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# BOYCE & ISLEY, PLLC

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RALEIGH, NORTH CAROLINA 27602-1990

## ATTACHMENT 1

G. Eugene Boyce  
R. Daniel Boyce  
Philip R. Isley  
Laura Boyce Isley

107 Fayetteville Street Mall  
Raleigh, North Carolina 27601  
Telephone: (919) 833-7373  
Facsimile: (919) 833-7536

TO: Municipality and County Representatives  
FROM: Boyce & Isley, PLLC  
Re: County of Cabarrus, et al. v. Tolson, No. 02 CVS 12518  
DATE: December 18, 2002

Several clients have asked us to advise you of the above-captioned case regarding recovery of county and municipality funds withheld and to be withheld by the Secretary of Revenue.

The Complaint was filed September 17, 2002. Chief Justice I. Beverly Lake, Jr. appointed the Honorable Robert L. Farmer as an "exceptional designated Judge" under Rule 2.1 of North Carolina General Rules of Practice for Superior Court. The parties agreed to a Scheduling Order by which the case may be concluded as early as May, 2003. We are extremely pleased that we are in the position to move this case forward without unnecessary delay. The Scheduling Order also sets a deadline for joinder of additional parties by January 31, 2003.

We originally had six (6) named plaintiffs. Since that time, that number has increased to approximately 30. Additional boards of county commissioners and town/city councils are considering joining in the case. Please be advised that this case cannot be filed as a class action lawsuit under N.C. R. Civ. P. 23. If a settlement opportunity presents itself, we will only be representing our clients in the settlement process.

Originally, we had requested that our clients advance costs on a schedule based on population. The maximum amount had been set at \$1,000.00. However, due to the significant interest in this suit, we will adjust the contribution downward to some amount less than \$1,000.00. We have advised our clients they do not need to send a check in at this time.

Our first client had requested that we consider handling this case on a contingency fee basis rather than a flat fee or hourly basis. In other words, if we do not succeed, we are not paid. We agreed. Based on our experience in other cases, we believe a judge would not set a fee in this type of case in excess of fifteen percent (15%), and we put a cap on any collection of fees at that amount. However, we are not going to ask for a specific amount. Instead, the only request we will make is that the court set a "reasonable fee" consistent with the North Carolina Rules of Professional Conduct. In other words, we are leaving the fee entirely within the discretion of the judge.

The only other obligation we require is for the clients to send us a copy of their Resolution confirming their participation. Enclosed please find a draft Resolution which your board or council may want to use.

We are committed to fighting for our clients at the trial level. However, if not settled, the case will not end at the trial level. We fully anticipate this case to be resolved in the North Carolina Supreme Court. There will be no additional costs even if the case goes to the Supreme Court. Except for our expenses, we are willing to bear the entire risk of succeeding in the lawsuit.

If we can be of further assistance, please do not hesitate to contact our office.

RDB/bsh  
Enclosures: Scheduling Order  
Draft Resolution



NORTH CAROLINA  
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
02 CVS 12518

COUNTY OF CABARRUS, COUNTY OF )  
 ALAMANCE, COUNTY OF STOKES, )  
 COUNTY OF CALDWELL, COUNTY OF )  
 DAVIE, , TOWN OF GARNER, TOWN OF )  
 YANCEYVILLE, COUNTY OF NEW )  
 HANOVER and ADDITIONAL LOCAL )  
 GOVERNMENTS TO BE JOINED UPON )  
 THEIR MOTION, )  
 Plaintiffs, )  
 vs. )  
 NORRIS L.TOLSON, SECRETARY OF )  
 REVENUE OF THE STATE OF NORTH )  
 CAROLINA, )  
 Defendant. )

RULE 26(f) SCHEDULING ORDER  
 N.C. R. Civ. P. 26(f)

FILED  
 WAKE COUNTY N.C.S.C.  
 2002 NOV 25 AM 9:22  
 PLETT

Pursuant to the North Carolina Rules of Civil Procedure Rule 26(f), between October 23, 2002, and November 21, 2002, counsel for Plaintiff conferred via mail and telephone conferences with counsel for the represented Defendants, regarding the Scheduling Order in the above-captioned matter. The parties will appear before The Honorable Robert L. Farmer, Rule 2.1 Exceptional Designated Judge. After hearing from the parties, Plaintiffs requested that this Court, pursuant to N.C. R. Civ. P. 26(f) enter a scheduling order for the parties to conduct discovery and pretrial proceedings.

