and you are directed to file a written answer to the attached Petition in the court at the above address within twenty (20) days after service of this Summons upon you, exclusive of the day of service. Within the same time, a copy of your answer must be delivered or mailed to the attorney for the Plaintiff.

Unless you answer the Petition within the time stated, judgment will be rendered against you with costs of action.

COURT CLERK

James E. Hight

[seal]

Attorney for Plaintiff:

Name:

BRENDAN M. MCHUGH

Address:

P.O. BOX 1392

CLAREMORE, OK 74018

Telephone:

(918) 608-0111

YOU MAY SEEK THE ADVICE OF AN ATTORNEY ON ANY MATTER CONNECTED WITH THIS SUIT OR YOUR ANSWER. SUCH ATTORNEY SHOULD BE CONSULTED IMMEDIATELY SO THAT AN ANSWER MAY BE FILED WITHIN THE TIME LIMIT STATED IN THE SUMMONS.

# IN THE DISTRICT COURT OF WAGONER COUNTY STATE OF OKLAHOMA

MISTY DAWN BURKE, Plaintiff,	) ) ) Case No. CJ-2025-   <b>٥</b> ५
<b>v.</b>	)
JUDY ELLIOTT, individually; JAMES EARL HANNING, individually, WAGONER COUNTY E-911, and BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF WAGONER COUNTY; jointly and severally, Defendants.	

#### **SUMMONS**

To: Judy Elliott

You have been sued by the above-named Plaintiff and you are directed to file a written answer to the attached Petition in the court at the above address within twenty (20) days after service of this Summons upon you, exclusive of the day of service. Within the same time, a copy of your answer must be delivered or mailed to the attorney for the Plaintiff.

Unless you answer the Petition within the time stated, judgment will be rendered against you with costs of action.

Issued this Lat day of Morch, 2025.

James E. Hight , DISTRICT COURT CLERK

[seal]

Attorney for Plaintiff:

Name:

BRENDAN M. MCHUGH

Address:

P.O. BOX 1392

CLAREMORE, OK 74018

Telephone:

(918) 608-0111

YOU MAY SEEK THE ADVICE OF AN ATTORNEY ON ANY MATTER CONNECTED WITH THIS SUIT OR YOUR ANSWER. SUCH ATTORNEY SHOULD BE CONSULTED IMMEDIATELY SO THAT AN ANSWER MAY BE FILED WITHIN THE TIME LIMIT STATED IN THE SUMMONS.



### IN THE DISTRICT COURT OF WAGONER COUNTY STATE OF OKLAHOMA

MISTY DAWN BURKE,	)	
Plaintiff,	)	Case No. CJ-2025-104
v.	) )	•
JUDY ELLIOTT, individually;	j j	
JAMES EARL HANNING, individually,	)	
WAGONER COUNTY E-911, and	)	
BOARD OF COUNTY COMMISSIONERS	)	
OF THE COUNTY OF WAGONER COUNTY;	)	
jointly and severally,	)	
Defendants.	)	
CYTHE	A CONTO	

#### **SUMMONS**

**Board of County Commissioners** To: of the County of Wagoner County

You have been sued by the above-named Plaintiff and you are directed to file a written answer to the attached Petition in the court at the above address within twenty (20) days after service of this Summons upon you, exclusive of the day of service. Within the same time, a copy of your answer must be delivered or mailed to the attorney for the Plaintiff.

Unless you answer the Petition within the time stated, judgment will be rendered against you with costs of action.

Issued this LA to day of March, 2025.

[seal]

Attorney for Plaintiff:

Name:

BRENDAN M. MCHUGH

Address:

P.O. BOX 1392

CLAREMORE, OK 74018

Telephone:

(918) 608-0111

YOU MAY SEEK THE ADVICE OF AN ATTORNEY ON ANY MATTER CONNECTED WITH THIS SUIT OR YOUR ANSWER. SUCH ATTORNEY SHOULD BE CONSULTED IMMEDIATELY SO THAT AN ANSWER MAY BE FILED WITHIN THE TIME LIMIT STATED IN THE SUMMONS.



## IN THE DISTRICT COURT OF WAGONER COUNTY STATE OF OKLAHOMA

MISTY DAWN BURKE,	)	
Plaintiff,	)	
, and the second	)	Case No. CJ-2025-104
v.	)	• • •
	)	
JUDY ELLIOTT, individually;	)	
JAMES EARL HANNING, individually,	)	
WAGONER COUNTY E-911, and	)	
BOARD OF COUNTY COMMISSIONERS	)	
OF THE COUNTY OF WAGONER COUNTY;	)	
jointly and severally,	)	
Defendants.	)	

### SUMMONS

#### To: Wagoner County E-911

You have been sued by the above-named Plaintiff and you are directed to file a written answer to the attached Petition in the court at the above address within twenty (20) days after service of this Summons upon you, exclusive of the day of service. Within the same time, a copy of your answer must be delivered or mailed to the attorney for the Plaintiff.

Unless you answer the Petition within the time stated, judgment will be rendered against you with costs of action.

Issued this Unday of March, 2025.

James E. Hight I, DISTRICT COURT CLERK

[seal]

Attorney for Plaintiff:

Name:

BRENDAN M. MCHUGH

Address:

P.O. BOX 1392

CLAREMORE, OK 74018

Telephone:

(918) 608-0111

YOU MAY SEEK THE ADVICE OF AN ATTORNEY ON ANY MATTER CONNECTED WITH THIS SUIT OR YOUR ANSWER. SUCH ATTORNEY SHOULD BE CONSULTED IMMEDIATELY SO THAT AN ANSWER MAY BE FILED WITHIN THE TIME LIMIT STATED IN THE SUMMONS.

IN THE DISTRICT COURT OF OK		Wagoner County, Oklahoma Filed In District Court MAR 0 6 2025
MISTY DAWN BURKE, Plaintiff,	) ) Case No. CJ-2025-	James E. Hight Court Clerk. At 12020'clock p. M.
v.	)	
JUDY ELLIOTT, individually; JAMES EARL HANNING, individually, WAGONER COUNTY E-911, and BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF WAGONER COUNTY; jointly and severally, Defendants.	) ) ) ) ) ) ) )	

### **ENTRY OF APPEARANCE**

Brendan M. McHugh enters his appearance as counsel of record in the above captioned matter for Plaintiff Misty Dawn Burke.

Brendan M. McHugh, OBA #18422

Rt. 66 Attorneys, LC

P.O. Box 1392

Claremore, OK 74018

Tele:(918) 608-0111 Fax: (918) 803-4910

Email: brendan@lawinok.com

Attorney for Plaintiff

IN THE DISTRICT COURT OF WAGONER COUNTY agoner County, Oklahoma

In District Court MAR 2 4 2025

MISTY DAWN BURKE,

PETITIONER,

VS.

CASE NO. CJ-2025-104

James E. Hight Coun Clerk

JUDY ELLIOT, individually. JAMES EARL HANNING, individually. WAGONER COUNTY E-911 AND BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF WAGONER COUNTY. Jointly and severally,

RESPONDENT.

#### **ORDER**

NOW ON THIS 24th day of March, 2025 the Chief Judge recuses in this case due to the appearance of conflict. Pursuant Rule 15 of Title 12 of the Oklahoma Statutes, the Chief Judge refers this case to the Presiding Judge for reassignment.

Judge Douglas Kirkley

CC: Brendan M. McHugh

Hon. Brett Smith, Presiding Judge;

6:25-cv-00174-RAW-GLJ Document 2-5

Filed in ED/OK on 05/23/25

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### IN THE DISTRICT COURT OF WAGONER COUNTY STATE OF OKLAHOMA

MISTY DAWN BURKE,

PETITIONER,

VS.

CASE NO. CJ-2025-104

JUDY ELLIOT, individually. JAMES EARL HANNING, individually. WAGONER COUNTY E-911 AND BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF WAGONER COUNTY. Jointly and severally,

RESPONDENT.

#### ORDER

NOW ON THIS 24th day of March, 2025 the Chief Judge recuses in this case due to the

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	Wagoner County, Oklahoma Filed In District Count
IN THE DISTRICT COURT OF W STATE OF OKLAH	AGONER COUNTY APR 1 7 2025
MISTY DAWN BURKE,	At 25 Count Clerk  O'clock P M
Plaintiff,	) O'clock A M
	Case No. CJ-2025-104
v.	)
JUDY, ELLIOTT, individually; and in her official capacity; and JAMES EARL HANNING, individually, and in his official capacity; and WAGONER COUNTY E-911, and BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF WAGONER COUNTY; jointly and severally,  Defendants.	

#### FIRST AMENDED PETITION1

COMES NOW the Plaintiff Misty Dawn Burke (Plaintiff) and hereby submits her First Amended Petition (FAP) against Defendants, JUDY ELLIOTT, (Judy), JAMES EARL HANNING (Hanning), WAGONER COUNTY E-911 (E-911), and Board of County Commissioners of the County WAGONER COUNTY (Board). In support thereof, Plaintiff alleges and states as follows:

- 1. Plaintiff is an individual who resides in Wagoner County, Oklahoma and at all material times herein was employed with E-911.
- 2. Hanning is a Wagoner County Commissioner who was the Chairman at the time of Plaintiff's termination and was a decision maker in her termination. Hanning became Chairman just prior to Plaintiff's termination. During much of the time at issue, the Chairman was Tim Kelley.
  - 3. Judy was Plaintiff's immediate supervisor and E-911 director.

<sup>&</sup>lt;sup>1</sup> Plaintiff files her first amended petition pursuant to 12 O.S. § 2015 which allows for the filing of a first amended petition prior to a responsive pleading being filed.

- 4. Board is the governing body for Wagoner County public officials and is the proper party to be sued for claims against County officials not specified in 19 O.S. § 161. Pursuant to Oklahoma law, Board is a political subdivision and municipal corporation. Further, E-911 is a government entity.
- 5. E-911 is a public entity operated by Wagoner County. It is responsible for dispatching, mapping, and maintaining accurate 911 information. The E-911 employees are subject to the control of the Board to hire, fire, and appoint employees.
- 6. Plaintiff began working for E-911 in August of 2016. Plaintiff's immediate supervisor was Judy, the E-911 director.
- 7. On March 11, 2024, a public meeting was had by the Board and one item that was to be discussed in executive session was:
  - "the employment, hiring, appointment, promotion, demotion, disciplining or resignation, of E-911 Coordinator, E-911 Dispatchers and E-911 Staff to include salary and compensation."
- 8. At the March 11, 2024, meeting, the employment status of Judy was discussed. Specifically, numerous employees of E-911 had submitted written complaints to Human Resources (HR) regarding the hostile work environment created by Judy. This includes violations of the Fair Labor Standards Act (FLSA), 29 U.S.C. §§ 201 et seq., the Family and Medical Leave Act (FMLA), 29 U.S.C. §§ 2601 et seq. This includes more than ten (10) employees submitting written grievances about Judy to HR.
- 9. An emergency meeting was then held on March 12, 2024, after Judy retaliated against several people who made the complaints. The gist of the complaints were that Judy was not paying overtime or compensatory time, was harassing employees who were on or needed leave, was verbally abusive to employees, was monitoring employees social media posts, telling some employees to take posts down etc. Plaintiff

was one person who made a complaint, submitting a written complaint to HR that was supposed to be confidential.

- 10. Judy was Plaintiff's boss. Judy is the wife of Sheriff Chris Elliott.
- 11. About three (3) years ago, Judy trained Plaintiff to be supervisor.
- 12. In March of 2024, Judy Elliott was informed by HR of the complaints which was put it on the agenda and was discussed at the March 11, 2024, Meeting. At this meeting, an executive session was held. In the session, the complaints were discussed but the sources were not supposed to be revealed under Board Policy. Specifically, Wagoner County Personnel Policy Handbook (Handbook) provides:

## POLICY AGAINST HARASSMENT AND DISCRIMINATION AND COMPLAINT PROCEDURE

Discrimination, harassment, and/or retaliation in any form constitute misconduct that undermines the integrity of the employment relationship with the County.

\*\*\*

The County expects that everyone will act responsibly to establish a professional work environment. However, if an employee feels he/she has been subjected to any form of harassment and/or discrimination, the employee should promptly report that conduct to his/her immediate supervisor, another member of supervision, or a member of the Board of Commissioners within three calendar days of the offense. Employees are not required to approach the person who is harassing and/or discriminating against them, and they may bypass any offending member of supervision. The person the harassment or discrimination is reported to will take the necessary steps to initiate an investigation of the discrimination and/or harassment claim. Employees who believe they have been discriminated against on the basis of a disability or who believe they have not been properly afforded a reasonable accommodation for a disability should utilize this same complaint and reporting process. The County will conduct its investigation in as confidential a manner as possible. However, the County will not allow the goal of confidentiality to be a deterrent to an effective investigation. A timely resolution of each complaint will be reached and communicated to the employee. Appropriate corrective action, up to and including termination, will be taken promptly against any employee engaging in discrimination and/or harassment. The corrective action issued will be proportional to the severity of the conduct. The alleged harasser's employment history and any similar complaints of prior

unlawful discrimination and/or harassment will be taken into consideration. The County prohibits retaliation of any kind against employees, who, in good faith, report harassment and/or discrimination or assist in investigating such complaints. If an employee feels he/she has been subjected to any form of retaliation, the employee should report that conduct to his/her immediate supervisor, another member of supervision, or Human Resources within three calendar days of the offense. Employees are not required to approach the person who is retaliating against them, and they may bypass any offending member of management. Employees are encouraged to use the Complaint Resolution Procedure (Open Door Policy) set out in this handbook as well.

