

**Minutes of the 9 May 2011
Special Meeting of the Yancey County Board of Commissioners
Held at 10:00 o'clock a.m. in the Courtroom of the Yancey County Courthouse and
Commissioners Board Room
Yancey County Courthouse, Burnsville, North Carolina**

Present at the 9 May 2011 meeting of the Yancey County Board of County Commissioners were Chairman Johnny Riddle, Commissioner Jill Austin, Commissioner Marvin Holland and Commissioner Michele Presnell. Also present were County Manager and Assistant Clerk to the Board of Commissioners Nathan Bennett, County Attorney Donny Laws, Attorney Warren Hughes, County Planner and Legal Assistant Jamie McMahan and members of the general public. Commissioner Dale England was absent due to prior scheduling conflict.

Call to Order

Chairman Riddle called the meeting to order pursuant to the notice of special meeting posted on 6 May 2011 by Clerk to the Board of Commissioners Jason Robinson as directed by the Chairman. The Chairman specifically cited that this meeting is convened pursuant to the posted meeting notice (Attachment A). Chairman Riddle and County Attorney Laws verbally announced to the audience in the Yancey County Courtroom and a written notice posted on the courtroom door that this special meeting on the Board of Commissioners would be conducted in the Commissioners Board Room located directly across the hall from the courtroom for the purpose of discussion related to pending litigation of Frank and Franklin versus Yancey County scheduled to be heard today in Yancey County Superior Court. There was no prepared agenda as the purpose of this meeting is for the Board of Commissioners to appear as Defendants in Yancey County Superior Court in File Number 09 CVS 21 and to participate in trial, preparation, and resolution thereof.

Frank and Franklin vs. Yancey County – Case Number 09CVS 21

Chairman Riddle then recognized County Attorney Donny Laws to provide update and review status of pending litigation Frank and Franklin vs. Yancey County. Mr. Laws informed the Board that this case is set for hearing this term of Yancey County Superior Court, Civil Session. Mr. Laws advised the Board that further discussions regarding this pending litigation would be appropriate to be heard in closed session of the Board as permitted by N.C. General Statute 143-318.11(3). Chairman Riddle then asked the Board if there was a motion consistent with the comments of Mr. Laws. Commissioner Holland made a motion that the Board enter into closed session as permitted by N.C.G.S. 143-318.11(3), to consult with the county attorney for purposes of discussion of pending litigation Frank and Franklin vs. Yancey County. The motion was seconded by Commissioner Austin. The vote to approve the motion was unanimous.

Closed Session pursuant to N.C.G.S. 143-318.11(3)

Minutes of this closed session are sealed and withheld from public inspection so long as public inspection would frustrate the purpose of the closed session pursuant to N.C.G.S. 143-318.10(e).

Return to Open Session

Upon completion of discussions with the County Attorney, Commissioner Holland made a motion to return to open session. The motion was seconded by Commissioner Austin. The vote to approve was unanimous.

Chairman Riddle acknowledged position of the Board concerning proposed resolution of pending litigation. The Board received a copy of the negotiated settlement and a copy of the settlement agreement was delivered to the Clerk to the Board of Commissioners. Commissioner Holland made a motion to accept the terms the of settlement agreement and authorize Chairman and County Attorney to sign the agreement. The motion was seconded by Commissioner Presnell. Chairman Riddle called for a vote on the motion and the motion was approved by a vote of 3 to 1. Commissioners voting Aye: Holland, Presnell and Riddle. Commissioners voting No: Austin.

Upon approval of the motion, Chairman Riddle executed copies of the settlement agreement for delivery to the Court. The agreement is incorporated as a part of these minutes as Attachment B. (Attachment B)

Adjournment

Having no further business Commissioner Austin made a motion to adjourn. The motion was seconded by Commissioner Holland. The vote to adjourn was unanimous.

Approved and authenticated on this the 6th day of December 2011.

Recording Clerk and Attest:

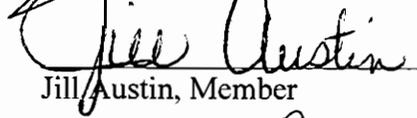


Nathan R. Bennett
Assistant Clerk to the Board

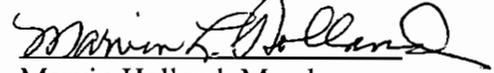
(County Seal)



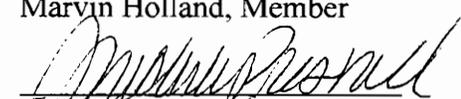
Johnny Riddle, Chairman



Jill Austin, Member



Marvin Holland, Member



Michele Presnell, Member

Attachment A

COUNTYMANAGER
Nathan Bennett



COMMISSIONERS
Jill Austin
Dale England
Marvin Holland
Michele Presnell
Johnny Riddle

YANCEY COUNTY

110 Town Square, Room 11 • Burnsville, North Carolina 28714
PHONE: (828) 682-3971 • FAX: (828) 682-4301

Notice of Special Meeting of the
Yancey County Board of County Commissioners
Scheduled for 9 May 2011

PLEASE TAKE NOTICE that the Yancey County Board of County Commissioners shall, pursuant to NC Gen. Stat. 153A-40(b) and NC Gen. Stat. 143-318.12(b)(2), hold a special meeting at the following designated place and time:

Date of Meeting: Monday, 9 May 2011

Time of Meeting: 10:00 a.m.