Upon Good Cause Shown, and upon Stipulation of Counsel as is set forth below, it is hereby **ORDERED** that the parties conduct discovery and pretrial proceedings as is set forth below:

1. **Discovery Plan.**
  - a. The parties stipulate and agree that discovery will be needed on the following subjects:
    - (i) Jurisdiction issues including Defendants' Pretrial Motions;
    - (ii) All subjects raised by the pleadings and motions; and

(iii) All claims and defenses raised by the pleadings and motions.

b. **Discovery Completion:**

(i) The parties stipulate and agree that all discovery related to all matters be completed by **March 31, 2003**; and

(ii) A hearing on any unresolved discovery issues shall be held on or before **April 14, 2003**.

c. **Interrogatories:**

(i) The parties stipulate and agree that a maximum of 30 interrogatories, including sub-parts, may be served by each party upon any other party; and

(ii) The parties stipulate and agree that responses to interrogatories shall be due within 30 days after service unless extended by agreement of the parties.

d. **Requests for Admission:**

(i) The parties stipulate and agree that a maximum of 30 requests for admission, including sub-parts, may be served by each party upon any other party; and

(ii) The parties stipulate and agree that responses to requests for admission shall be due within 30 days after service unless extended by agreement of the parties.

e. **Requests for Production of Documents:**

(i) The parties stipulate and agree that a maximum of 30 requests for productions of documents, including sub-parts, may be served by each party upon any other party; and

(ii) The parties stipulate and agree that responses to requests for production of documents shall be due within 30 days after service unless extended by agreement of the parties.

f. **Depositions:**

(i) The parties stipulate and agree that a maximum of 10 depositions of fact witnesses may be taken by each party. In addition to the maximum depositions of fact witnesses, each party may also depose any person who has been

identified as an expert whose opinions may be presented at trial or motion; and

- (ii) The parties stipulate and agree that each deposition shall be limited to a maximum of 7 hours unless extended by agreement of the parties.

g. **Experts:**

- (i) The parties stipulate and agree that reports from retained experts under Rule 26 (a)(2) shall be due from all parties no later than **February 15, 2003**;
- (ii) The parties agree that supplementation under Rule 26(e) shall be due within 10 days after the need to supplement is discovered unless extended by agreement of the parties; and
- (iii) Depositions of experts shall be completed no later than **March 1, 2003**.

3. **Other Items:**

a. **Joinder of Additional Parties and Amendment of Pleadings by Plaintiffs:**

- (i) The parties stipulate and agree that Plaintiff shall be allowed until **January 31, 2003**, to join additional parties and until **April 21, 2003**, to amend the pleadings.

b. **Joinder of Additional Parties and Amendment of Pleadings by Defendants:**

- (i) The parties stipulate and agree that Defendant shall be allowed until **January 31, 2003**, to join additional parties and until **April 21, 2003**, to amend the pleadings.

c. Settlement can be evaluated prior to the close of discovery.

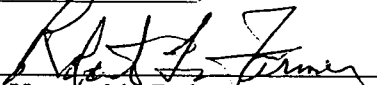
d. At this time, this case does not need early judicial intervention other than that which is indicated in this Discovery Plan.

4. **Filing of Dispositive Motions:**

- (i) The parties stipulate and agree that all other potentially dispositive motions and briefs shall be filed by **May 5, 2003**; reply briefs shall be filed by **May 19, 2003**; and the hearing shall be held no later than **May 23, 2003**.