See Handbook (2023 edition) (emphasis added, underlined in original), pp. 48-50, attached as Exhibit 1. Moreover, the Handbook affords additional protections to Plaintiff as a whistleblower:

#### WHISTLEBLOWER PROTECTION POLICY

Wagoner County has an open-door policy which includes Whistleblower protections in accordance with Federal Law. In no instance with there be retaliation against a whistleblower whether that individual be an employee or person acting on behalf of an employee or member of the public. This includes, but is not limited to, protection from retaliation in the form of an adverse employment action such as termination or threat of termination, compensation decreases, or poor work assignments, relocation and threats of physical harm. Any whistleblower who believes he/she is being retaliated against must report it immediately. The right of a whistleblower for protection against retaliation does not include immunity for any personal wrongdoing that is alleged and investigated, unless such conduct is required by the employer. Whistleblower protections are provided in two important areas: confidentiality and retaliation. Insofar as possible, the confidentiality of the whistleblower will be maintained. However, identity may have to be disclosed to conduct a thorough investigation, to comply with the law, and to provide accused individuals their legal rights of defense. The provisions of this policy do not authorize the disclosure of information that is legally required to be kept confidential; or diminish or impair the rights of an employee. "Matter of public concern" means a violation of a state, federal or municipal law, regulation or ordinance; a danger to public health or safety; and/or gross mismanagement, substantial waste of funds or a clear abuse of authority. Procedures:

A. If an employee has knowledge of or a concern of illegal or dishonest/fraudulent activity, the employee is to contact his/her immediate supervisor, their Elected Official or Human Resources and shall submit a written report concerning the matter.

- B. The employee is not required to submit a written report if he or she believes with reasonable certainty that the activity, policy, or practice is already known to the official, that the activity involves the official; or that an emergency is involved. In this instance, a report should be made immediately to Human Resources.
- C. Any concerns involving Human Resources should be reported to the County Clerk and/or the Board of County Commissioners.
- D. The whistleblower is not responsible for investigating the alleged illegal or dishonest activity, or for determining fault or corrective measures; appropriate management officials are charged with these responsibilities.
- E. Reports of illegal activity shall be forwarded to the District Attorney for further investigation.

*Id.* pp. 49-50. Thus, Plaintiff was protected from retaliation for making her complaint to HR, opposing unlawful conduct and further for reporting unlawful conduct she was contractually protected by the Handbook as a whistleblower.

- 13. The Handbook applies to all Wagoner County employees. *Id.*, (unnumbered p.85).
- 14. Nevertheless, despite the prohibition in the Handbook and applicable law, Hanning, during executive session, texted Judy the names of the people who complained against her. A flagrant violation of the Handbook and itself a form of retaliation. James Hanning is beholden to the Elliotts because they have buried his numerous acts of criminal conduct through the years.
- 15. Immediately after the meeting, on March 11, 2024, Judy told Plaintiff the name of one of the employees that she thinks made a complaint about her; Judy was right because Hanning had told her. Judy instructed Plaintiff to change this employee's schedule from nights to days. Judy told Plaintiff that this would cause the employee to lose her second job. Plaintiff was a supervisor and the one who makes the schedule.

Plaintiff told Judy that she was not changing the employee's schedule and was not going to be responsible for this employee losing her second job. Judy told Plaintiff that she had to because Judy was the boss.

- 16. On March 12, 2024, Judy called Plaintiff to meet her downstairs at the elevator. There, Judy told Plaintiff to get this employee's file and give it to her. Judy and Plaintiff went to Plaintiff's office to get this employee's file. Judy told Plaintiff to get the leads' files (3 co-workers) Judy said to get their laptops and radios and that Plaintiff was going to do all their work and that Plaintiff would not get paid overtime because she was exempt from overtime. Judy told Plaintiff that she was punishing her for running her mouth. Judy threatened to tell people falsely that Plaintiff was an addict. Plaintiff told Judy she was retaliating. Judy said, "sit your ass down, I can make it to where no one would ever hire you again." She further said she "can ruin you." Judy's conduct towards Plaintiff is obvious retaliation and indeed Judy admitted this to Plaintiff.
- 17. Based on Judy's conduct toward Plaintiff and others, an emergency meeting was had that day, March 12, 2024.
- 18. During the meeting while Judy was in executive session, Sheriff Chris Elliott mistakenly sent Plaintiff a text intended for District Attorney Jack Thorp. Sheriff Elliott texted Jack Thorp "if they are going to retain Misty for Judy's position she will have control of personnel files, I would suggest your office take custody of the files or she will alter or destroy them." (while 2<sup>nd</sup> executive session going on). There is no mechanism for the DA to take control of personnel files of a separate county entity. Likely, Elliott and Thorp wanted to purge the personnel files. Plaintiff texted him back

telling him he sent her the text in error and Sherriff Elliott responded and sent a text to Plaintiff accusing her of erratic behavior.

- 19. Just prior to the March 11, 2024, meeting (first meeting) Plaintiff overhead DA Jack Thorp tell Judy to secretly record executive session (illegal she is not secretary of the entity, only secretary can do this). Judy instructed an IT person to illegally record instead.
- 20. On March 12, 2024, Judy instructed the IT person to delete all files off of Judy's computer which was done. Sheriff Chris Elliott and Mark Secrest, the undersheriff observed the IT person delete the files.
- 21. On or around March 13, 2024, Plaintiff was placed into the role of Interim Coordinator for Wagoner County E-911 following the placement of administrative leave of Judy. Judy was placed on leave due to multiple complaints against her, including allegations of creating a hostile work environment, bullying, discrimination, failure to pay employees properly and emotional and mental abuse.
- 22. In June 2024, Plaintiff was informed that she required major spine surgery. Her condition became emergent the week of June 20, 2024, and she contacted Maria Rafalko from Human Resources to request that FMLA paperwork be sent to her doctor. She was admitted to the hospital on June 22, 2024, and underwent surgery on June 23, 2024. She was discharged on June 24, 2024, and was scheduled to return to work on a modified work schedule two weeks later. Plaintiff submitted the FMLA paperwork to HR. Further, Chairman, Tim Kelley also was aware and approved of the leave.

- 23. On June 28, 2024, during a special meeting of the Board that was called by Hanning regarding Plaintiff's position as Interim Coordinator, Hanning retaliated against Plaintiff during this meeting, by placing her on speakerphone while she was at home recovering from surgery, on pain medication, and on FMLA approved leave. Hanning demanded to know who Plaintiff had informed about her surgery, when she would be returning to work, and who was covering her position during her absence. Plaintiff had been approved by HR and had advised Commissioner/Chairman Tim Kelley. Hanning asked her to send her correspondence with Chairman Tim Kelley about her surgery to the County Clerk, Lori Hendrix, via text message. The Board of County Commissioners voted to take no action during the meeting, leaving Plaintiff in the Interim Coordinator position.
- 24. Plaintiff submitted an ORA request on December 6, 2024, and on December 13, 2024, *See* ORA requests attached as Exhibits 2A and B.
- 25. On December 16, 2024, Wagoner County Clerk Lori Hendricks emailed Plaintiff's counsel inquiring into the status of ORA request. *See* E-mail chain attached as Exhibit 3A-C, Exhibit 3A.
- 26. On January 21, 2025, Plaintiff was fired. At the meeting wherein Plaintiff's employment status was discussed, Hanning was overheard in executive session alleging that Plaintiff had a character flaw because she used her position for special treatment. This assertion is an obvious pretext. It is false. Moreover, Hanning has used his position as Wagoner County Commissioners numerous times to obtain special treatment. This includes numerous acts of criminal conduct being buried by DA Thorp. It also includes Hanning using his position to have criminal charges filed against

individuals that he has a motive or agenda against, using his position of power for special treatment.

### COUNT I-42 U.S.C. § 1983 (First Amendment Retaliation as to Judy and Hanning)

Plaintiff incorporates by reference the foregoing paragraphs as though fully set forth herein. Additionally, Plaintiff asserts the following:

#### A. INDIVIDUAL LIABILITY of Hanning and Judy

- 27. That Plaintiff has a constitutional right of freedom of speech, as guaranteed by the First Amendment of the United States Constitution, and as such public officials are forbidden from discharging or threatening to discharge employees for and from retaliating against them based on her speech.
- 28. Plaintiff engaged in protected speech by submitting a grievance regarding Judy and by submitting an ORA for the text messages. Hanning and Elliott violated Plaintiff's First Amendment rights, first by creating a hostile work environment then by terminating her. Indeed, Hanning is the individual who recommended termination. Hanning did so in conspiracy with Judy, her husband Sheriff Chris Elliott and DA Jack Thorp.
- 29. Plaintiff's speech was protected by the First Amendment in that it involved a matter of public concern. Further, her speech was non-disruptive and did not impede or interfere with the E-911's ability to perform its functions nor was it within her job functions.
- 30. That Plaintiff sustained an adverse employment action because of her protected speech in that she was terminated and that a significant motivating factor was

expression of her political speech and as such termination of Plaintiff is in contravention of her First Amendment rights in violation of 42 U.S.C. § 1983.

- 31. That the conduct at issue herein was taken under color of law.
- 32. That as a result of the conduct of Elliot and Hanning, Plaintiff has sustained actual damages in excess of in excess of the amount required for diversity jurisdiction pursuant to Section 1332 of Title 28 of the United States Code.
- 33. Punitive damages should be assessed against Elliott and Hanning, as a result of their conscious disregard of the federally secured rights of Plaintiff.
- 34. Plaintiff should be reimbursed for her reasonable attorney fees and court costs.
- 35. In the event that actual damages are not provable, Plaintiff should be awarded nominal damages.

#### **COUNT II-FLSA**

In support of this claim, Plaintiff restates and realleges the foregoing allegations. Further, Plaintiff asserts:

- 36. Plaintiff was employed with E-911 and Board as set forth above.
- 37. While employed with E-911 and Board, Plaintiff was a covered employee within the FLSA. E-911 and Board are employees within the FLSA.

### A. Unpaid Wages and Overtime (Board and E-911)

In support of this claim, Plaintiff restates and realleges the foregoing allegations. Further, Plaintiff asserts:

38. While employed with E-911 and Board, Plaintiff routinely worked overtime.

- 39. Plaintiff was not paid overtime nor was she provided with compensatory time.
- 40. The Handbook, applicable to Plaintiff, expressly provides that Plaintiff will be paid comp time or eventually monetary compensation. Specifically, it provides:

## READ CAREFULLY BEFORE SIGNING BELOW

## COMPENSATORY TIME OFF FOR OVERTIME AGREEMENT

I, \_\_\_\_\_\_\_\_, have read, understand and have in my possession Wagoner County's Employee Personnel Policy Handbook. I further understand that overtime for eligible employees pursuant to the Fair Labor Standards Act 29 U.S.C. Section 207 (0)(2) shall be paid as compensatory time off in lieu of cash overtime payment under the guidelines of the Fair Labor Standards Act outlined in the County's Employee Personnel Policy Handbook.

As an exception to this policy, overtime shall be paid as cash overtime payment in the event of any national or state declared emergency, whether it be weather, other natural disaster, or epidemic/pandemic in nature. I further understand that this signed statement will be a permanent record in my personnel file.

- Ex. 1, p. 6 (underline and bold in original). The form is required to be signed and placed in the employment file of the employee, including Plaintiff.
- 41. Thus, in addition to applicable law, payment of overtime or comp. time is contractually assured by Board and E-911.
- 42. Plaintiff has not been compensated as required by the FLSA. As a result of Defendant Board and E-911 violations of the FLSA, Plaintiff has sustained damages in excess of the amount required for diversity jurisdiction pursuant to Section 1332 of Title 28 of the United States Code.
- 43. Plaintiff should be reimbursed for her reasonable attorney fees and court costs.

- 44. In the event that actual damages are not provable, Plaintiff should be awarded nominal damages.
  - 45. That liquidated damages should be assessed against E-911 and Board.

