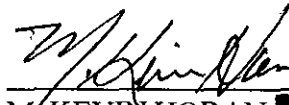


CERTIFICATE OF INTERESTED PARTIES

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Justices of the Supreme Court and/or the Judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. City of Laurel, Mississippi, the Appellant
2. L. Clark Hicks, Jr. - Counsel for Appellant
3. L. Grand Bennett - Counsel for Appellant
4. Clyde Williams - Appellee
5. Michael DeAnthony Williams - Minor Child and interested heir
6. Dorrien Alexander Williams - Minor Child and interested heir
7. J. Michael Horan - Trial Counsel for Appellee
8. M. Kevin Horan - Counsel for Appellee

ATTORNEY FOR APPELLEE



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TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PARTIES	i
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iii
I. Cases:	iii
II. Statutes	iii
STATEMENT OF THE CASE	1
I. Nature of the case, course of proceedings and disposition below	1
II. Motion to Strike Portion of Appellant's Statement of Case.....	2
III. Statement of Facts	3
SUMMARY OF ARGUMENT	6
ARGUMENT	7
I. Whether Judge Landrum erred by not enforcing the statute which renders police officers immune for any failure, in good faith, to make a domestic related arrest?	7
II. Whether Judge Landrum erred in ruling the Laurel Police Department acted in "reckless disregard" by failing to prevent Kenneth Wilson from murdering Lisa Williams?	7
III. Whether Judge Landrum erred by failing to find that the alleged recklessness of the police department was a proximate cause of the death of Lisa Williams?	10
CONCLUSION	11
CERTIFICATE OF SERVICE	12
ADDENDUM TO BRIEF OF APPELLEE	

TABLE OF AUTHORITIES

I. Cases:

<i>City of Jackson, Mississippi v. Sharon Trigg Spann</i> , No. 2007-CA-01756-SCT.	10
<i>City of Greenville v. Jones</i> , 925 So. 2d 106 (Miss. 2006)	10
<i>Fair v. Town of Friars Point</i> , 930 So.2d 467 (Miss. Ct. App 2006).....	6,8
<i>Glover v. Jackson State University</i> , 968 So2d 1267 (Miss. 2007)	10
<i>Mississippi Department of Public Safety v. Durn</i> , 861 So. 2d. 990 (Miss. 2003)	6
<i>Strong v. Nicholson</i> , 580 So.2d 1288 (Miss. 1991)	9
<i>Willing v. Estate of Benz</i> , 958 So. 2d 1240 (Miss. Ct. App. 2007)	9

II. Statutes:

Mississippi Code Ann. Section 11-46-5(2)	9
Miss. Code Ann. Section 11-46-9(1)(c)	7
Miss. Code Ann. Section 93-21-27	6,7,8
Miss. Code Ann. Section 99-3-7.....	7
Miss. Code Ann. Section 99-3-7(3)	7
Miss. Code Ann. Section 99-3-7(3)(a)	8, 11
Miss. Code Ann. Section 99-3-7(5)(b)	7
Miss. Code Ann. Section 99-3-7(7)	6
Miss. Code Ann. Section 99-5-37	10

II. Rules:

Mississippi Rules of Appellate Procedure, Rule 28(k)	3
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STATEMENT OF THE CASE

I. Nature of the case, course of proceeding and disposition below.

That portion of Appellant's Brief, noted as subsection I. of "Statement of the Case", bearing on "The Nature of the Case" fairly sets forth the issues joined by the Complaint and Answer filed by the Heirs of Lisa Williams and the City of Laurel, respectively. (R.3-12 and R 22-30).

However, Appellee feels that the "course of proceedings" should be expounded upon. Not only did the trial judge hear testimony from the two Laurel Police officers involved in this matter, but had benefit of the testimony of two lay witnesses to the occurrences of the night in question. In addition, the Court had benefit of the entire police file (R. Exhibit 1) and a video/audio of at least a portion of the events which lead to the filing of this complaint. (R. Exhibit 4).

Your Appellee takes great exception to that portion of page 2 of Appellant's brief wherein it is averred "When the Plaintiff rested at trial, a strange twist happened. Believing that they did not prove their case against Laurel, the lawyers for the victim's heirs announced that if Judge Landrum would rule in their favor, they would accept no more than \$75,000.00 for the gruesome death of Lisa Williams at the hands of Kenneth Wilson. (Tr. 78). The strategy worked." This was supposedly gleaned from the transcript, but a true and correct reading of same clearly shows that there was merely a stipulation *between the parties* (emphasis added) that damages would be limited to and stipulated as \$75,000.00. (Tr. 78). How Appellant's counsel contorts the record to somehow support this outlandish proposition escapes reason and will be addressed further below in Appellee's motion to strike.

Finally, Judge Landrum, after hearing all of the evidence, both testimonial and physical,

and weighing the credibility of all of the witnesses, found that the officers for the city of Laurel had probable cause to arrest Kenneth Wilson and/or Lisa Williams on the initial 911 call, and subsequently had probable cause to arrest Kenneth Wilson on a second domestic disturbance call, but failed to do so in either case. Judge Landrum, as a multi-term Circuit Court Judge, has had numerous occasions to rule on what does and does not constitute probable cause and great deference should be afforded this finding. In addition, Judge Landrum notes that Ms. Williams, mother, Mrs. Walker, believed Wilson to be under arrest. All of the above being noted as bearing on his Honor's finding that the officers acted in reckless disregard for the safety and well-being of Lisa Williams and displayed a conscious indifference to the consequences of their inactions.

