

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
NORTHERN DIVISION AT COVINGTON
CIVIL ACTION NO. 2012-00030 DLB**

**CHARLIE COLEMAN, JOHN P. ROTH JR AND
ERIK HERMES ON BEHALF OF THEMSELVES
AND OTHERS SIMILARLY SITUATED**

PLAINTIFFS

V.

**CAMPBELL COUNTY PUBLIC LIBRARY BOARD
OF TRUSTEES**

DEFENDANT

**PLAINTIFFS' MOTION TO BAR EX-PARTE CONTACTS AND THE
RECKLESS EXPENDITURE OF FUNDS OWED AS REFUNDS TO MAKE SAID
CONTACT**

Comes now the Plaintiffs, by Counsel, and hereby moves for an immediate Order from this Court to prevent Defendants from making any ex-parte contacts with the proposed class of taxpayers. Plaintiff seeks relief to bar Defendant from unlawful conduct in the form of an Order that bars Defendant from engaging in *ex-parte* self serving communication paid with monies ultimately owed to the Plaintiffs and class in the form of refunds. In support, Plaintiffs' attach hereto as Exhibit A, the February 2012 "Connections" newsletter, sent to prospective class members.

Defendant's Executive Director specifically states, "The library is in total compliance with the spirit, intent and letter of the Kentucky Revised Statutes...." Furthermore, Defendant's Executive Director seeks to mislead the prospective class by stating "It's extremely unfortunate that time, energy and money that should be used to serve the public must instead be diverted to this shortsighted lawsuit."

Mr. Morgan's statements are misleading and not based on fact. As argued in prior filings, KRS 173.790 governs the manner of taxation for the Defendant. Classification of this action as "short sighted" is to argue that the laws of the Commonwealth of Kentucky

do not apply to the Defendant. The unfortunate “time, energy and money” being spent, is being expended on misleading communications to the class. The Defendant’s Executive Director has also started attending various city council meetings to state similar remarks, for which Plaintiffs do not have the requisite “podium” in that they are not the Library. Furthermore, to allow the Defendant Library to use its standing as a library to then seek to mislead the public as to the issues raised herein is an abuse of the public trust and money.

This action is simply brought to insure the rule of law is followed. The use of taxpayer money to mislead should be barred. Absent an Order from this Court, the use of monies, which are ultimately due in the form of refunds, will be spent on frivolous statements and public relations by the Defendant Library.

In *Gulf Oil Company v. Bernard*, 452 U.S. 89 (1981) the United States Supreme Court stated that “because of the potential for abuse, a district court has both the duty and the broad authority to exercise control over a class action and to enter appropriate orders governing the conduct of counsel and the parties.” *Hoffman-LaRoche, Inc. v. Sperling*, 493 U.S. 165, 171, 110 S.Ct. 482, 486-87 (1989) (quoting *Gulf Oil Co. v. Bernard*, 452 U.S. 89 (1981)). In *Gulf*, the Court found that proper regulation of communication with class members does not violate the First Amendment.

The Sixth Circuit has embraced the decision in *Gulf Oil* by requiring orders limiting communication between parties and potential class members to be based on the specific circumstances of the case:

[A]n order limiting communications between the parties and potential class members should be based on a clear record and specific findings that reflect a weighing of the need for a limitation and the potential interference with the rights of the parties. Only such a determination can ensure that the court is furthering rather than hindering, the policies embodied in the Federal Rules of Civil Procedure, especially Rule 23.

Williams, 658 F.2d at 436 (quoting *Gulf Oil Co. v. Bernard*, 101 S.Ct. 2193, 2200 n.12).

Specific circumstances where the federal courts have found that the purposes of Rule 23 class actions would be hindered include: (1) soliciting non-party class members; (2) counseling potential members and “drumming up” participation in the proceeding; or (3) communicating with class members and misrepresenting the status or effect of the pending action. *Williams*, 658 F.2d at 436. Defendant Executive Director Morgan is clearly attempting to misrepresent the status or effect of the pending action.

Plaintiffs action is not brought to “unravel and undermine the work that helps so many,” as misrepresented by Defendant. To the contrary, Defendant engaged in a taxing scheme, with knowledge of a statutory limitation. The meeting in which Plaintiffs and their Counsel attended, the Defendant Library Board’s attorney acknowledged the existence and conflict between HB44 and KRS 173.790. For the Defendant’s Executive Director to then advise that he is “honestly baffled,” after his own attorney in a meeting advised of a potential problem, is the type of misrepresentation to be prohibited. Especially, in light of the fact that the taxpayers are paying for Mr. Morgan to engage in misrepresentation.