#### B. FLSA Retaliation (All Defendants)

In support of this claim, Plaintiff restates and realleges the foregoing allegations. Further, Plaintiff asserts:

- 46. Plaintiff complained about lack of overtime pay, including in her written grievance submitted March 10, 2024, that Hanning outed her to Judy. Further, Plaintiff refused to retaliate against other individuals as demanded by Judy. Accordingly, Plaintiff engaged in protected conduct, in good faith, under the FLSA.
- 47. Defendants retaliated against Plaintiff for her availment of her rights under the FLSA by terminating Plaintiff, and creating a hostile work environment and the availment of her rights was a significant motivating factor in her termination. This termination contravenes the FLSA. Judy and Hanning attempted to dissuade Plaintiff to not exercise her rights and terminated Plaintiff for a sham reason.
- 48. The FLSA allows for individual liability under the economic realities test. See Hodson v. Okada, 472 F. 2d 965, 1156, 1160 (10<sup>th</sup> Cir. 2018); Dole v. Elliott Travel & Tours, Inc., 942 F.2d 962 (10th Cir. 1991).
- 49. As a result of Defendants' conduct, Plaintiff has sustained damages in excess of in excess of the amount required for diversity jurisdiction pursuant to Section 1332 of Title 28 of the United States Code. Further, Plaintiff should be awarded all damages and relief entitled to her under the FLSA, including front pay, back pay, reinstatement, and all "legal and equitable relief" authorized by the FLSA.

- 50. Plaintiff should be reimbursed for her reasonable attorney fees and court costs.
- 51. In the event that actual damages are not provable, Plaintiff should be awarded nominal damages.

### **COUNT III-FMLA (All Defendants)**

Plaintiff incorporates by reference the foregoing paragraphs as though fully set forth herein. Additionally, Plaintiff asserts the following:

- 52. That Plaintiff is a former employee of Defendants E-911 and Board.
- 53. The FMLA defines "employer" to "include[] . . . any person who acts, directly or indirectly, in the interest of an employer to any of the employees of such employer." 29 U.S.C. § 2611(4)(A)(ii).
- 54. That individual liability under the FMLA, like the FLSA, exists under the economic realities test. See *Walkingstick Dixon v. Oklahoma ex rel Regional University System of Oklahoma*, No. 24-7016 (2025), Op. of Jan. 14, 2025, (citation pending, designated for publication).
  - 55. That Defendants were qualified employers under the FMLA.
  - 56. That Plaintiff was a qualified employee under the FMLA.

# A. Interference (Hanning and Board)

Plaintiff incorporates by reference the foregoing paragraphs as though fully set forth herein. Additionally, Plaintiff asserts the following:

57. That Plaintiff applied for and was approved intermittent leave as a result of a serious health condition in June of 2024 as set forth above.

- 58. Hanning and Board interfered with Plaintiff's FMLA rights as set forth above.
- 59. The FMLA entitles qualified employees to take up to twelve weeks of leave during a twelve-month period for any one of several reasons, including "[b]ecause of a serious health condition that makes the employee unable to perform the functions of the position of such employee." 29 U.S.C. § 2612(a)(1)(D).
- 60. An FMLA interference claim is based on an employer's denial of an employee's FMLA rights. *See Campbell v. Gambro Healthcare, Inc.*, 478 F.3d 1282, 1287 (10th Cir. 2007); *see also* 29 U.S.C. § 2615(a)(1) (providing that it is "unlawful for any employer to interfere with, restrain, or deny the exercise" of FMLA rights).
- 61. To establish an interference claim, an employee must show: "(1) that she was entitled to FMLA leave, (2) that some adverse action by the employer interfered with her right to take FMLA leave, and (3) that the employer's action was related to the exercise or attempted exercise of her FMLA rights." *Campbell*, 478 F.3d at 1287.
- 62. That Defendant and Board interfered with Plaintiff's rights under the FMLA as set forth above.
- 63. Hanning and Board have acted maliciously and willfully and as such liquidated damages should be assessed against them.

# B. Retaliation (Board, Hanning, and E-911)

In support of this claim, Plaintiff restates the foregoing. Additionally, Plaintiff states:

64. The FMLA permits eligible employees to take leave for serious health conditions and prohibits employers from retaliating against employees for doing so. *See* 

29 U.S.C. §§ 2612(a), 2615(a)(2); Metzler v. Fed. Home Loan Bank of Topeka, 464 F.3d 1164, 1170-71 (10th Cir. 2006).

- 65. Plaintiff availed herself of her FMLA rights.
- 66. Defendants retaliated against Plaintiff for availing herself of her rights under the FLMA.

## COUNT IV - BREACH OF CONTRACT (AS TO DEFENDANT BOARD AND E-911)

In support of this claim, Plaintiff restates the foregoing. Additionally, Plaintiff states:

67. The various policies of Board provide as follows:

# READ CAREFULLY BEFORE SIGNING BELOW

# EMPLOYEE PERSONNEL POLICY HANDBOOK ACKNOWLEDGEMENT FORM

I acknowledge that I have received a copy of The Employee Personnel Policy Handbook adopted by Wagoner County and understand that it outlines the policies and practices that apply to me as an employee with Wagoner County. I further understand that I am governed by the contents of The Employee Personnel Policy Handbook and that it is my responsibility to familiarize myself with all information in The Handbook. The information, policies and benefits described in The Handbook are subject to change. I understand and agree that such changes can be made by the County at its sole and absolute discretion. Any changes to the policies and practices described in The Handbook must be made in writing by the County in order to be effective, and I agree to observe these changes in all respects. I understand The Handbook represents the sole policy of the County and replaces and supersedes any and all other oral or written personnel policies or procedures. I understand that the most updated version of the Handbook will be posted on the county website at

https://www.ok.gov/wagonercounty/About Wagoner County/Employee Information.

I further understand The Handbook is not, nor is it intended to be a contract of employment. I further understand the County Elected Official retains the right of employment-at-will to terminate his/her employees at any time for any reason not prohibited by Federal, State or Municipal law. Employees may also terminate at

will. I further understand that this signed statement will be a permanent record in my personnel file.

- Ex. 1, p. 5. The Handbook was in existence throughout Plaintiff's employment with the most recent edition being 2023.
- 68. The Handbook expressly provides for overtime and/or comp. time.

Plaintiff did not receive either overtime and comp. time. Id. p. 6

69. The Handbook provides further:

#### **INTRODUCTION**

An interesting and challenging experience awaits you as an employee of Wagoner County. In order to answer questions you may have concerning the County and its policies, we have written this handbook. Please read it thoroughly and retain it for future reference. This handbook is designed to familiarize you with the policies and practices that apply to your employment. It is not intended to be and does not constitute a contract of employment. This Employee Personnel Policy Handbook has been adopted by Wagoner County pursuant to O.S. 19, § 339 (A)(9). The following personnel policies are designed to inform Wagoner County Employees of the County's operating policies and practices as they apply to all County employees. County employees are defined as those deputies and employees employed by or serving at the pleasure of the elected officials. Each County employee is responsible to the elected official who hires and/or appoints that employee. From time to time as conditions change, it will be necessary to change or add rules and procedures governing employees. Where practical or required by law, such changes will be posted in advance of their effective date, after which time they will become a part of this handbook. The most updated version of the Handbook will be posted on the county website at https://www.ok.gov/wagonercounty/About Wagoner County/Employee\_Informa tion. Should you have any questions regarding policies, please ask your

https://www.ok.gov/wagonercounty/About\_Wagoner\_County/Employee\_Information. Should you have any questions regarding policies, please ask your supervisor, elected official or the County Clerk for assistance. We wish you the best of luck in your position and hope that your employment relationship with Wagoner County will be a rewarding experience.

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#### **EARNING OVERTIME**

Wagoner County's overtime policy conforms to overtime provisions of the Federal Fair Labor Standards Act and applicable Oklahoma Laws. Exemptions from these provisions will be claimed only when the necessary basis is established. Wagoner County Employees who are not exempt shall be entitled to

overtime at the rate of 1 ½ times their regular rate of pay for all hours worked in a work week in excess of 40 hours. Employees in management positions are exempt from overtime provisions. In the case of law enforcement personnel who are not exempt, compensatory time will be earned for hours worked in excess of 171 hours in the 28-day period. Such compensatory time will be earned at the rate of 1 ½ times the employee's regular rate of pay. Note: Only non-exempt employees are entitled to earn compensatory time as described above. Exempt employees are not entitled to overtime pay. For clarification on Exempt and Non-Exempt employees, see the Department of Labor website https://www.dol.gov/agencies/whd/flsa

#### **COMPENSATORY TIME OFF FOR OVERTIME**

Wagoner County has adopted as its policy, practice and procedure, a method of compensating employees for overtime whereby employees are required to utilize compensatory time off in lieu of cash overtime payments. As an exception to this policy, overtime shall be paid as cash overtime payment in the event of any national or state declared emergency, whether it be weather, other natural disaster, or epidemic/pandemic in nature. On other occasions, and at the sole discretion of the elected official, any elected official may decide to make cash overtime payments. Compensatory time off will be granted to an employee at the rate of 1 ½ hours for each hour of overtime worked. As approved by the Board of Commissioners: Election board personnel, with the exception of the Election Board Secretary, may receive cash overtime payment for only those elections in which overtime wages are reimbursed by the non-county (outside) entity for which an election has been called. All compensatory time off will be scheduled at the discretion of the elected official or department head. Except in the case of law enforcement personnel, each employee can accrue up to 240 hours of compensatory time off in lieu of overtime payment. After the accrual of 240 hours of unredeemed compensatory time, such employee will thereafter be paid cash payment for overtime. Unless an exception is made at the discretion of the elected official, compensatory time must be used before PDO, vacation, or personal leave. In the case of law enforcement personnel who are not exempt, each employee can accumulate up to 480 hours of unredeemed compensatory time off. After the accrual of 480 hours of compensatory time, a law enforcement employee will thereafter be paid cash payment for overtime. In all cases where compensatory time off is authorized, once the employee has utilized compensatory time off to reduce the maximum accrual below the applicable limit, then additional overtime will be paid in the form of additional compensatory time off. 74 O.S. §840-2.15; 29 U.S.C. § 2079(o) Note that 74 O.S. Section § 840-2.15 requires that any County employee working in "an Institutional setting "(i.e., jailors and perhaps others) must be allowed to take their compensatory time off within 180 days of when it is accrued. The balance of any unused compensatory time received but not taken after 180 days, shall be paid to the employee at the employee's current regular hourly rate.

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## FAMILY AND MEDICAL LEAVE

Family/Medical Leave (FML) is provided consistent with the Family and Medical Leave Act (FMLA). Any provisions of Wagoner County's policies which are found to be contradictory to the FMLA will be superseded by the FMLA. Wagoner County will comply with the federal Family and Medical Leave Act of 1994, as amended in 2010 (the "FMLA"). Employees must have been employed by Wagoner County for more than 12 months over the past seven (7) years and must have worked at least 1,250 hours in the 12 months preceding any leave to be eligible for the Family and Medical Leave described in this Policy (note: this seven (7) year measurement is adjusted if the leave is due to certain military service). Employees must also work in or within 75 miles of a location at which Wagoner County employs 50 or more individuals to be eligible for the Family Medical Leave described in this Policy. Wagoner County provides up to a total of 12 weeks (480 hours) of leave in any "forward rolling" 12 month period. The 12 month forward rolling period during which time you may take up to 12 weeks (480 hours) of unpaid FMLA Leave is a period measured forward from the date the employee first takes FMLA leave. For example, if an eligible employee first takes FMLA Leave on May 1, they are entitled to no more than 12 weeks (480 hours) of FMLA Leave through April 30. Additionally, eligible employees have the right to take up to 26 weeks (1040 hours) of unpaid leave in a single 12-month period (less any FMLA leave taken during the period for other purposes under this Policy) to care for a family service member in connection with a serious military illness or injury. See "Military Caregiver Leave" below. Upon submission and approval of a leave of absence request, eligible employees are entitled to leaves of absence for the following purposes..."

- *Id.*, pp. 13-14, 18. Plaintiff qualified for leave under the Handbook as well. The Handbook also contains a leave certification policy. *Id.*, pp. 22-23.
- 70. The Wagoner handbook prohibits retaliation and interference and also sets forth the policy for obtaining approval from HR. Nowhere in this policy is a county Commissioner allowed to interfere with FMLA approved leave in the manner that Hanning did.
  - 71. Thus, Plaintiff had a contract with Defendants.
  - 72. Defendant breached this as set forth above.

- 73. As a result of Defendants conduct, Plaintiff has sustained damages in excess of \$10,000.00 dollars.
  - 74. Plaintiff should be reimbursed attorney fees, and costs.

### **COUNT V-PROMISSORY ESTOPPEL**

Plaintiff incorporates the foregoing allegations in their entirety as though fully set forth herein. Further, Plaintiff states:

75. That alternatively, Plaintiff relied to her detriment on the assurances provided by Defendant Board and E-911, and to the extent a contract does not exist, one should be enforced through promissory estoppel and/or detrimental reliance and be equitably enforced.