While Judge Landrum does not explicitly put in his written Order that the Defendant officers did not act in "Good Faith", it is clear from a recitation, within the Order itself, of the pertinent portion of Mississippi Code Annotated Section 99-3-7(7), that he considered such a requirement and implicitly found good faith lacking. (R.63-66, Appellant's R.E. 63-66). Likewise, in finding that the officers had displayed a conscious indifference to the consequences of their actions, Judge Landrum has implicitly and logically found their actions to be the proximate cause of the damages stipulated to. (R.66, Appellant's R.E. 66).

II. Motion to Strike a portion of Appellant's Statement of Case.

As noted in subsection I. above, the last paragraph of page 2 of Appellant's Brief, beginning with "When the Plaintiff rested at trial" and ending with "The strategy worked", is unsupported by the record and is in fact refuted by the record and is totally and completely inaccurate, false and scurrilous. On its face it insinuates that somehow a stipulation as to damages would somehow influence the Court decision as to liability. Even more egregious and ridiculous is the assertion that it **did have a bearing** on Judge Landrum's decision as to liability.

Therefore, pursuant to Mississippi Rules of Appellate Procedure, Rule 28(k) your Appellee moves for an Order striking the offending language from Appellant's Brief, as it shows both disrespects and contempt for the trial court.

III. Statement of the Facts.

On July 2, 2003, DeAnthony Williams, son of Lisa Williams, placed a 911 call to the Laurel Police Department reporting a domestic disturbance at 1422 North Second Street, Laurel, Mississippi. According to the deceased's sister, Rika Carmichael, the phone call was necessitated by a altercation between her sister, Lisa Williams and boyfriend, Kenneth Wilson. (R. Exhibit 1 and Tr. 55-56). Officers Styron Keller and Michael Valentine responded to the call at approximately 8:30 p.m. The inquiry into the situation was recorded and should be reviewed by this Court. When asked about blood on his neck, Wilson can be heard to say "that's where she grabbed me around the neck" (R. Exhibit 4, noted at approximately 20:35 hr.). In response to one of the officer's questioning concerning where the blood on Mr. Wilson came from, he can be heard "that's where she grabbed me and hit me in the head". (R. Exhibit 1, at approximately 20:37 hr.).

Likewise, on a portion of the tape Wilson is asked whether Williams had stabbed him, to which he responded "she might have". (R. Exhibit 4, at approximately 20:37 hr.). Also gleaned from this tape is an allegation by Kenneth Wilson that Ms. Williams had knocked out one of this contacts. The officer can be heard to say that if he (Wilson) keeps talking that she (Williams) would be put in jail. (R. Exhibit 4, at approximately 20:40 hr.). Officer Keller's original incident report states that Lisa Williams fourteen year old son stated that there had been no contact between Williams and Wilson (R. Exhibit 1, #001006 and R.E. 1). To the contrary, in the tape the youngster can be heard telling the officer that there been physical contact between his mother

and Mr. Wilson. (R. Exhibit 4, at approximately 20:36 hr.) The tape also reveals Officer Keller advising the parties that someone was going to get hurt (if they did not separate that night). (R. Exhibit 1 and Tr. 33).

Throughout the taping of this original call to the disturbance between Wilson and Williams, the officer or officers can be heard on numerous occasions stating that they had enough to arrest both Wilson and Williams for domestic violence. While officer Keller testified at trial that this was merely a bluff (Tr. 48), it was clear to Judge Landrum and should be clear to this Court that there was ample probable cause to arrest either Wilson or Williams, or both.

Contrary to officer Keller's testimony, Rika Carmichael testified that both she and Lisa Williams informed the officers at the scene that Williams and Wilson had been physically fighting. (Tr. 59 and 63). She testified that the word "tussling" was used in describing the altercation between Wilson and Williams (Tr. 59). While not actually seeing any actual blows being struck, Carmichael testified that she heard banging coming from the room occupied by Wilson and Williams, opened the door finding Wilson on top of Williams, with Williams "hair and stuff" messed up. (Tr. 67). Carmichael further testified that both Wilson and Williams were intoxicated, with Wilson being in the worse shape. (Tr. 61).

The original response to the first altercation was concluded by a warning to Wilson that any further problems out of him would result in somebody going to jail. (Tr. 40). Unfortunately for Lisa Williams, and ultimately the Plaintiffs herein, the officers were not true to their word. For, less than two hours later, these same officers responded to a disturbance of the family call at 730 N. 13th Avenue, the home of Annie Walker. (Exhibit 1, #001063 and R.E. 2). Mrs. Walker, mother of the deceased, testified that Wilson appeared at her home intoxicated and angry. (Tr. 71). When Wilson would not leave, Mrs. Walker went to a neighbors home and called the police. (Tr. 71). When officers arrived Wilson was still sitting on the steps in Mrs. Walker's

yard, leading to the sidewalk. (Tr. 71). According to Mrs. Walker, officer Valentine informed her that this was the second time they had been called out on Mr. Wilson and that they (the Walker family) would have no further worry with Wilson because he was going to jail. (Tr. 72). Apparently everyone, including the dispatcher, assumed Wilson was being arrested for disturbing the family peace, as reflected by the dispatcher report. (R. Exhibit 1, #001063 and R.E. 2). Contrary to the officers' trial testimony, Mrs. Walker testified that she inquired about making charges against Wilson for trespassing. According to Mrs. Walker, the officers informed her that she couldn't make such charges because Wilson was on the sidewalk. (Tr. 74). Walker testified that when the officers arrived Wilson was on the steps, not the sidewalk, and further that she had informed the officer that he Wilson been up at her house as well. (Tr. 74). After viewing Wilson being handcuffed and placed in the back of the patrol care, Mrs. Walker traveled to Rika Carmichael's residence and informed her daughter, Ms. Williams, that Wilson had been taken to jail for the night and they didn't have to worry about him. (Tr. 73).