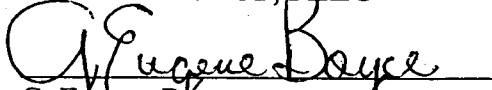
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SO ORDERED this the 23 day of November, 2002.

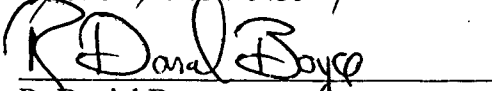
  
The Honorable Robert L. Farmer

CONSENTED TO:


**BOYCE & ISLEY, PLLC**



G. Eugene Boyce  
N. C. State Bar # 0435



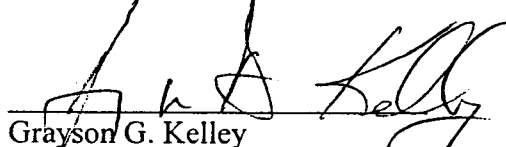
R. Daniel Boyce  
N. C. State Bar # 12329

  
Philip R. Isley  
N. C. State Bar # 19094

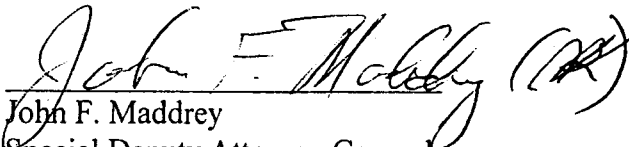
Post Office Box 1990  
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Facsimile: (919) 833-7536  
*Attorneys for Plaintiffs*

CONSENTED TO:

**NORTH CAROLINA DEPARTMENT OF JUSTICE**



Grayson G. Kelley  
Senior Deputy Attorney General



John F. Maddrey  
Special Deputy Attorney General

114 W. Edenton Street  
Post Office Box 629  
Raleigh, North Carolina 27602  
*Attorneys for Defendant*

RESOLUTION

**BOARD OF COMMISSIONERS AUTHORIZING A LAWSUIT  
TO RECOVER REIMBURSEMENT AND RECEIPT OF REVENUE DUE THE  
COUNTY/CITY/TOWN OF \_\_\_\_\_ BEING ILLEGALLY WITHHELD  
BY THE STATE OF NORTH CAROLINA**

**WHEREAS**, the 641 towns, cities and counties of North Carolina have long depended on tax revenues to which by law they are entitled upon collection by the Secretary of Revenue, and the General Assembly until now has historically held local governments harmless by appropriated reimbursement when one or more local revenue sources is diminished or eliminated; and

**WHEREAS**, local government revenues for FY 2001-2002 were withheld illegally for FY 2001-2002 by the Secretary of Revenue and it appears the Governor will order the Secretary to withhold FY 2002-2003 local revenues due to be paid beginning g September 215, 2002, and otherwise; and

**WHEREAS**, no administrative remedy exists to correct the illegal conversion of the local revenues and a genuine controversy exists about proper interpretation of the law as to ownership of the local tax revenues, and enactment of the pending clarifying legislation favoring local governments will likely not be enacted; and

**WHEREAS**, the General Court of Justice is the sole, proper and independent branch of government to make a final legal determination of the rights of the respective parties.

**NOW, THEREFORE, BE IT RESOLVED** that \_\_\_\_\_ hereby authorizes its Attorney to retain Boyce & Isley PLLC, of Raleigh, North Carolina at a cost not to exceed \$1,000 with all other fees, costs and expenses of litigation, if any, paid on a contingency basis not to exceed fifteen percent (25% of any total monetary recovery by settlement or judgment or as may be ordered by the Court. Outside counsel will agree to prosecute a civil action in Wake County Superior Court to have declared the legal rights of local government to recover past tax revenues and reimbursements withheld and to enjoin withholding of future tax revenues as above set forth.

ADOPTED this the \_\_\_\_\_ day of \_\_\_\_\_, 2003.

\_\_\_\_\_  
\_\_\_\_\_, Chairman  
\_\_\_\_\_  
Board of Commissioners