# COUNT VI-MALICIOUS INTERFERENCE WITH A CONTRACTUAL RELATIONSHIP- JUDY ELLIOTT and JAMES HANNING

Plaintiff incorporates by reference the foregoing paragraphs as though fully set forth herein. Additionally, Plaintiff asserts:

- 76. That Judy and Hanning interfered with Plaintiff's contractual relationship by terminating her, and otherwise retaliating against her.
- 77. Plaintiff had a contractual interest in her continued employment. Judy and Hanning interfered with his employment maliciously and without justification and Plaintiff suffered damages as a result.
- 78. As a result of the conduct of Judy and Hanning, Plaintiff has sustained actual damages in excess of \$10,000.00.
- 79. Judy and Hanning have acted for reckless disregard of the rights of Plaintiff and intentionally with malice and as such Plaintiff should be awarded punitive damages in excess of \$10,000.00.

#### **COUNT VII- OKLAHOMA OPEN RECORDS ACT (Board and Hanning)**

Plaintiff incorporates the foregoing paragraphs. Additionally, Plaintiff asserts as follows:

- 80. Plaintiff brings this claim under the Oklahoma Open Records Act, 51 O.S. §§24A.l, et seq. ("ORA").
- 81. The plaintiff further petitions this Court to restrain and enjoin Defendants and its agents from destroying any documents relevant to the plaintiff's ORA requests until such time as the issues herein are fully resolved. Plaintiff also seeks immediate release of the requested records. Further, Plaintiff demands that Hanning be ordered to submit his personal cell phone[s] and any phones used for work for a forensic examination based on Plaintiff's belief that he likely deleted his messages.
  - 82. Plaintiff is a resident and citizen of the State of Oklahoma.
- 83. Defendant Board is a public entity law that is funded by public dollars. Further, Hanning is a person responsible for records under the ORA. *Lawson*Curnutt, 2010 OK CIV APP 78, ¶8, 239 P.3d 192
- 84. The events giving rise to this lawsuit occurred in Wagoner County, Oklahoma.
- 85. On December 13, 2024 Plaintiff submitted<sup>2</sup> a request under the ORA. *See* Exhibit 2B.
- 86. The clerk responded to such request inquiring as to the status to which Plaintiff's counsel responded. See Exhibit 3A. The clerk noted that she would "follow up

<sup>&</sup>lt;sup>2</sup> Plaintiff also sent an ORA request to the Wagoner County DA's office this request does not form the basis of Plaintiff's ORA claim because the DA's office complied with the request based on Plaintiff's current knowledge and the current knowledge of the undersigned.

with my commissioners." *See* Exhibit 3C. As of this filing, no further response has been received. The ORA request was submitted to both the Clerk and Commissioner Hanning and moreover was acknowledged by the Clerk. *See* Exhibit 2.

- 87. The Oklahoma Court of Civil Appeals recently addressed the issue of text messages being a "record" under the ORA. In *Paulsen* v. *Wagoner County Sheriff's Office*, the court held that text messages discussing public business are a record within the ORA. *Id.* Case 121,575 Op. of July 31, 2024 (unpublished, mandate not yet issued). Further, the Court in *Paulsen* held that a search for the existence of such records is required. *Id.*
- 88. The ORA expresses "the public policy of the State of Oklahoma that the people are vested with the inherent right to know and be fully informed about their government." ORA § 24A.2. Pursuant to this public policy, the stated purpose of the ORA "is to ensure and facilitate the public's right of access to and review of government records so they may efficiently and intelligently exercise their inherent political power."

  Id. To effect these purposes, ORA §24A.5 mandates that "records of public bodies and public officials shall be open to any person for inspection, copying, or mechanical reproduction .... " As such, it imposes an affirmative and legally cognizable duty on Defendants to allow public access to the records within its custody, control, or possession. ORA §24A.5(6) mandates that a public body or an official "must provide prompt, reasonable access to its records." 51 O. S. § 24A.5 (6).
- 89. The Defendants have violated the ORA by failing to provide "prompt, reasonable access" to open records under the Oklahoma Open Records Act."

- 90. Pursuant to ORA §24A.17(B), Plaintiff requests (a) declaratory relief in the form of an order declaring that Defendant has violated the ORA by failing to provide prompt and reasonable access to public documents, and (b) injunctive relief in the form of an order for the immediate release of all records responsive to Plaintiff's ORA requests.
- 91. Plaintiff further requests injunctive relief to prevent Defendant from destroying any records relevant to Plaintiff's ORA requests
- 92. Plaintiff further prays that the Court Award Plaintiff its reasonable attorneys' fees in this action, as Plaintiff is entitled to attorneys' fees upon successful determination of the action on the merits under ORA §24A.17(B)(2).

#### **CONCLUSION**

WHEREFORE, for all of the foregoing reasons, Plaintiff respectfully requests an award of actual damages in excess of \$75,000.00, an award of punitive damages in excess of \$10,000.00, the costs of this action, a reasonable amount of attorney fees and any other and further relief this Court deems proper.

Brendan M. McHugh, QBA #18422

Rt. 66 Attorneys, LLC

P.O. Box 1392

Claremore, OK 74018

(918) 343-1773

Fax: (918) 803-4910 Attorney for Plaintiff



# **WAGONER COUNTY** PERSONNEL POLICY HANDBOOK

# 2023 Edition

Revisions from the 2021 handbook are underlined.

# **ACKNOWLEDGEMENT OF RECEIPT OF THIS DOCUMENT** TO BE PLACED IN EMPLOYEE'S PERSONNEL FILE

Page 1 Wagoner County Personnel Policy Handbook - 2023 **EXHIBIT** Exhibit 6

# **READ CAREFULLY BEFORE SIGNING BELOW**

# EMPLOYEE PERSONNEL POLICY HANDBOOK ACKNOWLEDGEMENT FORM

I acknowledge that I have received a copy of The Employee Personnel Policy Handbook adopted by Wagoner County and understand that it outlines the policies and practices that apply to me as an employee with Wagoner County.

I further understand that I am governed by the contents of The Employee Personnel Policy Handbook and that it is my responsibility to familiarize myself with all information in The Handbook.

The information, policies and benefits described in The Handbook are subject to change. I understand and agree that such changes can be made by the County at its sole and absolute discretion. Any changes to the policies and practices described in The Handbook must be made in writing by the County in order to be effective, and I agree to observe these changes in all respects. I understand The Handbook represents the sole policy of the County and replaces and supersedes any and all other oral or written personnel policies or procedures. I understand that the most updated version of the Handbook will be posted on the county website at https://www.ok.gov/wagonercounty/About\_Wagoner\_County/Employee\_Information.

I further understand The Handbook is not, nor is it intended to be a contract of employment. I further understand the County Elected Official retains the right of employment-at-will to terminate his/her employees at any time for any reason not prohibited by Federal, State or Municipal law. Employees may also terminate at will.

I further understand that this signed statement will be a permanent record in my personnel file		
Employee's Name (Printed or Typed)	Employee's Signature	
Date		

# **READ CAREFULLY BEFORE SIGNING BELOW**

# **COMPENSATORY TIME OFF FOR OVERTIME AGREEMENT**

County's Employee Personnel Policy H employees pursuant to the Fair Labor S compensatory time off in lieu of cash	read, understand and have in my possession Wagoner andbook. I further understand that overtime for eligible Standards Act 29 U.S.C. Section 207 (0)(2) shall be paid as overtime payment under the guidelines of the Fair Labor Employee Personnel Policy Handbook.
• • •	e shall be paid as cash overtime payment in the event of ency, whether it be weather, other natural disaster, or
I further understand that this signed s	tatement will be a permanent record in my personnel file.
Employee's Signature	Employer Representative Signature
Date Signed	

## INTRODUCTION

An interesting and challenging experience awaits you as an employee of Wagoner County. In order to answer questions you may have concerning the County and its policies, we have written this handbook. Please read it thoroughly and retain it for future reference.

This handbook is designed to familiarize you with the policies and practices that apply to your employment. It is not intended to be and does not constitute a contract of employment. This Employee Personnel Policy Handbook has been adopted by Wagoner County pursuant to O.S. 19, § 339 (A)(9).

The following personnel policies are designed to inform Wagoner County Employees of the County's operating policies and practices as they apply to all County employees. County employees are defined as those deputies and employees employed by or serving at the pleasure of the elected officials. Each County employee is responsible to the elected official who hires and/or appoints that employee.

From time to time as conditions change, it will be necessary to change or add rules and procedures governing employees. Where practical or required by law, such changes will be posted in advance of their effective date, after which time they will become a part of this handbook. The most updated version of the Handbook will be posted on the county website at https://www.ok.gov/wagonercounty/About\_Wagoner\_County/Employee\_Information.

Should you have any questions regarding policies, please ask your supervisor, elected official or the County Clerk for assistance.

We wish you the best of luck in your position and hope that your employment relationship with Wagoner County will be a rewarding experience.

# **EMPLOYMENT POLICIES**

#### **EQUAL EMPLOYMENT OPPORTUNITY STATEMENT**

Wagoner County offers equal employment opportunity to all qualified persons, regardless of race, color, religion, sex, age, national origin, citizenship status, political affiliation, mental or physical disability, genetic information, or status as a disabled veteran. This commitment to equal employment opportunity extends to all aspects of employment including recruiting, hiring, promotion, training, working conditions, compensation and discipline. The County complies with all applicable federal and state equal employment opportunity laws.

This policy is to be implemented throughout the County, and its enforcement is the responsibility of the elected officials of the County.

# **RECRUITMENT/JOB POSTING**

To assure that all people have an equal opportunity to apply for County jobs, job openings shall be listed publicly and/or filled from applications as filed with the Elected Officials. All applications submitted will be on file for at least (1) one year. Postings generally include the title, the salary range, the minimum hiring specifications and the closing date for filing applications. Each elected official is responsible for the recruiting of all employees within their own office or department and for following equal opportunity practices in the recruitment process.

#### HIRING PROCEDURES

#### Wagoner County participates in E-Verify (Federal law requires verification of all new hires)

Each elected official shall be responsible for hiring and/or appointing the employees in his/her office and shall base the hiring on the budget appropriation for the fiscal year in which the hiring/appointment is made. Employers shall notify the Payroll/HR Clerk of new hires as soon as possible, but prior to the employee's first shift.

Employees serve in an at-will capacity, at the pleasure of the elected official.

All new employees, upon instruction from the elected official, will report to the County Clerk's Office for enrollment as a county employee.

All new employees must demonstrate their employment eligibility with appropriate documentation. The required documentation, including but not limited to, a valid driver's license and social security card, must be presented by the employee/applicant within (3) three business days of the date of hire. If the employee/applicant is unable to provide the required document or documents within the time period, the individual must present a receipt for the application of the document within (3) three days of hire and present the required documentation within 21 days of hire. The employee/applicant must also complete the portions of INS Form 1-9 on the first day of employment as required by law.

perform necessary duties.

The activities of some departments require alternative schedules to meet their work needs. In those departments, the elected official may authorize a deviation from the normal work schedule.

#### **WORK WEEK AND WORK PERIOD:**

The work week for all employees, except law enforcement and emergency medical employees, commences at 12:01 A.M. on Monday and ends at 12:00 midnight the following Sunday. For law enforcement and emergency medical employees who meet the following requirements:

- 1) A uniformed or plain-clothed member or a body of officers who are empowered by statute or local ordinance to enforce laws designed to maintain public peace and order and to protect both life and property from accidental or willful injury, and to prevent and detect crimes;
- 2) Has the power of arrest; and
- Presently undergoing, has undergone, or will undergo on-the-job training and/or a course of instruction and study which typically includes physical training, self-defense, firearm proficiency, criminal and civil law principles, investigation and law enforcement techniques, community relations, medical aid, and ethics.

the work period begins at midnight on Sunday and continues on a 28 day cycle ending at midnight on Sunday four weeks later. This latter work period for all law enforcement and emergency medical personnel is intended to qualify for the exemption permitted under Section 7(k) of the Fair Labor Standards Act, as amended. 29 F.R. § 553.211(a)

#### **EARNING OVERTIME:**

Wagoner County's overtime policy conforms to overtime provisions of the Federal Fair Labor Standards Act and applicable Oklahoma Laws. Exemptions from these provisions will be claimed only when the necessary basis is established.

Wagoner County Employees who are not exempt shall be entitled to overtime at the rate of 1 % times their regular rate of pay for all hours worked in a work week in excess of 40 hours. Employees in management positions are exempt from overtime provisions.

In the case of law enforcement personnel who are not exempt, compensatory time will be earned for hours worked in excess of 171 hours in the 28-day period. Such compensatory time will be earned at the rate of  $1\,\%$  times the employee's regular rate of pay.