Upon leaving with Wilson, officers contacted his mother to come pick him up, which she did (Tr. 53, and see R. Exhibit 1, police records). Wilson was allowed to leave the police station despite being 1) intoxicated, as testified to by both Rika Carmichael and Annie Walker, as well as by Wilson's own admission to Detective Byron Craft. (R. Exhibit 1, #001072 and R.E. 3) and 2) being the center of two domestic disturbances within a two hour period. Shortly thereafter, Officer Keller's earlier premonition "that someone was gonna get hurt" became painfully and irreversibly true. Kenneth Wilson broke into the home of Rika Carmichael, stabbing Lisa Wilson to death and stabbing Michael DeAnthony Williams during his attempt to help his mother. (R. Exhibit 1).

SUMMARY OF THE ARGUMENT

I. Whether Judge Landrum erred by not enforcing the statute which renders police officers immune for any failure, in good faith, to make a domestic related arrest.

The City's reliance on *Fair v. Town of Friars Point*, 930 So.2d 467 (Miss. Ct. App. 2006) as to this issue is misplaced. The opinion in *Fair* dealt primarily with a discussion of whether the officers had acted in "reckless disregard" and gave little or no guidance as to defining "good faith" as required in both Miss. Code Ann. § 99-3-7(7) and Miss. Code Ann. § 93-21-27. The facts in *Fair* are easily distinguishable from those present in this.

II. Whether Judge Landrum erred in ruling the laurel Police Department acted in "reckless disregard" by failing to prevent Kenneth Wilson from murdering Lisa Williams.

The Appellees' case is founded upon what the City of Laurel *did not do*, i.e. acts of omission, as opposed to what the City *did do*. Judge Landrum made his ruling based on these omissions. The case law cited by the City as defining "reckless disregard" generally addresses factual situations where conduct complained of resulted from acts of commission, as opposed to omission. In such cases the standard of applying and considering specific willful, wanton and intentional conduct is more readily applied. The standard applied by Judge Landrum as announced in *Mississippi Department of Public Safety v. Durn*, 861 So. 2d. 990 (Miss. 2003) is the more applicable to cases such as the one before this Court.

III. Whether Judge Landrum erred by failing to find the alleged recklessness of the police department was a proximate cause of the death of Lisa Williams.

While the trial Court's Order does not specifically reflect a finding of proximate cause as to the death of Lisa Williams (and injuries to Michael DeAnthony Williams), that finding is implicit in the Court's order, as it is required in a finding of damages in all tort cases. In any event, this reviewing court, has the power to make such a finding and based on the record should

do so. The officers' persistent failure to arrest Kenneth Wilson set in motion the entire series of events that culminated in the damages sustained by the Plaintiffs. Lisa Williams would not and could not have been killed by Wilson, had he been arrested and maintained in custody until brought before a magistrate as required by law in domestic violence cases.

ARGUMENT

- I. Whether Judge Landrum erred by not enforcing the statute which renders police officers immune for any failure, in good faith, to make a domestic related arrest.**
- II. Whether Judge Landrum erred in ruling the Laurel Police Department acted in "reckless disregard" by failing to prevent Kenneth Wilson from murdering Lisa Williams.**

Your Appellee will address these two issues concurrently, as it is impractical, if not impossible, to separate the two legal concepts which form the basis of these issues.

The applicable statutes in this case are Miss. Code Ann. Section 99-3-7, Miss. Code Ann. Section 93-21-27 and Miss. Code Ann. Section 11-46-9(1)(c).

Miss. Code Ann. Section 99-3-7(7) grants immunity to officers for failure, in good faith, to arrest under Miss. Code Ann. Section 99-3-7(3) (act of domestic violence). It should be noted that "an act of domestic violence" under the statute is not limited to assaults, but includes disturbances of the family peace, under Miss. Code Ann. Section 99-3-7(5)(b).

Miss. Code Ann. Section 93-21-27 likewise reiterates the grant of immunity to police officers who, in good faith, fail to make an arrest in a case involving an act of domestic violence.

Miss. Code Ann. Section 11-46-9(1)(c) affords law enforcement immunity from claims that arise relative to the "performance or execution of duties or activities relating to police or fire

protection unless the employee acted in reckless disregard of the safety and well-being of any person not engaged in criminal activity at the time of injury”.

The City’s reliance of *Fair v. City of Town of Friar Point*, 930 So. 2d. 467 (Miss. Ct. App. 2006) is not dispositive of the issues raised herein. *Fair* dealt with a factual situation totally different and distinct from the case before this Court. In *Friar* the conduct complained of was the failure of the arresting officers to make designate his arrest as coming under Mississippi Code Ann. Section 99-3-7(3)(a) for domestic violence. The officer arrested the perpetrator for simple assault, wrongfully assuming, but in good faith, that the parties were not still together so as to bring in the “domestic” portion of the statutes. In addition, the Plaintiff alleged that the officers involved were liable for failing to inform the perpetrator’s parole officers of his misconduct. The crux of the opinion deals with the issue of “reckless disregard”. It should be noted that the deceased in *Fair* was killed some thirty-six days after the perpetrator had been arrested. While there is dicta in the opinion that might lead one to believe that the Court in *Fair* somehow found Miss. Code Ann. Section 93-21-27 grant officers absolute immunity in such cases, clearly a finding of good faith is still requirement.

The case now before the Court is easily distinguishable from *Fair*. Here we are dealing with two separate incidents, both within one hundred and twenty minutes of each other and both clearly involving acts of domestic violence as defined by the aforementioned statutes. Likewise, unlike *Fair*, no arrest was made in either occasion.