Wherefore, based on the foregoing, Plaintiff would ask this Court to enter an Order prohibiting the further use of taxpayer dollars to engage in ex parte communications with the prospective class members.

Respectfully Submitted,

/s/Brandon N. Voelker
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CERTIFICATION

This is to certify that on the 10th day of February 2012, I electronically filed the foregoing with the clerk of the court by using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

/s/Brandon N. Voelker _____
Brandon N. Voelker



Newport

Create your own
aromatherapy scent

2/13 - Monday

Details See Calendar

Fort Thomas

Create the right
resume, part 1

2/29 - Wednesday

Details See Calendar

Cold Spring

Meet political fiction
writer Rick Robinson

2/15 - Wednesday

Details See Calendar

CONNECTIONS

FEBRUARY 2012

www.cc-pl.org

Lawsuit threatens libraries; CCPL vows to fight

A lawsuit filed against the Campbell County Public Library Jan. 19 alleges the Library has adjusted its tax rate incorrectly for the past 33 years.

Three plaintiffs filed suit stating they represent all county taxpayers. They claim the Library has unlawfully collected taxes and seek an injunction to keep the Library from adopting any tax rate above the \$30 per \$100,000 set in 1978, to refund all taxes paid in excess of that amount, and pay plaintiffs and attorneys' fees and costs. The Library currently collects \$74 per \$100,000 of property value.

The Library is in total compliance with the spirit, intent and letter of the Kentucky Revised Statutes that govern our operation. The Library has followed the law under House Bill 44 since 1979 when the law was enacted.

JC Morgan, director of the Library, said, "Library services are vital to so many people that I'm honestly baffled that anyone would file a suit that could unravel and undermine the work that helps so many."

Many other public libraries across Kentucky, which also use the taxing method outlined in H.B. 44, could be severely damaged or destroyed by this lawsuit.

"It's extremely unfortunate that time, energy and money that should be used to serve the public must instead be diverted to this short-sighted lawsuit," Morgan said.

The next Board meeting is at 4:30 p.m. on **Feb. 21**, at the Newport Branch. Please consider coming to voice your thoughts.



Series offers help for life's stresses

Sometimes life throws us a curveball (or two), leaving us unprepared to manage the stress that comes with the unexpected. The Library is introducing a four-week series designed to provide information, skills and techniques needed for some of life's most serious issues. Thriving in Tough Times is a series of programs to help patrons cope with grief, bullying, financial strains and more.

"Libraries have an important role in the community, and we are pleased to offer resources and strategies to the public to help cope with life's stressors," said JC Morgan, director of the Campbell County Public Library.

Cincinnati Playhouse in the Park kicks off the series with the powerful drama *War* at 3 p.m. **Feb. 4** at the Carrico/Fort Thomas Branch. This play examines the role violence plays in today's culture. A facilitated session after the play will address the issues represented.

Being unemployed or underemployed is an extremely stressful situation. Bring resumes and be prepared to fill out applications at the One Stop Northern Kentucky Job Fair from 1-4 p.m. **Feb. 10** at the Cold Spring Branch.

Programs on anti-bullying, chronic stress, taking care of yourself as a caregiver and helping children navigate through difficult times will be offered. Children also can read or tell their troubles to therapy dogs at Cold Spring and Fort Thomas.

The Thriving in Tough Times series concludes **March 2** with a compelling financial workshop featuring a speaker from financial expert Dave Ramsey's organization. Christy Brown will share an inspiring and practical message. Pick up a brochure or check the website for program dates and locations.



Campbell County Judge-executive Steve Pendery (left) appoints Paul Johnson as the Library's newest board member.

Johnson tapped

Paul Johnson of California, KY was appointed to fill the unexpired term of board member Judy Voelker, who resigned in November 2011. Johnson will serve until September 2012 when Voelker's term would have expired. Johnson has a strong business background having worked in information technology, facilities management, resource management and other personnel positions before retiring from the Alcohol Tobacco & Firearms/Internal Revenue Services in 1999. He remains active in the community, volunteering with academic, professional and non-profit associations.