Note: Only non-exempt employees are entitled to earn compensatory time as described above. Exempt employees are not entitled to overtime pay. For clarification on Exempt and Non-Exempt employees, see the Department of Labor website <a href="https://www.dol.gov/agencies/whd/flsa">https://www.dol.gov/agencies/whd/flsa</a>

#### **COMPENSATORY TIME OFF FOR OVERTIME:**

Wagoner County has adopted as its policy, practice and procedure, a method of compensating employees for overtime whereby employees are required to utilize compensatory time off in lieu of cash overtime payments. As an exception to this policy, overtime shall be paid as cash overtime payment in the event of any national or state declared emergency, whether it be weather, other natural disaster, or epidemic/pandemic in nature. On other occasions, and at the sole discretion of the elected official, the any elected official may decide to make cash overtime payments. Compensatory time off will be granted to an employee at the rate of 1 ½ hours for each hour of overtime worked. As approved by the Board of Commissioners: Election board personnel, with the exception of the Election Board Secretary, may receive cash overtime payment for only those elections in which overtime wages are reimbursed by the noncounty (outside) entity for which an election has been called.

All compensatory time off will be scheduled at the discretion of the elected official or department head. Except in the case of law enforcement personnel, each employee can accrue up to 240 hours of compensatory time off in lieu of overtime payment. After the accrual of 240 hours of unredeemed compensatory time, such employee will thereafter be paid cash payment for overtime. Unless an exception is made at the discretion of the elected official, compensatory time must be used before PDO, vacation, or personal leave.

In the case of law enforcement personnel who are not exempt, each employee can accumulate up to 480 hours of unredeemed compensatory time off. After the accrual of 480 hours of compensatory time, a law enforcement employee will thereafter be paid cash payment for overtime. In all cases where compensatory time off is authorized, once the employee has utilized compensatory time off to reduce the maximum accrual below the applicable limit, then additional overtime will be paid in the form of additional compensatory time off. <u>74 O.S. §840-2.15</u>; 29 U.S.C. § 2079(o)

Note that 74 O.S. Section § 840-2.15 requires that any County employee working in "an Institutional setting "(i.e., jailors and perhaps others) must be allowed to take their compensatory time off within 180 days of when it is accrued. The balance of any unused compensatory time received but not taken after 180 days, shall be paid to the employee at the employee's current regular hourly rate.

#### SHORT TERM DISABILITY:

Wagoner County provides employees with a short-term disability policy at no expense to the employee. The benefits begin on the 15<sup>th</sup> day after the employee is deemed disabled either by sickness or accident. The benefits include payment of 60% of your current salary up to \$2500 per week for up to 24 weeks. Employees have the option of carrying long term disability at their own expense.

It is the responsibility of the employee to notify Human Resources on the day that short-term disability begins. Employees may opt to use accrued leave such as personal or vacation leave for the first fourteen (14) days before short-term disability benefits begin. Any accrued leave used beyond the initial fourteen (14) days, will reduce the allowable short-term disability benefit. For example, if an employee uses 4 weeks (28 days) of personal leave, the maximum short-term disability benefit allowable would be reduced to 22 weeks.

Because short-term disability provides benefits for conditions protected by FMLA, health insurance benefits will continue for a term of up to 12 weeks only unless the employee elects to continue coverage through COBRA. While on short-term disability, an employee will not accrue vacation or personal leave.

# **LEAVE BENEFITS**

Wagoner County has adopted a paid general leave program for regular employees which incorporates forms of leave such as vacation and personal leave, funeral leave, emergency leave, military leave and education leave. It is the intent of the general leave program to allow eligible employees greater flexibility in the use and application of paid absence from work while maintaining necessary and appropriate operation levels. Each elected official shall be responsible for keeping records of the leave taken by his/her employees and shall make monthly reports to the County Clerk to be submitted with payroll claims. Such records shall include type and length of leave. All vacation and other leave benefits shall be calculated from the date on which the employee began full-time employment. For vacation and personal leave, see "Fringe Benefits".

#### MILITARY LEAVE -

Full-time employees who are members of any military reserve component will be granted military leave for such time as they are in the military service on field training or active duty for periods not to exceed an accumulation of five (5) years while working for Wagoner County. In order to be eligible for such leave, the employee must:

- 1. Provide Wagoner County with advance written or verbal notice of the leave;
- 2. Return to work or apply for reemployment in a timely manner after conclusion of service; and
- 3. Have not been separated from service with a disqualifying discharge or under other than honorable conditions.

During the first thirty (30) calendar days for Wagoner County employees in any federal fiscal year, employees shall continue to receive their full regular rate of pay for such military leave of absence. The federal fiscal year is October 1<sup>st</sup> to September 30<sup>th</sup>. This time may not be used for weekend drills. Such requested leave shall be supported with copies of the armed forces orders. While on military leave beyond the initial 30 calendar days, health insurance benefits do not continue unless the employee elects to participate in COBRA at their own expense. O.S. 72, § 48 and Oklahoma Uniformed Services Employment and Reemployment Rights Act.

#### **EMERGENCY LEAVE** –

Emergency leave shall be granted in the case of property-threatening situations directly affecting the employee, or life-threatening situations directly affecting the employee or the employee's immediate family. Such emergency leave will be charged against compensatory time or personal days off.

#### **FUNERAL LEAVE –**

Employees shall be granted time off with pay not to exceed (3) three consecutive scheduled working days to attend the funeral in the event of the death of the employee's parent, child, spouse, brother,

#### LEAVE WITHOUT PAY -

Leave without pay of specified length may be granted at the discretion of the elected official. While on leave without pay, an employee will not accrue vacation or personal leave. While on leave without pay, health insurance benefits do not continue unless the employee elects to participate in COBRA at their own expense. An employee granted leave without pay remains a County employee and does not lose his/her work experience status. The absence without pay leave shall not extend for a period in excess of one year. O.S. 74 § 840-2.21

#### FAMILY AND MEDICAL LEAVE -

Family/Medical Leave (FML) is provided consistent with the Family and Medical Leave Act (FMLA). Any provisions of Wagoner County's policies which are found to be contradictory to the FMLA will be superseded by the FMLA.

Wagoner County will comply with the federal Family and Medical Leave Act of 1994, as amended in 2010 (the "FMLA"). Employees must have been employed by Wagoner County for more than 12 months over the past seven (7) years and must have worked at least 1,250 hours in the 12 months preceding any leave to be eligible for the Family and Medical Leave described in this Policy (note: this seven (7) year measurement is adjusted if the leave is due to certain military service). Employees must also work in or within 75 miles of a location at which Wagoner County employs 50 or more individuals to be eligible for the Family Medical Leave described in this Policy.

Wagoner County provides up to a total of 12 weeks (480 hours) of leave in any "forward rolling" 12-month period. The 12 month forward rolling period during which time you may take up to 12 weeks (480 hours) of unpaid FMLA Leave is a period measured forward from the date the employee first takes FMLA leave. For example, if an eligible employee first takes FMLA Leave on May 1, they are entitled to no more than 12 weeks (480 hours) of FMLA Leave through April 30. Additionally, eligible employees have the right to take up to 26 weeks (1040 hours) of unpaid leave in a single 12-month period (less any FMLA leave taken during the period for other purposes under this Policy) to care for a family service member in connection with a serious military illness or injury. See "Military Caregiver Leave" below.

Upon submission and approval of a leave of absence request, eligible employees are entitled to leaves of absence for the following purposes:

**Birth/Adoption/Foster Care Leave**. An employee may take leave in connection with the birth of the employee's natural child or the placement of a child with the employee for adoption or foster care. An employee's entitlement to leave for birth or placement of a child expires 12 months after the birth or placement.

**Family Leave**. An employee may take leave to care for his or her son or daughter, spouse or parent with a serious health condition.

**Medical Leave**. An employee may take leave in connection with his or her own serious health condition which renders the employee unable to perform his or her job duties.

**Military Qualifying Exigency Leave**. An employee with a spouse, son, daughter, or parent on "covered active duty" may use their 12-week leave entitlement to address certain qualifying exigencies.

Military Caregiver Leave. An employee is also entitled to take up to 26 weeks of leave during a single 12-month period (less any FMLA leave taken during the period for other purposes under this Policy) to care for a "covered service member" with a serious injury or illness, if the employee is the spouse, son, daughter, parent, or next of kin of the covered service member. This leave is applied on a per-covered-service member, per-injury basis, provided that no more than 26 workweeks of leave may be taken during a single 12-month period.

#### **Definitions**

As used in this Policy and under the federal FMLA regulations, the following terms are defined as follows:

#### "Child or Son or Daughter"

Child, son or daughter means a biological, adopted, or foster child, a stepchild, a legal ward or a child of a person standing in loco parentis, who is either under age 18, or age 18 or older and "incapable of self-care because of a mental or physical disability."

#### "Contingency Operation"

A military operation that is designated by the Secretary of Defense or otherwise created by operation of law as an operation in which members of the Armed Forces are or may become involved in military actions, operations or hostilities against an enemy or opposing forces of the U.S.

#### "Continuing Treatment"

A serious health condition involving continuing treatment by a health care provider includes any one or more of the following: (i) A period of incapacity (i.e., inability to work, attend school, or perform other regular daily activities due to the serious health condition, treatment therefore, or recovery there from) of more than three consecutive full calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that involves an in-person visit to a health care provider with the first inperson treatment visit coming within seven (7) days of the first day of incapacity, that also involves: (a) Treatment two or more times, within 30 days of the first day of incapacity, unless extenuating circumstances exist, by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; or (b) Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider; (ii) Any period of incapacity due to pregnancy, or for prenatal care; (iii) Any period of incapacity or treatment for such incapacity due to chronic serious health conditions (requires at least two visits to a health care provider per year; continues for an extended period of time; and may cause episodic rather than continuing periods of incapacity); (iv) A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective, but which requires the continued supervision of a health care provider (e.g. Alzheimer's, severe stroke, etc.); (v) Any period of absence to receive multiple treatments (or to recover from same) conducted or ordered by a health care provider for a condition which, if untreated, would result in a serious health condition.

#### "Covered Active Duty"

Your spouse, son, daughter, or parent, who is either: a) in the case of a member of a regular component of the Armed Forces, duty during the deployment of the member of the Armed Forces to a foreign country; or b) in the case of a member of a reserve component of the Armed Forces, duty during

deployment of the member with the Armed Forces to a foreign country under a call or order to active duty under a contingency operation, as defined in 10 U.S.C. § 101(a)(13)(B).

#### "Covered Service Member" or "Covered Military Member"

Either: a) a member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or b) a veteran who is undergoing medical treatment recuperation, or therapy, for a serious injury or illness and who was discharged or released under conditions other than dishonorable as a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of 5 years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.

#### "Equivalent Position"

An equivalent position must have the same pay, benefits, and working conditions, including privileges, perquisites, and status. It must involve the same or substantially similar duties and responsibilities, which must entail substantially equivalent skill, effort, responsibility, and authority.

#### "Health Care Provider"

A health care provider is: (i) a doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the State in which the doctor practices; or (ii) any other person determined by the Secretary of Labor to be capable of providing health care services. These include podiatrists, dentists, clinical psychologists, clinical social workers, optometrists, chiropractors, nurse practitioners and nurse-midwives who are authorized to practice by the State. Christian Science practitioners listed with the First Church of Christ Scientists in Boston, Massachusetts are also included.

#### "Key Employee"

A key employee is a salaried employee who is among the highest paid 10 percent of all the employees employed by Wagoner County within 75 miles of the employee's worksite.

#### "Next of Kin"

The nearest blood relative of a covered service member, other than the covered service member's spouse, parent, son, or daughter, in the following order of priority: blood relatives who have been granted legal custody of the covered service member by court decree or statute, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered service member has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of Military Caregiver Leave under the FMLA. When no such designation is made, and there are multiple family members with the same level of relationship to the covered service member, all such family members shall be considered the covered service member's next of kin and may take FMLA leave to provide care to the covered service member consecutively or simultaneously.

#### "Qualifying Exigency"

Qualifying exigencies include the following:

**Short-Notice Deployment:** An allotment of up to 7 days of leave to address any issue that arises from the fact that the employee's spouse, son, daughter, or parent, who is on covered active duty has been notified of an impending call or order to active duty in support of a contingency operation seven or less

Military Events and Related Activities: Leave to attend an official ceremony, program, or event sponsored by the military that is related to the active duty or call to active duty status of an employee's spouse, son, daughter, or parent, who is on covered active duty or to attend family support or assistance programs and informational briefings sponsored or promoted by the military, military service organizations, or the American Red Cross that are related to the active duty or call to active duty status of an employee's spouse, son, daughter, or parent, who is on covered active duty.

**Childcare and School Activities:** Leave to arrange for or provide for childcare or school-related activities when the active duty or call to active duty status of an employee's spouse, son, daughter, or parent, who is on covered active duty, necessitates a change in the existing childcare arrangement for a child, as defined in number one (1) of these definitions above.