Your appellee can find no authority that addresses the “good faith” portions of the statutes cited herein. As noted above, the City cites *Fair* as it’s only authority concerning this issue. It would seem that any finding of “reckless disregard” for the safety of others would necessarily preclude a finding that the same officer(s) acted “good faith”. Though no case can be

found to specifically rule so, your Appellee urges this Court to consider such a ruling.

Appellee will now address part II. of the City's Argument. It is conceded that the authority cited by the City, namely *Willing v. Estate of Benz*, 958 So. 2d 1240 (Miss. Ct. App. 2007), sets forth the current standard for "reckless disregard". However, as pointed out previously, it is impossible to apply that portion of the standard which "requires knowingly and intentionally doing a thing or wrongful act" in cases involving gross *inactions* by an officer or officers. Another problem arises when applying this portion of the standard. By literally requiring the wrongful act to be "knowingly and intentionally done" a conflict necessarily arises with Mississippi Code Ann. Section 11-46-5(2) in that acts done with "malice" are deemed acts outside the scope of ones employment. In fact, in the context of a malicious prosecution case, the Supreme Court noted that malice can be inferred from a persons reckless disregard of another's rights. *Strong v. Nicholson*, 580 So.2d 1288 (Miss. 1991) As such, the literal standard announced in *Willing* and the above cited subsection seem to be hopelessly in conflict. The City can't be liable for acts done by its employees with malice, yet the Appellees herein are basically required to prove malice under the current standard. Under this scenario we are essentially back to complete immunity. This was certainly not intended by the legislature.

Nonetheless, applying the remaining portions of the standard announced in *Wiling*, your Appellee urges this Court to find that the officers inactions amounted to wilful and wanton conduct that was accompanied by a conscience indifference to the consequences that were surely to arise. If the officers had merely failed to arrest Wilson for a single event, then the City's argument might be more palatable. But here, we have an second and subsequent event, on the same night, followed by actions that gave the victim and her family a false sense of security. Judge Landrum sitting as the trier of fact is given the same deference as a Chancery Judge. *City*

of *Greenville v. Jones*, 925 So. 2d 106 (Miss. 2006). Under these circumstances it surely cannot be said the Judge Landrum was manifestly wrong or clearly erroneous in finding the necessary reckless disregard for the safety of Lisa Williams and others in her household.

III. Whether Judge Landrum erred by failing to find the alleged recklessness of the police department was a proximate cause of the death of Lisa Williams.

Proximate cause has been described as requiring (1) cause in fact and (2) legal cause.

Glover v. Jackson State University, 968 So2d 1267 (Miss. 2007). "Cause in fact" means that, but for the defendant's negligence, the injury would not have occurred. *Glover*, 968 So. 2d at 1277. Once cause in fact is established, the defendant's negligence will be deemed the legal cause so long as the damage "is the type, or within the classification, of damage the negligent actor should reasonably expect (or foresee) to result from the negligent act." *Glover*, 968 So. 2d at 1277 (citing Dobbs, *The Law of Torts*, §§ 180 at 443). These criteria were just recently reiterated by the Supreme Court in *City of Jackson, Mississippi v. Sharon Trigg Spann*, No. 2007-CA-01756-SCT.

In applying these criteria to the case sub judice it is elementary that, but for the officers' failure to arrest Wilson, Lisa Williams would not have been killed that night. Had Wilson been arrested as he should have been, he would have remained in jail until he appeared before a magistrate, as his offense would not have been bondable under Mississippi Code Ann. Section 99-5-37. As such, he would have had time to cool down and sober up.

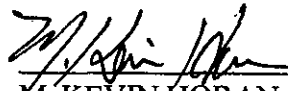
Any claim that Wilson's conduct was unforeseeable is can be quickly extinguished by a review of the audio tape wherein Keller can be heard to exclaim that someone was going to get hurt if the parties didn't get separated that night. (R. Exhibit 4).

CONCLUSION

Judge Landrum had the opportunity and the duty to consider all evidence presented, to consider the demeanor and motive of all witnesses called and to make findings of fact as to whether or not officers for the City of Laurel acted in "reckless disregard" to the safety of Lisa Williams and Michael DeAnthony Williams. Judge Landrum found that the officers in question had probable cause to arrest Kenneth Wilson on both occasions. Since these matters involved domestic disturbances, his arrest was mandatory in both instances. Miss. Code Ann. Section 99-3-7(3)(a). This was not a single, isolated event. Officer Keller had been called to a disturbance between these parties some months prior. (R. Exhibit 4). He was called twice to family disturbance on the day of Lisa Williams death. The central figure was an intoxicated Kenneth Wilson. Rather than arresting Wilson as they should have, the officers compounded the problem by leading the Walker/Williams families to believe he *was* under arrest. Further, officers dissuaded Mrs. Walker from doing what they should have done, namely making out charges against Wilson, by erroneously advising her that trespassing charges couldn't be brought under the circumstances. These series of events lead directly to and were the proximate cause of Lisa William's death and injury to the Plaintiff's herein. The Plaintiff's Judgment of \$75,000.00 should be affirmed.

Respectfully submitted this the 2nd day of March, 2009.

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CERTIFICATE OF SERVICE

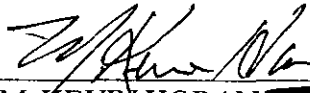
I certify that I have served a true and correct copy of the Brief of Appellee on counsel for all parties by depositing a copy of same in the United States mail, properly addressed and first class postage prepaid:

Hon. Billy Joe Landrum
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THIS THE 21st DAY OF March, 2009.