**Financial and Legal Arrangements:** Leave to make or update various financial and legal arrangements to address an employee's spouse, son, daughter, or parent, who is on covered active duty's absence while on active duty or call to active duty status.

**Counseling:** Leave to attend counseling provided by someone other than a health care provider for oneself, for an employee's spouse, son, daughter, or parent, who is on covered active duty, or for the child of an employee's spouse, son, daughter, or parent, who is on covered active duty, provided that the need for counseling arises from the active duty or call to active duty status of a an employee's spouse, son, daughter, or parent, who is on covered active duty.

**Rest and Recuperation:** An allotment of up to fifteen (15) days for each instance of rest and recuperation leave to spend time with an employee's spouse, son, daughter, or parent, who is on covered active duty who is on short-term, temporary, rest and recuperation leave during the period of deployment.

**Post-Deployment Activities:** Leave to attend arrival ceremonies, reintegration briefings and events, and any other official ceremony or program sponsored by the military for a period of 90 days following termination of an employee's spouse, son, daughter, or parent, who is on covered active duty's active duty status and to address issues that arise from the death of a an employee's spouse, son, daughter, or parent, who is on covered active duty.

Leave to Care for Military Member's Parent: Leave to care for a military member's parent who is incapable of self-care when the care is necessitated by the member's covered active duty. Such are may including arranging for alternative care, providing care on an immediate need basis, admitting or transferring the parent to a care facility, or attending meetings with staff at a care facility.

Additional Activities: Leave to attend other activities arising out of an employee's spouse, son, daughter, or parent, who is on covered active duty's active duty status' active duty or call to active duty status provided that the employer and employee both mutually agree: a) that such leave should qualify as an exigency; and b) to the timing and duration of the leave.

#### "Parent"

Parent means a biological parent or an individual who stands or stood in loco parentis to an employee when the employee was a child. The term does not include parents "in-law."

#### "Serious Health Condition"

A serious health condition is an illness, injury, impairment or physical or mental condition that involves: (1) inpatient care (an overnight stay in a hospital, hospice, or residential medical care facility) and any corresponding period of incapacity or subsequent treatment in connection with the inpatient care, or (2) "continuing treatment," as defined above, by a health care provider. "Incapacity" means the inability to work, attend school, or perform other regular daily activities due to a serious health condition, treatment therefore or recovery therefrom. "Treatment" includes examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical, eye, or dental examinations. Ordinarily, unless complications arise, the common cold, the flu, ear aches, upset stomach, minor ulcers, headaches or other migraine, routine dental or orthodontia problems, periodontal disease, etc., are examples of conditions that do not meet the definition of a serious health condition and do not qualify for FMLA leave.

#### "Serious Injury or Illness"

A serious injury or illness is either: a) in the case of a current member of the Armed Forces (including a member of the National Guard or Reserves), means an injury or illness that was incurred by the member in line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in line of duty on active duty in the Armed Forces) and that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating; or b) in the case of a veteran who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period 5 years preceding the date on which the veteran undergoes medical treatment, recuperation, or therapy, means a qualifying injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in line of duty on active duty in the Armed Forces) and that manifested itself before or after the member became a veteran.

#### "Serious Injury or Illness for a Covered Veteran"

An injury or illness that was incurred or aggravated by the member in the line of duty on active duty in the Armed Forces and manifested itself before or after the member became a veteran, and is:

- (1) A continuation of a serious injury or illness that was incurred or aggravated when the covered veteran was a member of the Armed Forces and rendered the service member unable to perform the duties of the service member's office, grade, rank, or rating; OR
- (2) A physical or mental condition for which the covered veteran has received a VA Service Related Disability Rating (VASRD) of 50 percent or greater and such VASRD rating is based, in whole or in part, on the condition precipitating the need for caregiver leave; OR
- (3) A physical or mental condition that substantially impairs the veteran's ability to secure or follow a substantially gainful occupation by reason of a disability or disabilities related to military service or would do so absent treatment; OR
- (4) An injury, including a psychological injury, on the basis of which the covered veteran has been enrolled in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

"Spouse"

Spouse means a husband or wife as defined or recognized under state law for purposes of marriage, including common law marriage in states where it is recognized.

#### **Employee Notice or Wagoner County Election of FMLA Leave**

When it is foreseeable for the birth or placement of a child or for planned medical treatment, an employee who wishes to take leave under this Policy must give reasonable, advance notice and must submit a written leave of absence request for approval prior to the commencement of the leave. In most circumstances, a "reasonable, advance notice" means 30 days. When planning medical treatment, the employee must consult with the Human Resources Department and make a reasonable effort to schedule the treatment so as not to unduly disrupt Wagoner County's operations, subject to the approval of the health care provider. Advance notice of the need to take Military Caregiver Leave is also required when such leave is foreseeable. The employee has a responsibility to provide notice sufficient to make Wagoner County aware that the employee needs FMLA qualifying leave, and the anticipated timing and duration of the leave. Failure to provide notice sufficient to make Wagoner County aware that the employee needs FMLA qualifying leave could result in a denial of the employee's leave application.

When it is not possible to give advance notice—for example, in connection with an unforeseeable medical emergency or for Military Qualifying Exigency Leave—the employee must notify the Human Resources Department as soon as practicable, ordinarily within one (1) or two (2) business days of when the employee learns of the need for leave. Employees must follow Wagoner County's customary call-in procedures, unless unusual circumstances require a deviation from them.

When an employee requests FMLA leave, the Human Resources Department will notify the employee of the employee's eligibility for and obligations and expectations of taking FMLA leave within five (5) business days, absent extenuating circumstances. After the Human Resources Department has enough information to determine whether the leave is being taken for an FMLA-qualifying reason, the Human Resources Department will notify the employee of whether the leave will be designated and will be counted as FMLA leave within five (5) business days, absent extenuating circumstances. Wagoner County also has the right to designate an absence as Family and Medical Leave on its own volition, consistent with applicable laws and regulations, even if the employee does not request it.

If an employee has credited vacation and/or sick leave, he or she must take advantage of those paid leaves in connection with any leave under this Policy. That means that the employee's paid leave will run concurrently with their FMLA leave. Accordingly, the period of unpaid leave is shortened by the period of paid leave so that the maximum leave taken is no more than 12 weeks (480 hours).

If such paid leaves do not apply or have been exhausted, leaves under this Policy will be without pay. Employees who are absent and receiving benefits under worker's compensation insurance are not required to substitute credited vacation or sick leave. Nonetheless worker's compensation or other disability absences qualifying as serious health conditions will be designated by Wagoner County as Family and Medical Leave and the leave would be counted as running concurrently for purposes of both worker's comp/long-term disability and FMLA.

#### **Certification of FMLA Leave**

Wagoner County will require a health care provider's complete and sufficient certification of either the

employee's or the family member's serious health condition, whichever is applicable, to be completed within 15 calendar days of the leave request. For Military Qualifying Exigency Leave, Wagoner County will require complete and sufficient certification for the first instance of a request for leave in accordance with 825.309 of the FMLA, to be completed within 15 calendar days of the leave request. For Military Caregiver Leave, Wagoner County will require confirmation of a covered family relationship to the covered service member pursuant to 825.122(j) of the FMLA. Also for Military Caregiver Leave, the employee must provide complete and sufficient certification to Wagoner County in accordance with 825.310 of the FMLA, to be completed within 15 calendar days of the leave request. Wagoner County

will notify the employee of the requirement to provide certification and the penalties for failing to do so upon the employee's notice of a request for FMLA leave; within five (5) business days thereafter; or within five (5) business days of the leave commencing in cases of unforeseen leave. Where the employee's need for leave due to the employee's own serious health condition, or the serious health condition of the employee's covered family member, lasts beyond a single year, Wagoner County will

If the certification the employee provides is incomplete (blank entries) or insufficient (vague or non-responsive answers), the Human Resources Department will advise the employee of the deficiencies in writing and the employee will be allotted seven (7) additional calendar days (unless not practicable under the particular circumstances despite the employee's diligent good faith efforts) to cure the certification. Failure to provide complete and sufficient certification could result in a denial of the employee's FMLA leave request.

require the employee to provide a new medical certification in each subsequent leave year.

Furthermore, upon the employee's authorization pursuant to HIPAA, the Human Resources Department may contact the health care provider for purposes of clarification and authentication of any medical certification. Wagoner County will, under no circumstances, utilize the employee's direct supervisor when making such contact. Despite Wagoner County's ability to make such contact, it remains the employee's sole responsibility to provide the employer with a complete and sufficient certification, and a failure to do so could result in a denial of the employee's FMLA leave request.

Wagoner County may request recertification for leave taken because of the employee's own serious health condition or the serious health condition of a family member every thirty (30) days if the employee continues to be absent. If the medical certification indicates that the minimum duration of the condition is more than thirty (30) days, Wagoner County will wait until the minimum duration expires before requesting a recertification. In all cases Wagoner County can request recertification of a medical condition every six (6) months in connection with an absence of the employee. In all cases Wagoner County may request recertification in less than thirty (30) days if: (a) the employee requests an extension of leave; (b) circumstances described by the previous certification have changed significantly; (c) Wagoner County receives information that casts doubt upon the employee's stated reason for the absence or the continuing validity of the certification. All recertification requested shall be at the employee's expense.

As a condition for restoring an employee whose FMLA leave was occasioned by the employee's own serious health condition that made the employee unable to perform the employee's job, Wagoner County will require the employee to obtain and present certification from the employee's health care provider that the employee is able to resume work. The employee has the same obligations to participate and cooperate in the fitness-for-duty certification process as in the initial certification process. The certification from the employee's health care provider must certify that the employee is

Page 24

Page 37 of 52

able to resume work. Additionally, the certification must specifically address whether the employee is able is perform the essential functions of the employee's job. Wagoner County will supply the employee with a list of essential job functions with its designation notice described above. The cost of certification will be borne by the employee.

#### **Husband and Wife Leave under the FMLA**

When a husband and wife are both employed by Wagoner County, they are limited to a combined total of 12 workweeks during any rolling 12-month period if leave is taken for birth of a child, care for the child after the birth, placement of a child with the employee for adoption or foster care, or to care for the employee's parent with a serious health condition. The limitation does not apply, however, to leave taken by either spouse to care for the other who is seriously ill and unable to work, to care for a child with a serious health condition, or for his or her own serious illness.

Also, an aggregate of 26 workweeks during any single 12-month period may be taken by a husband and wife who are both employed by Wagoner County for Military Caregiver Leave. The number of workweeks of leave available to each will be reduced by the number of workweeks taken by that individual (but not his or her spouse) during the 12-month period for other purposes under this Policy.

#### Intermittent or Reduced Leave Schedule under the FMLA

An employee taking leave after the birth or because of placement for adoption or foster care of a healthy child is permitted to take leave intermittently or by working a reduced workweek only with the approval of an officer of Wagoner County. However, intermittent or reduced work leave to care for a seriously ill family member, because of the employee's own serious health condition, or for Military Caregiver Leave, may be taken whenever medically necessary. Military Qualifying Exigency Leave may also be taken on an intermittent or reduced leave basis. Wagoner County may require a medical certification of the need for intermittent or reduced schedule leave and periodic recertification of the continued need for the leave consistent with the regulations issued by the Department of Labor. In some instances, Wagoner County may transfer an employee temporarily to an available alternative position with equivalent pay and benefits when this would better accommodate recurring periods of intermittent or reduced schedule leave based on planned medical treatment. Actual time taken should be reported as Family and Medical Leave on the employee's time sheet. Employees on intermittent leave should contact their Human Resources representative with any questions concerning actual hours worked and overtime compensation.

When an employee takes FMLA leave on an intermittent or reduced leave schedule basis, Wagoner County will account for the leave using an increment no greater than the shortest period of time that Wagoner County uses to account for use of other forms of leave provided it is not greater than one hour and provided that the employee's FMLA leave entitlement will not be reduced by more than the amount of leave actually taken.

Wagoner County will require a certification of fitness to return to duty from intermittent or reduced leave schedule for each absence up to once every thirty (30) days if reasonable safety concerns exist regarding the employee's ability to perform his or her duties, based upon the serious health condition for which the employee took such leave.

#### **Benefits During FMLA Leave**

Employees on Family or Medical Leave will continue to be covered under Wagoner County's benefits

program. If the employee has coverage through Wagoner County's health plan, the employee must continue to pay the employee's share of the premiums to keep this coverage in effect, just as if he or she was working. If the employee does not return to work at the end of the leave, Wagoner County may charge the employee for the full premium cost of the health coverage during the leave. However, the employee will not be charged if he or she does not return due to:

The continuation, recurrence or onset of a serious health condition which would entitle the employee to Family and Medical Leave; or other circumstances beyond the employee's control.

#### **Holidays While on FMLA Leave**

The fact that a holiday may occur within the week that an employee has taken as FMLA leave has no effect; the week is counted as a week of FMLA leave. However, if the employee is using FMLA leave in increments of less than one week, the holiday will not count against the employee's FMLA entitlement unless the employee was otherwise scheduled and expected to work during the holiday. Furthermore, if for some reason Wagoner County's business activity has temporarily ceased and employees are generally not expected to report for work one or more weeks, the days the employer's activities have ceased do not count against the employee's FMLA leave entitlement.

#### **Return to Work Following FMLA Leave**

On return to work from Family and Medical Leave, an employee is entitled to be returned to the same position the employee held when leave commenced, or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment. Ordinarily an employee will be restored to the same position the employee held prior to the leave, with the same pay and benefits, if the position remains available. However, an employee has no right to return to the same position.

If an employee is certified as able to return to work in a light duty job, the employee has the option of declining to return and remaining on Family and Medical Leave until fully released or the 12-week entitlement period is exhausted, whichever occurs earlier. The decision not to accept light duty, however, may result in the loss of worker's compensation benefits, at which point the provision for substitution of paid leave (vacation and sick leave) would apply. Voluntary acceptance of light duty does not waive an employee's right to restoration to the same or an equivalent position. Although time spent on light duty does not count against the annual 12-week FMLA allotment, an employee's right to restoration will expire at the end of the 12-month FMLA leave period.

#### **Key Employees under FMLA**

Wagoner County retains the right to deny reinstatement to "Key Employees" upon its determination that substantial and grievous economic injury will result. The employee will be given notice that he or she is considered a "Key Employee" as soon as practicable after receipt of a request or designation by Wagoner County of an absence as Family and Medical Leave. If a determination is made of substantial and grievous economic injury, the employee will be notified in writing, with such notice being served in person or by certified mail. Leave cannot be denied, but reinstatement can.

#### Other Work Prohibited During FMLA Leave

Employees may not engage in work for another employer during employee's normal business hours, whether full or part-time, while on Family and Medical Leave from Wagoner County. Any violation of this provision may jeopardize the employee's right to return to work. Wagoner County will also require both periodic reports during the course of the leave of an employee's status and his or her projected

date of return to work and a written release from his or her physician to return to work.

#### **Unlawful Acts under FMLA**

It is unlawful for Wagoner County to: a) interfere with, restrain, or deny the exercise of any right provided for under FMLA; or b) discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

#### **Enforcement of FMLA**

An employee may file a complaint with the U.S. Department of Labor or may bring a private lawsuit against Wagoner County for any violation of FMLA.

# **LEAVE SHARING POLICY**

Wagoner County has adopted a Leave Sharing Policy which is similar to, but is not totally consistent with, the Leave Sharing Act for State employees (74 O.S. § 840-2.23). A county employee may donate vacation or personal leave to another county employee only pursuant to the following conditions:

- The receiving employee is eligible for and requires family leave pursuant to the provisions of the Family and Medical Leave Act, 29 USC 2601 et seq; and
- The receiving employee has exhausted, or will exhaust, all vacation or personal leave and compensatory time (if applicable) due to illness, injury, impairment, or physical or mental condition, which is of an extraordinary or severe nature; and
- The condition has caused, or is likely to cause, the employee to go on leave without pay or terminate employment.
- The supervising officials of both the Recipient Employee and the Donor Employee approve the leave sharing arrangement in writing.
- An employee may donate leave to an eligible employee provided the donation does not cause the leave balance of the donor employee to fall below eighty (80) hours of the specified leave donated.
- The maximum amount of shared leave an employee may receive during their lifetime tenure of employment with the county is two hundred sixty-one (261) days (2088 hours) of shared leave.
- Donated leave may only be used by the recipient for the purposes specified.
- Donated leave is transferrable on an hour-hour basis irrespective of the hourly wage of the donating or receiving employee.
- All forms of paid leave available for use by the recipient must be exhausted prior to using donated leave.
- Any donated leave not used by the recipient during each occurrence shall be returned to the donor. In the event leave is donated by multiple donors, it shall be returned on a prorated basis.

Compensatory and Holiday leave may not be shared, as these are considered "earned wages" under the Department of Labor and IRS guidelines.

#### **EMERGENCY LEAVE POOL**

Effective July 1, 2023, employees may donate unused vacation or personal time into the Emergency Leave

# **COMPLAINT RESOLUTION PROCEDURE (OPEN DOOR POLICY)**

Wagoner County believes it is in the best interest of both the County and its employees to promote free and open communication between employees and all levels of management. Wagoner County encourages employees to discuss work-related concerns with their supervisor, other management personnel, and elected officials. However, even in such discussions, misunderstandings occur. In order to resolve such instances as quickly and easily as possible, we suggest the following to ensure a policy of free and open communication:

Step 1: Should you have a concern, bring it to your supervisor's attention (if appropriate) verbally or in writing. After reviewing the facts, your supervisor will meet with you to discuss your concerns and to respond.

Step 2: If you are not satisfied with your supervisor's response (or if meeting with him or her is not appropriate) then you may present your concern to the next immediate supervisor or to the appropriate elected official who will follow the same evaluation process.

Step 3: If you wish to pursue this matter further, then you may present your concern to the Board of County Commissioners who will investigate the matter.

After considering your position and the available facts, the Board of county Commissioners will make a final determination on how Wagoner County will respond to your concern.

# POLICY AGAINST HARASSMENT AND DISCRIMINATION AND COMPLAINT PROCEDURE

Discrimination, harassment, and/or retaliation in any form constitute misconduct that undermines the integrity of the employment relationship with the County. The County prohibits discrimination and/or harassment that is sexual, racial, or religious in nature or is related to anyone's actual or perceived sexual orientation or gender, national origin, age, disability, or any other basis protected by federal, state, or local law. Furthermore, the County will make reasonable accommodations for qualified individuals with known disabilities, unless doing so would result in an undue hardship, health, or safety concern.

Harassment prohibited because of protected status includes but is not limited to verbal conduct such as epithets, derogatory comments, slurs or unwelcome sexual advances, requests for sexual favors, or use of offensive or demeaning terms, including those which have a sexual connotation.

The following are additional examples of conduct which may be legally actionable sexual harassment:

- Use of any offensive or demeaning terms which have sexual connotation.
- Any verbal, visual, or physical conduct of a harassing and/or discriminatory nature including objectionable physical proximity or physical contact.
- Unwelcome suggestions regarding, or invitations to, social engagements or work-related social events.

- Any indication, express or implied, that an employee's job security, job assignment, conditions of
  employment, or opportunities for advancement depend or may depend on the granting of sexual
  favors to any other employee, supervisor, or manager.
- Any action relating to an employee's job status which is in fact affected by consideration of the granting or refusal of social or sexual favors.
- The deliberate or careless creation of an atmosphere of sexual harassment or intimidation.
- The deliberate or careless expression of jokes or remarks of a sexual nature to or in the presence of employees who may find such jokes or remarks offensive.
- The deliberate or careless dissemination of materials (such as cartoons, articles, pictures, etc.), which have a sexual content and which are not necessary for our work, to employees who may find such materials offensive.

The County expects that everyone will act responsibly to establish a professional work environment. However, if an employee feels he/she has been subjected to any form of harassment and/or discrimination, the employee should promptly report that conduct to his/her immediate supervisor, another member of supervision, or a member of the Board of Commissioners within three calendar days of the offense. Employees are not required to approach the person who is harassing and/or discriminating against them, and they may bypass any offending member of supervision. The person the harassment or discrimination is reported to will take the necessary steps to initiate an investigation of the discrimination and/or harassment claim. Employees who believe they have been discriminated against on the basis of a disability or who believe they have not been properly afforded a reasonable accommodation for a disability should utilize this same complaint and reporting process.

The County will conduct its investigation in as confidential a manner as possible. However, the County will not allow the goal of confidentiality to be a deterrent to an effective investigation. A timely resolution of each complaint will be reached and communicated to the employee. Appropriate corrective action, up to and including termination, will be taken promptly against any employee engaging in discrimination and/or harassment. The corrective action issued will be proportional to the severity of the conduct. The alleged harasser's employment history and any similar complaints of prior unlawful discrimination and/or harassment will be taken into consideration.

The County prohibits retaliation of any kind against employees, who, in good faith, report harassment and/or discrimination or assist in investigating such complaints. If an employee feels he/she has been subjected to any form of retaliation, the employee should report that conduct to his/her immediate supervisor, another member of supervision, or Human Resources within three calendar days of the offense. Employees are not required to approach the person who is retaliating against them, and they may bypass any offending member of management. Employees are encouraged to use the Complaint Resolution Procedure (Open Door Policy) set out in this handbook as well.

# WHISTLEBLOWER PROTECTION POLICY

Wagoner County has an open-door policy which includes Whistleblower protections in accordance with Federal Law. In no instance with there be retaliation against a whistleblower whether that individual be an employee or person acting on behalf of an employee or member of the public. This includes, but is not limited to, protection from retaliation in the form of an adverse employment action such as

termination or threat of termination, compensation decreases, or poor work assignments, relocation and threats of physical harm. Any whistleblower who believes he/she is being retaliated against must report it immediately. The right of a whistleblower for protection against retaliation does not include immunity for any personal wrongdoing that is alleged and investigated, unless such conduct is required by the employer.

Whistleblower protections are provided in two important areas: confidentiality and retaliation. Insofar as possible, the confidentiality of the whistleblower will be maintained. However, identity may have to be disclosed to conduct a thorough investigation, to comply with the law, and to provide accused individuals their legal rights of defense. The provisions of this policy do not authorize the disclosure of information that is legally required to be kept confidential; or diminish or impair the rights of an employee.

"Matter of public concern" means a violation of a state, federal or municipal law, regulation or ordinance; a danger to public health or safety; and/or gross mismanagement, substantial waste of funds or a clear abuse of authority.

#### Procedures:

- A. If an employee has knowledge of or a concern of illegal or dishonest/fraudulent activity, the employee is to contact his/her immediate supervisor, their Elected Official or Human Resources and shall submit a written report concerning the matter.
- B. The employee is not required to submit a written report if he or she believes with reasonable certainty that the activity, policy, or practice is already known to the official, that the activity involves the official; or that an emergency is involved. In this instance, a report should be made immediately to Human Resources.
- C. Any concerns involving Human Resources should be reported to the County Clerk and/or the Board of County Commissioners.
- D. The whistleblower is not responsible for investigating the alleged illegal or dishonest activity, or for determining fault or corrective measures; appropriate management officials are charged with these responsibilities.
- E. Reports of illegal activity shall be forwarded to the District Attorney for further investigation.

# WORKER'S COMPENSATION AND REPORTING OF ACCIDENTS AND/OR INJURIES PROCEDURES

It is the policy of Wagoner County to prevent the occurrence of accidents by maintaining safe working conditions and promoting safety at all times.

Employees must report any injury received while on the job as soon as practical to their supervisor, regardless of the extent of the injury. The Supervisor will determine if the employee should have medical attention and where medical services will be given. If doubt exists, the employee should be sent to a clinic or hospital emergency room where the employee should be examined by medical personnel. The employee must complete a written report as soon as practical. If the employee is unable to complete a report, the supervisor will complete it.

#### RESOLUTION TO ADOPT HANDBOOK

#### **RESOLUTION #2023-065**

#### "EMPLOYEE PERSONNEL POLICY HANDBOOK - WAGONER COUNTY

Wagoner County has determined there exists a need for an Employee Personnel Policy Handbook which is uniformly applied to all employees of Wagoner County, and

WHEREAS the elected officials of Wagoner County have determined that an Employee Personnel Policy Handbook will significantly improve communications between the County and its employees, and

WHEREAS the elected officials of Wagoner County have determined that a written Employee Personnel Policy handbook promotes fairness in employment and assists in the prevention of discrimination in employment of any nature, now

THEREFORE, BE IT RESOLVED that pursuant to Oklahoma Statutes Annotated Title 19, Section 339, Wagoner County, by the majority vote of the elected officials, does hereby adopt the "Employee Personnel Policy Handbook – Wagoner County".

DATED THIS 19 DAY OF JULE, 2023.

Board of Coupty Commissioners and Other Elected Officials of Wagoner County:

James Hanning, District One

Commissioner

Tim Kalley District Three Commissioner

Chasity Levi Treasurer

Sandy Hodges, Assessor

Chris Edwards, District Two

Commissioner

Lori Hendricks, County Clerk

Jim Hight, Court Clerk

Chris Elliott, Sheriff

#### **OPEN RECORDS REQUEST**

Wagoner County

Attn: Lori Hendricks, Wagoner County Clerk

PO Box 156

Wagoner, OK 74477

Via Facsimile: (918) 485-7718

#### PERSON REQUESTING RECORDS:

ROUTE 66, Attorneys, L.L.C. Brendan M. McHugh, Attorney at Law P.O. Box 1392 Claremore, OK 74018 Phone 918-608-0111 Fax 918-803-4910 Email brendan@lawinok.com

Relationship To Part(v/ies) In Record: Attorney for Misty Dawn Burke

#### **BACKGROUND**

Misty Burke is charged in Wagoner County Case CM-24-354. It is believed that Jack Thorp corresponded with at least one County Commissioner regarding her criminal case.