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IN THE SUPREME COURT OF MISSISSIPPI

NO. 2008-CA-01137

CITY OF LAUREL, MISSISSIPPI

APPELLANT

VS.

**CLYDE WILLIAMS, AS PERSONAL/LEGAL
GUARDIAN AND NEXT FRIEND OF
MICHAEL DeANTHONY WILLIAMS,
INDIVIDUALLY AND CLYDE WILLIAMS
AS PERSONAL/LEGAL GUARDIAN AND
NEXT FRIEND OF MINOR CHILD,
MICHAEL DeANTHONY WILLIAMS AND
THE MINOR CHILD, DORRIEN
ALEXANDER WILLIAMS, BEING THE
WRONGFUL DEATH HEIRS OF LISA
WILLIAMS, DECEASED**

APPELLEE

**APPEAL FROM THE CIRCUIT COURT OF JONES COUNTY,
MISSISSIPPI, SECOND JUDICIAL DISTRICT**

ADDENDUM TO BRIEF OF APPELLEE

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11-46-5**TITLE 11 CIVIL PRACTICE AND PROCEDURE****CHAPTER 46 IMMUNITY OF STATE AND POLITICAL SUBDIVISIONS FROM LIABILITY AND SUIT FOR TORTS AND TORTS OF EMPLOYEES****11-46-5. Waiver of immunity; course and scope of employment; presumptions.**

(1) Notwithstanding the immunity granted in Section 11-46-3, or the provisions of any other law to the contrary, the immunity of the state and its political subdivisions from claims for money damages arising out of the torts of such governmental entities and the torts of their employees while acting within the course and scope of their employment is hereby waived from and after July 1, 1993, as to the state, and from and after October 1, 1993, as to political subdivisions; provided, however, immunity of a governmental entity in any such case shall be waived only to the extent of the maximum amount of liability provided for in Section 11-46-15.

(2) For the purposes of this chapter an employee shall not be considered as acting within the course and scope of his employment and a governmental entity shall not be liable or be considered to have waived immunity for any conduct of its employee if the employee's conduct constituted fraud, malice, libel, slander, defamation or any criminal offense other than traffic violations.

(3) For the purposes of this chapter and not otherwise, it shall be a rebuttable presumption that any act or omission of an employee within the time and at the place of his employment is within the course and scope of his employment.

(4) Nothing contained in this chapter shall be construed to waive the immunity of the state from suit in federal courts guaranteed by the Eleventh Amendment to the Constitution of the United States.

Sources: Laws, 1984, ch. 495, § 3; reenacted and amended, Laws, 1985, ch. 474, § 3; reenacted and amended, Laws, 1986, ch. 438, § 2; Laws, 1987, ch. 483, § 2; Laws, 1988, ch. 442, § 2; Laws, 1989, ch. 537, § 2; Laws, 1990, ch. 518, § 2; Laws, 1991, ch. 618, § 2; Laws, 1992, ch. 491 § 4, eff from and after passage (approved May 12, 1992).

11-46-9**TITLE 11 CIVIL PRACTICE AND PROCEDURE****CHAPTER 46 IMMUNITY OF STATE AND POLITICAL SUBDIVISIONS FROM LIABILITY AND SUIT FOR TORTS AND TORTS OF EMPLOYEES****11-46-9. Exemption of governmental entity from liability on claims based on specified circumstances.**

[Effective until the date Laws of 2007, ch. 582, § 21, is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, this section will read as follows:]

(1) A governmental entity and its employees acting within the course and scope of their employment or duties shall not be liable for any claim:

(a) Arising out of a legislative or judicial action or inaction, or administrative action or inaction of a legislative or judicial nature;

(b) Arising out of any act or omission of an employee of a governmental entity exercising ordinary care in reliance upon, or in the execution or performance of, or in the failure to execute or perform, a statute, ordinance or regulation, whether or not the statute, ordinance or regulation be valid;

(c) Arising out of any act or omission of an employee of a governmental entity engaged in the performance or execution of duties or activities relating to police or fire protection unless the employee acted in reckless disregard of the safety and well-being of any person not engaged in criminal activity at the time of injury;

(d) Based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a governmental entity or employee thereof, whether or not the discretion be abused;

(e) Arising out of an injury caused by adopting or failing to adopt a statute, ordinance or regulation;

(f) Which is limited or barred by the provisions of any other law;

(g) Arising out of the exercise of discretion in determining whether or not to seek or provide the resources necessary for the purchase of equipment, the construction or maintenance of facilities, the hiring of personnel and, in general, the provision of adequate governmental services;

(h) Arising out of the issuance, denial, suspension or revocation of, or the failure or refusal to issue, deny, suspend or revoke any privilege, ticket, pass, permit, license, certificate, approval, order or similar authorization where the governmental entity or its employee is authorized by law to determine whether or not such authorization should be issued, denied, suspended or revoked unless such issuance, denial, suspension or revocation, or failure or refusal thereof, is of a malicious or arbitrary and capricious nature;

(i) Arising out of the assessment or collection of any tax or fee;

(j) Arising out of the detention of any goods or merchandise by any law enforcement officer, unless such detention is of a malicious or arbitrary and capricious nature;

(k) Arising out of the imposition or establishment of a quarantine, whether such quarantine relates to persons or property;

(l) Of any claimant who is an employee of a governmental entity and whose injury is covered by the Workers' Compensation Law of this state by benefits furnished by the governmental entity by which he is employed;

(m) Of any claimant who at the time the claim arises is an inmate of any detention center, jail, workhouse, penal farm, penitentiary or other such institution, regardless of whether such claimant is or is not an inmate of any detention center, jail, workhouse, penal farm, penitentiary or other such institution when the claim is filed;

(n) Arising out of any work performed by a person convicted of a crime when the work is performed pursuant to any sentence or order of any court or pursuant to laws of the State of Mississippi authorizing or requiring such work;

(o) Under circumstances where liability has been or is hereafter assumed by the United States, to the extent of such assumption of liability, including, but not limited to, any claim based on activities of the Mississippi National Guard when such claim is cognizable under the National Guard Tort Claims Act of the United States, 32 USCS 715 (32 USCS 715), or when such claim accrues as a result of active federal service or state service at the call of the Governor for quelling riots and civil disturbances;

(p) Arising out of a plan or design for construction or improvements to public property, including, but not limited to, public buildings, highways,

roads, streets, bridges, levees, dikes, dams, impoundments, drainage channels, diversion channels, harbors, ports, wharfs or docks, where such plan or design has been approved in advance of the construction or improvement by the legislative body or governing authority of a governmental entity or by some other body or administrative agency, exercising discretion by authority to give such approval, and where such plan or design is in conformity with engineering or design standards in effect at the time of preparation of the plan or design;

(q) Arising out of an injury caused solely by the effect of weather conditions on the use of streets and highways;

(r) Arising out of the lack of adequate personnel or facilities at a state hospital or state corrections facility if reasonable use of available appropriations has been made to provide such personnel or facilities;

(s) Arising out of loss, damage or destruction of property of a patient or inmate of a state institution;

(t) Arising out of any loss of benefits or compensation due under a program of public assistance or public welfare;

(u) Arising out of or resulting from riots, unlawful assemblies, unlawful public demonstrations, mob violence or civil disturbances;

(v) Arising out of an injury caused by a dangerous condition on property of the governmental entity that was not caused by the negligent or other wrongful conduct of an employee of the governmental entity or of which the governmental entity did not have notice, either actual or constructive, and adequate opportunity to protect or warn against; provided, however, that a governmental entity shall not be liable for the failure to warn of a dangerous condition which is obvious to one exercising due care;

(w) Arising out of the absence, condition, malfunction or removal by third parties of any sign, signal, warning device, illumination device, guardrail or median barrier, unless the absence, condition, malfunction or removal is not corrected by the governmental entity responsible for its maintenance within a reasonable time after actual or constructive notice;

(x) Arising out of the administration of corporal punishment or the taking of any action to maintain control and discipline of students, as defined in

Section 37-11-57, by a teacher, assistant teacher, principal or assistant principal of a public school district in the state unless the teacher, assistant teacher, principal or assistant principal acted in bad faith or with malicious purpose or in a manner exhibiting a wanton and willful disregard of human rights or safety; or

(2) A governmental entity shall also not be liable for any claim where the governmental entity:

- (a) Is inactive and dormant;
- (b) Receives no revenue;
- (c) Has no employees; and
- (d) Owns no property.

(3) If a governmental entity exempt from liability by subsection (2) becomes active, receives income, hires employees or acquires any property, such governmental entity shall no longer be exempt from liability as provided in subsection (2) and shall be subject to the provisions of this chapter.

[Effective from and after the date Laws of 2007, ch. 582, § 21, is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, this section will read as follows:]

(1) A governmental entity and its employees acting within the course and scope of their employment or duties shall not be liable for any claim:

(a) Arising out of a legislative or judicial action or inaction, or administrative action or inaction of a legislative or judicial nature;

(b) Arising out of any act or omission of an employee of a governmental entity exercising ordinary care in reliance upon, or in the execution or performance of, or in the failure to execute or perform, a statute, ordinance or regulation, whether or not the statute, ordinance or regulation be valid;

(c) Arising out of any act or omission of an employee of a governmental entity engaged in the performance or execution of duties or activities relating to police or fire protection unless the employee acted in reckless disregard of the safety and well-being of any person not engaged in criminal activity at the

time of injury;

(d) Based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a governmental entity or employee thereof, whether or not the discretion be abused;

(e) Arising out of an injury caused by adopting or failing to adopt a statute, ordinance or regulation;

(f) Which is limited or barred by the provisions of any other law;

(g) Arising out of the exercise of discretion in determining whether or not to seek or provide the resources necessary for the purchase of equipment, the construction or maintenance of facilities, the hiring of personnel and, in general, the provision of adequate governmental services;

(h) Arising out of the issuance, denial, suspension or revocation of, or the failure or refusal to issue, deny, suspend or revoke any privilege, ticket, pass, permit, license, certificate, approval, order or similar authorization where the governmental entity or its employee is authorized by law to determine whether or not such authorization should be issued, denied, suspended or revoked unless such issuance, denial, suspension or revocation, or failure or refusal thereof, is of a malicious or arbitrary and capricious nature;

(i) Arising out of the assessment or collection of any tax or fee;

(j) Arising out of the detention of any goods or merchandise by any law enforcement officer, unless such detention is of a malicious or arbitrary and capricious nature;

(k) Arising out of the imposition or establishment of a quarantine, whether such quarantine relates to persons or property;

(l) Of any claimant who is an employee of a governmental entity and whose injury is covered by the Workers' Compensation Law of this state by benefits furnished by the governmental entity by which he is employed;

(m) Of any claimant who at the time the claim arises is an inmate of any detention center, jail, workhouse, penal farm, penitentiary or other such institution, regardless of whether such claimant is or is not an inmate of any detention center, jail, workhouse, penal farm, penitentiary or other such

institution when the claim is filed;

(n) Arising out of any work performed by a person convicted of a crime when the work is performed pursuant to any sentence or order of any court or pursuant to laws of the State of Mississippi authorizing or requiring such work;