#### **RECORDS REQUESTED**

- 1) All emails or text messages from Jack Thorp to any county commissioner regarding Misty Dawn Burke from July 22,2024 until November 15, 2024.
- 2) All emails or text messages from any County Commissioner to Jack Thorp regarding Misty Dawn Burk from July 22, 2024 until November 15, 2024. .

This request is being made under the Oklahoma Open Records Act. It additionally requires that public bodies provide "prompt, reasonable access to its records," (Okla. Stat. title. 51, 24A.5(5)). which the attorney General has interpreted as meaning "only the time required to locate and compile the public records." 1999 OK AG 58, 15, 9. We are willing to pay any fees for this request and will submit payment upon receipt of the requested information. Please do not hesitate to contact the office with any questions or concerns. In Paulsen v. Wagoner County, the Court held that text messages discussing public business are records subject to production. See Oklahoma Supreme Court, Case 121,575, opinion of July 31, 2024. Thank you for your attention to this request.

I swear under penalties of perjury that this is not being made for commercial solicitation purposes. I further certify that this request is made in the public interest.

Exhibit 6

# **OPEN RECORDS REQUEST**

Wagoner County Commissioners, District 1 Attn: James Hanning 30020 E 71st St. S Broken Arrow, OK 74014 Via Facsimile: (918) 357-2053

-and-

Wagoner County Attn: Lori Hendricks, Wagoner County Clerk PO Box 156 Wagoner, OK 74477

Via Facsimile: (918) 485-7718

# **PERSON REQUESTING RECORDS:**

ROUTE 66, Attorneys, L.L.C.
Brendan M. McHugh, Attorney at Law
P.O. Box 1392
Claremore, OK 74018
Phone 918-608-0111
Fax 918-803-4910
Email brendan@lawinok.com

Relationship To Part(v/ies) In Record: Attorney for Misty Dawn Burke

#### **BACKGROUND**

On March 12, 2024, Wagoner County Commissioners had an Emergency Meeting regarding Judy Elliott's employment status. It is believed that James Hanning and Judy Elliott corresponded regarding this matter.

#### **RECORDS REQUESTED**

- 1) All emails or text messages from Judy Elliott to you on March 12, 2024.
- 2) All emails or text messages from you to Judy Elliott on March 12, 2024.

This request is being made under the Oklahoma Open Records Act. It additionally requires that public bodies provide "prompt, reasonable access to its records," (Okla. Stat, title. 51, 24A.5(5)), which the attorney General has interpreted as meaning "only the time required to locate and compile the public records." 1999 OK AG 58, 15, 9. We are willing to pay any fees for this request and will submit payment upon receipt of the requested information. Please do not hesitate to contact the office with any questions or concerns. In *Paulsen v. Wagoner County*, the Court held that text messages



discussing public business are records subject to production. See Oklahoma Supreme Court, Case 121,575, opinion of July 31, 2024. Thank you for your attention to this request.

I swear under penalties of perjury that this is not being made for commercial solicitation purposes. I further certify that this request is made in the public interest.

SIGATURE: B. MCHA

PATE: 13/3/2024

6:25-cv-00174-RAW-GLJ Document 2-6 Filed in ED/OK on 05/23/25 Page 48 of 52

Brendan Mchugh <br/>
bmcq1990@gmail.com>

ax to (918) 485-7718 was successfully sent

r@ooma.com <no\_reply@ooma.com> |1990@gmail.com

Fri, Dec 13, 2024 at 3:24 PM

Account: Route 66 Attorneys : (918) 803-4910

# Fax Sent Successfully

Your fax to (918) 485-7718 was sent successfully.

Document Name	Burke ORA request to Hanning and Hendricks.pdf
Length	2 page(s)

Exhibit 6

**C** Gmail

Your fax to (918) 357-2053 was successfully sent

1 message

no\_reply@ooma.com <no\_reply@ooma.com> To: bmcq1990@gmail.com Account: Route 66 Attorneys : (918) 803-4910

# Fax Sent Successfully

Your fax to (918) 357-2053 was sent successfully.

Document Name	Burke ORA request to Hanning and Hendricks.pdf
Length	2 page(s)



From:

Lori Hendricks <a href="mailto:lhendricks@wagonercounty.ok.gov">lhendricks@wagonercounty.ok.gov</a>

To:

brendan@lawinok.com <br/> brendan@lawinok.com>

Date:

12/16/2024 2:47 PM

Subject:

Open Records Request Follow Up

Mr. McHugh,

I am emailing to follow up on your open records request of 12/6/24.

We forwarded your request to the appropriate parties, however have not received a response. I am curious if anyone responded directly to you. Please advise so we may mark your request complete, or follow up for a response.

Lori Hendricks
Wagoner County Clerk
918.485.7717 direct
918.485.7718 fax
Ihendricks@wagonercounty.ok.gov



# **☎** 00076-Burke

From:

Brendan M. McHugh <br/>
<br/>
bmcq1990@gmail.com>

To:

Lori Hendricks <a href="mailto:lhendricks@wagonercounty.ok.gov">lhendricks@wagonercounty.ok.gov</a>

Date:

12/18/2024 10:11 AM

Subject:

Re: Open Records Request Follow Up

Jack Thorp responded to the request.

Thank you and Merry Christmas.

Sent from my iPhone

> On Dec 16, 2024, at 2:47 PM, Lori Hendricks <a href="mailto:lhendricks@wagonercounty.ok.gov">lhendricks@wagonercounty.ok.gov</a> wrote:

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> >

>

> Lori Hendricks

> Wagoner County Clerk

> 918.485.7717 direct

> 918.485.7718 fax

> Ihendricks@wagonercounty.ok.gov



# **2** 00076-Burke

From:

Lori Hendricks <a href="mailto:lhendricks@wagonercounty.ok.gov">lhendricks@wagonercounty.ok.gov</a>

To:

Brendan M. McHugh <br/>
<br/>
bmcq1990@gmail.com>

Date:

12/18/2024 10:30 AM

Subject:

RE: Open Records Request Follow Up

Thank you. I will follow up with my commissioners.

Lori Hendricks
Wagoner County Clerk
918.485.7717 direct
918.485.7718 fax

910.400.77 10 18X

Ihendricks@wagonercounty.ok.gov

To: Lori Hendricks <a href="mailto:lhendricks@wagonercounty.ok.gov">lhendricks@wagonercounty.ok.gov</a>

Subject: Re: Open Records Request Follow Up

[https://members.ironscales.com/static/webapp/images/iron\_icon\_color\_7\_2021.png]
IRONSCALES couldn't recognize this email as this is the first time you received an email from this sender bmcq1990 @ gmail.com

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#### IN THE DISTRICT COURT OF WAGONER COUNTY STATE OF OKLAHOMA

MISTY DAWN BURKE,	
Plaintiff,	
)	Case No. CJ-2025-104
v. )	
)	
JUDY, ELLIOTT, individually; and in her official	
capacity; and	
JAMES EARL HANNING, individually, and in his	Wagoner County, Oklahoma
official capacity; and	Filed
WAGONER COUNTY E-911, and	) In District Court
BOARD OF COUNTY COMMISSIONERS	MAY 1 2 2025
OF THE COUNTY OF WAGONER COUNTY;	
,	sames E. Hight
jointly and severally,	Court Clerk
Defendants.	Ato'clockW

#### **CERTIFICATE OF SERVICE**

I, Brendan M. McHugh, hereby certify that I mailed a true and correct copy of the First Amended Petition and Summons in the above referenced case, via certified mail, to the below listed Defendants in this case as set forth below:

<u>DEFENDANT</u>	DATE OF SERVICE	BY SERVING
Board of County Commissioners	5-5-2025	Henley Lacey
Wagoner County E-911 and Judy Elliott	5-5-2025	Henley Lacey

Service of the documents set forth above is evidenced by the document attached hereto as Exhibit 1.

Brendan M. McHugh, OBA #18422

P.O. Box 1392

Claremore, OK 74018

(918) 608-0111

Fax: (918) 803-4910

Email: <u>brendan@lawinok.com</u>

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul> <li>Complete items 1, 2, and 3.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> <li>Article Addressed to:</li> </ul>	A. Signature  X
Board of County Commissioners  Attn: Lori Hendricks, County Clerk PO Box 156	If YES, enter delivery address pelow:
Wagoner, OK 74467	
9590 9402 7060 1225 7316 93  2. Article Number (Transfer from service label)  9589 0710 5270 1340 4077 92	3. Service Type  □ Adult Signature □ Adult Signature Restricted Delivery □ Certified Mail® □ Certified Mail® □ Collect on Delivery □ Collect on Delivery □ Collect on Delivery Restricted Delivery □ Insured Mail □ Insured Mail Restricted Delivery
SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul> <li>Complete items 1, 2, and 3.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>	A. Signature  X QUA JaCM Agent  B. Received by (Printed Name) C. Date of Deliver  Heal M Yally 5-5-25
Article Addressed to:	D. Is delivery address different from item 1? Yes If YES, enter delivery address below: No
Wagoner County E-911	ii 120, siksi dalifsiy addissi bolom.
Attn: Judy Elliott	
307 E Cherokee St., Ste. 2	
Wagoner, <b>©K 7</b> 4467	
9590 9402 7060 1225 7316 17	3. Service Type
2. Article Number (Transfer from service label)	☐ Insured Mail
9589 0710 5270 1340 4077 85	(over \$500)



PS Form 3811, July 2020 PSN 7530-02-000-9053

Domestic Return Receipt

#### IN THE DISTRICT COURT OF WAGONER COUNTY STATE OF OKLAHOMA

MISTY DAWN BURKE, )	
Plaintiff,	
j ,	Case No. CJ-2025-104
v. )	W <sub>agoner</sub> Co
JUDY, ELLIOTT, individually; and in her official ) capacity; and )	Wagoner County, Oklahoma In District Court
JAMES EARL HANNING, individually, and in his )	MAY 1 9 2025
official capacity; and	, 79 2025
WAGONER COUNTY E-911, and	g/no
BOARD OF COUNTY COMMISSIONERS )	At Count Clerk
OF THE COUNTY OF WAGONER COUNTY; )	o'clock M
jointly and severally,	
Defendants.	

#### **CERTIFICATE OF SERVICE**

I, Brendan M. McHugh, hereby certify that I mailed a true and correct copy of the First Amended Petition and Summons in the above referenced case, via certified mail, to the below listed Defendants in this case as set forth below:

<u>DEFENDANT</u>	DATE OF SERVICE	BY SERVING
James Earl Hanning	5-6-2025	C. Green

Service of the documents set forth above is evidenced by the document attached hereto as Exhibit 1.

Brendan M. McHugh, OBA #18422

P.O. Box 1392

Claremore, OK 74018

(918) 608-0111

Fax: (918) 803-4910

Email: brendan@lawinok.com

# IN THE DISTRICT COURT OF WAGONER COUNTY STATE OF OKLAHOMA

MISTY DAWN BURKE, )	
Plaintiff, )	
)	Case No. CJ-2025-104
v. )	Wagoner County, Oklahoma
JUDY, ELLIOTT, individually; and in her official )	In D. Filer, Oklaha
capacity; and	In District Count
JAMES EARL HANNING, individually, and in his )	MAY 1 9 2025
official capacity; and	9 2025
WAGONER COUNTY E-911, and )	James E. L.
BOARD OF COUNTY COMMISSIONERS )	James E. Hight  At Court Clerk O'clock
OF THE COUNTY OF WAGONER COUNTY; )	o'clock M
jointly and severally,	- M
Defendants.	

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Brendan M. McHugh, OBA #18422

P.O. Box 1392

Claremore, OK 74018

(918) 608-0111

Fax: (918) 803-4910

Email: <u>brendan@lawinok.com</u>

SENDER: COMPLETE THIS SECTION	COMPLETE THE SECTION ON DELIVERY
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James Earl Hanning 30020 E 71st Street South Broken Arrow, OK 74014	
9590 9402 7060 1225 7315 94 9589 0710 5270 1340 4077	3. Service Type  □ Adult Signature □ Adult Signature Restricted Delivery □ Certified Mail® □ Certified Mail Restricted Delivery □ Collect on Delivery □ Collect on Delivery Restricted Delivery □ Insured Mail 7 ♣ I Insured Mail Restricted Delivery
PS Form 3811, July 2020 PSN 7530-02-000-9053	(over \$500) Domestic Return Receipt