(o) Under circumstances where liability has been or is hereafter assumed by the United States, to the extent of such assumption of liability, including, but not limited to, any claim based on activities of the Mississippi National Guard when such claim is cognizable under the National Guard Tort Claims Act of the United States, 32 USCS 715 (32 USCS 715), or when such claim accrues as a result of active federal service or state service at the call of the Governor for quelling riots and civil disturbances;

(p) Arising out of a plan or design for construction or improvements to public property, including, but not limited to, public buildings, highways, roads, streets, bridges, levees, dikes, dams, impoundments, drainage channels, diversion channels, harbors, ports, wharfs or docks, where such plan or design has been approved in advance of the construction or improvement by the legislative body or governing authority of a governmental entity or by some other body or administrative agency, exercising discretion by authority to give such approval, and where such plan or design is in conformity with engineering or design standards in effect at the time of preparation of the plan or design;

(q) Arising out of an injury caused solely by the effect of weather conditions on the use of streets and highways;

(r) Arising out of the lack of adequate personnel or facilities at a state hospital or state corrections facility if reasonable use of available appropriations has been made to provide such personnel or facilities;

(s) Arising out of loss, damage or destruction of property of a patient or inmate of a state institution;

(t) Arising out of any loss of benefits or compensation due under a program of public assistance or public welfare;

(u) Arising out of or resulting from riots, unlawful assemblies, unlawful public demonstrations, mob violence or civil disturbances;

(v) Arising out of an injury caused by a dangerous condition on property of the governmental entity that was not caused by the negligent or other wrongful conduct of an employee of the governmental entity or of which the governmental entity did not have notice, either actual or constructive, and adequate opportunity to protect or warn against; provided, however, that a governmental entity shall not be liable for the failure to warn of a dangerous condition which is obvious to one exercising due care;

(w) Arising out of the absence, condition, malfunction or removal by third parties of any sign, signal, warning device, illumination device, guardrail or median barrier, unless the absence, condition, malfunction or removal is not corrected by the governmental entity responsible for its maintenance within a reasonable time after actual or constructive notice;

(x) Arising out of the administration of corporal punishment or the taking of any action to maintain control and discipline of students, as defined in Section 37-11-57, by a teacher, assistant teacher, principal or assistant principal of a public school district in the state unless the teacher, assistant teacher, principal or assistant principal acted in bad faith or with malicious purpose or in a manner exhibiting a wanton and willful disregard of human rights or safety; or

(y) Arising out of the construction, maintenance or operation of any highway, bridge or roadway project entered into by the Mississippi Transportation Commission or other governmental entity and a company under the provisions of Section 1 or 2 of Senate Bill No. 2375, 2007 Regular Session, where the act or omission occurs during the term of any such contract.

(2) A governmental entity shall also not be liable for any claim where the governmental entity:

- (a) Is inactive and dormant;
- (b) Receives no revenue;
- (c) Has no employees; and
- (d) Owns no property.

(3) If a governmental entity exempt from liability by subsection (2)

becomes active, receives income, hires employees or acquires any property, such governmental entity shall no longer be exempt from liability as provided in subsection (2) and shall be subject to the provisions of this chapter.

Sources: Laws, 1984, ch. 495, § 6; reenacted without change, 1985, ch. 474, § 5; Laws, 1987, ch. 483, § 5; Laws, 1993, ch. 476, § 4; Laws, 1994, ch. 334, § 1; Laws, 1995, ch. 483, § 1; Laws, 1996, ch. 538, § 1; Laws, 1997, ch. 512, § 2; Laws, 2007, ch. 582, § 21, eff _____ (the later of July 1, 2007, or the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

93-21-27**TITLE 93 DOMESTIC RELATIONS****CHAPTER 21 PROTECTION FROM DOMESTIC ABUSE****93-21-27. Immunity of law enforcement officers for arrests arising from incidents of domestic violence.**

A law enforcement officer shall not be held liable in any civil action for an arrest based on probable cause, enforcement in good faith of a court order, or any other action or omission in good faith under this chapter arising from an alleged domestic violence incident brought by any authorized party, or an arrest made in good faith pursuant to Section 99-3-7(3), or failure, in good faith, to make an arrest pursuant to Section 99-3-7(3).

Sources: Laws, 1981, ch. 429, § 14; Laws, 1988, ch. 571, § 2, eff from and after passage (approved May 21, 1988).

99-3-7**TITLE 99 CRIMINAL PROCEDURE
CHAPTER 3 ARRESTS****99-3-7. When arrests may be made without warrant.**

(1) An officer or private person may arrest any person without warrant, for an indictable offense committed, or a breach of the peace threatened or attempted in his presence; or when a person has committed a felony, though not in his presence; or when a felony has been committed, and he has reasonable ground to suspect and believe the person proposed to be arrested to have committed it; or on a charge, made upon reasonable cause, of the commission of a felony by the party proposed to be arrested. And in all cases of arrests without warrant, the person making such arrest must inform the accused of the object and cause of the arrest, except when he is in the actual commission of the offense, or is arrested on pursuit.

(2) Any law enforcement officer may arrest any person on a misdemeanor charge without having a warrant in his possession when a warrant is in fact outstanding for that person's arrest and the officer has knowledge through official channels that the warrant is outstanding for that person's arrest. In all such cases, the officer making the arrest must inform such person at the time of the arrest the object and cause therefor. If the person arrested so requests, the warrant shall be shown to him as soon as practicable.

(3) (a) Any law enforcement officer shall arrest a person with or without a warrant when he has probable cause to believe that the person has, within twenty-four (24) hours of such arrest, knowingly committed a misdemeanor which is an act of domestic violence or knowingly violated provisions of an ex parte protective order, protective order after hearing or court-approved consent agreement entered by a chancery, circuit, county, justice or municipal court pursuant to the Protection from Domestic Abuse Law, Sections 93-21-1 through 93-21-29, Mississippi Code of 1972, or a restraining order entered by a foreign court of competent jurisdiction to protect an applicant from domestic violence as defined by Section 97-3-7 that requires the person to refrain from further abuse or threats of abuse, to absent himself from a particular geographic area, or prohibit such person from being within a specified distance of another person or persons.

(b) If a law enforcement officer has probable cause to believe that two (2) or more persons committed a misdemeanor which is an act of domestic

violence as defined herein, or if two (2) or more persons make complaints to the officer, the officer shall attempt to determine who was the principal aggressor. The term principal aggressor is defined as the party who poses the most serious ongoing threat, or who is the most significant, rather than the first, aggressor. The officer shall presume that arrest is not the appropriate response for the person or persons who were not the principal aggressor. If the officer affirmatively finds more than one (1) principal aggressor was involved, the officer shall document those findings.

(c) To determine who is the principal aggressor, the officer shall consider the following factors, although such consideration is not limited to these factors:

(i) Evidence from the persons involved in the domestic abuse;

(ii) The history of domestic abuse between the parties, the likelihood of future injury to each person and the intent of the law to protect victims of domestic violence from continuing abuse;

(iii) Whether one (1) of the persons acted in self-defense; and

(iv) Evidence from witnesses of the domestic violence.

(d) A law enforcement officer shall not base the decision of whether to arrest on the consent or request of the victim.

(e) A law enforcement officer's determination regarding the existence of probable cause or the lack of probable cause shall not adversely affect the right of any party to independently seek appropriate remedies.

(4) (a) Any person authorized by a court of law to supervise or monitor a convicted offender who is under an intensive supervision program may arrest the offender when the offender is in violation of the terms or conditions of the intensive supervision program, without having a warrant, provided that the person making the arrest has been trained at the Law Enforcement Officers Training Academy established under Section 45-5-1 et seq., or at a course approved by the Board on Law Enforcement Officer Standards and Training.

(b) For the purposes of this subsection, the term "intensive supervision program" means an intensive supervision program of the Department of Corrections as described in Section 47-5-1001 et seq., or any similar program

authorized by a court for offenders who are not under jurisdiction of the Department of Corrections.

(5) As used in subsection (3) of this section, the phrase "misdemeanor which is an act of domestic violence" shall mean one or more of the following acts between current or former spouses, persons living as spouses or who formerly lived as spouses, other persons related by consanguinity or affinity who reside or formerly resided together, persons who have a current or former dating relationship, or persons who have a biological or legally adopted child together:

(a) Simple domestic violence within the meaning of Section 97-3-7;

(b) Disturbing the family or public peace within the meaning of Section 97-35-9, 97-35-11, 97-35-13 or 97-35-15; or

(c) Stalking within the meaning of Section 97-3-107.

(6) Any arrest made pursuant to subsection (3) of this section shall be designated as domestic assault or domestic violence on both the arrest docket and the incident report.

(7) A law enforcement officer shall not be held liable in any civil action for an arrest based on probable cause and in good faith pursuant to subsection (3) of this section, or failure, in good faith, to make an arrest pursuant to subsection (3) of this section.

Sources: Codes, 1857, ch. 64, art. 276; 1871, § 2776; 1880, § 3026; 1892, § 1375; 1906, § 1447; Hemingway's 1917, § 1204; 1930, § 1227; 1942, § 2470; Laws, 1968, ch. 355, § 1; Laws, 1988, ch. 571, § 1; Laws, 1989, ch. 330, § 1; Laws, 1989, ch. 364, § 1; Laws, 1995, ch. 328, § 1; Laws, 1996, ch. 483, § 1; Laws, 1999, ch. 504, § 1; Laws, 2000, ch. 554, § 1; Laws, 2000, ch. 555, § 2; Laws, 2002, ch. 510, § 1; Laws, 2008, ch. 391, § 3, eff from and after July 1, 2008.

99-5-37**TITLE 99 CRIMINAL PROCEDURE
CHAPTER 5 BAIL****99-5-37. Domestic violence; required appearance before judge; considerations; conditions.**

In any arrest for a misdemeanor which is an act of domestic violence, as defined in Section 99-3-7(5), no bail shall be granted until the person arrested has appeared before a judge of the court of competent jurisdiction. The defendant shall be brought before a judge at the first reasonable opportunity, not to exceed twenty-four (24) hours from the time of the arrest. In calculating the twenty-four (24) hours, weekends and holidays shall be included. The appearance may be by telephone. Upon setting bail in any case involving a misdemeanor which is an act of domestic violence, the judge shall give particular consideration to the exigencies of the case, including, but not limited to, (a) the potential for further violence, (b) the past history, if any, of violence between the defendant and alleged victim, (c) the level of violence of the instant offense, (d) any threats of further violence and (e) the existence of a domestic violence protection order prohibiting the defendant from engaging in abusive behavior, and shall impose any specific conditions as he or she may deem necessary. Specific conditions which may be imposed by the judge may include the issuance of an order prohibiting the defendant from contacting the alleged victim prior to trial, prohibiting the defendant from abusing or threatening the alleged victim or requiring defendant to refrain from drug or alcohol use. All such orders shall be reduced to writing.

Sources: Laws, 1998, ch. 525, § 2; Laws, 2003, ch. 431, § 1; Laws, 2007, ch. 589, § 11, eff from and after July 1, 2007.