Place of Meeting: Yancey County Courtroom,
Yancey County Courthouse,
Burnsville, North Carolina

Purpose of Meeting: To appear as Defendants in Yancey County Superior Court in File Number 09 CvS 21 and to participate in trial, preparation, and resolution thereof

This the 6th day of May 2011.

Johnny Riddle, Chairman /s/
Jill Austin, Commissioner /s/
Dale England, Commissioner /s/
Michele Presnell, Commissioner /s/
Marvin Holland, Commissioner /s/

Posted as required by NC Gen. Stat. 153A-40(b) and NC Gen. Stat. 143-318.12(b)(2) on this the 6th day of May 2011 at 6:05 o'clock p.m.

J. Jason Robinson, Clerk to Board

Attachment B

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

COUNTY OF YANCEY

09-CVS-21

TAMERA FRANK, individually, and as)
a member of the Yancey County)
Department of Social Services Board of)
Directors; and PETER FRANKLIN,)
individually, and as a member of the)
Yancey County Department of Social)
Services Board of Directors,)

Plaintiffs,)

v.)

WALTER SAVAGE, in his capacity as)
Chairman and Commissioner of the)
Yancey County Board of)
Commissioners; JERI STORIE, in her)
capacity as Commissioner for the)
Yancey County Board of)
Commissioners; JOHNNY RIDDLE, in)
his capacity as a Commissioner for the)
Yancey County Board of)
Commissioners; THE YANCEY)
COUNTY BOARD OF)
COMMISSIONERS, by and through the)
above named Commissioners; NATHAN)
BENNETT, in his capacity as County)
Manager of Yancey County; JASON)
ROBINSON, in his capacity as)
Chairman of the Yancey County)
Department of Social Services Board of)
Directors and as a member of said)
Board; JERRI STORIE, in her capacity)
as a member of the Yancey County)
Department of Social Services Board of)
Directors; KATHY KING, in her)
capacity as a member of the Yancey)
County Department of Social Services)
Board of Directors; ELAINE BOONE,)
individually, and in her capacity as a)
purported member of the Yancey County)
Department of Social Services Board of)
Directors; JUDY BUCHANAN,)

individually, and in her capacity as a)
 purported member of the Yancey County)
 Department of Social Services Board of)
 Directors; and THE YANCEY)
 COUNTY DEPARTMENT OF SOCIAL)
 SERVICES BOARD OF DIRECTORS,)
 by and through the above named)
 directors and purported directors,)
)
 Defendants.)
 _____)

SETTLEMENT AGREEMENT

This Agreement is entered into by and among Peter Franklin and Tamera Frank (“Plaintiffs”) and the Yancey County Board of County Commissioners (“the Board” or “Defendant”) (collectively the “Parties”).

RECITALS

WHEREAS, on January 23, 2009, Plaintiffs filed actions against Defendant in the Superior Court of Yancey County regarding, among other things, whether the November 11, 2008 appointments of Tamera Frank and Peter Franklin to the Yancey County Department of Social Services Board (“DSS Board”) was valid;

WHEREAS NOW, the Defendant agrees that John Renfro, Dean Hicks, and Freddy Penland properly appointed on 11 November 2008 Tamera Frank and Peter Franklin to the Department of Social Services Board for Yancey County. However, both parties agree that it is in the best interests of the citizens of Yancey County at this time to agree to the following:

TERMS OF AGREEMENT

1. Upon the expiration of Judy Buchanan’s term on the DSS Board on or around July 1, 2011, the Yancey County Board of Commissioners hereby acknowledge and agree that it will immediately appointment Peter Franklin to a three (3) year term on the DSS Board and will

take all necessary actions to make effective said appointment during the regularly scheduled July meeting of the Yancey County Board of Commissioners. The Yancey County Board of Commissions agrees to modify or remove any and all appointment qualifications created by the Board of Commissioners that may be necessary to effectuate Mr. Franklin's appointment to the DSS Board.

2) Plaintiffs will file a voluntary Motion to Dismiss dismissing all pending claims in its Lawsuit with Prejudice no more than five (5) days after Mr. Franklin's appointment becomes effective.

Effect of Settlement. By executing this Settlement Agreement, the Parties acknowledge that all issues and legal claims between the Parties are resolved and settled. The Parties hereby release, acquit and forever irrevocably discharge both Plaintiffs and Defendants, their respective heirs, executors, agents and attorneys, as well as their successors and assigns, from any and all claims, demands, charges, lawsuits, defenses, actions or causes of actions, obligations, damages, costs, attorneys fees not contemplated in this Agreement and all other liabilities whatsoever which the Parties now have or hereafter shall or may have, by reason of anything occurring, done or omitted to be done as of or prior to the date the Parties execute this Agreement

2. Merger. The Parties further agree and acknowledge that this written Agreement sets forth all of the terms and conditions among these Parties concerning the subject matter of this Agreement, superseding all prior oral and written drafts, statements and representations, and that there are no terms or conditions among these Parties except as specifically set forth in this Agreement.

3. Modification or Waiver. No modification or waiver of any provision of this Agreement shall be effective unless it is in writing. Any modification or waiver must be signed by authorized representatives of the Parties and must be adopted and approved by the Parties.

4. No Strict Interpretation Against Draftsman. Each of the Parties has participated in the drafting of this Agreement and has had the opportunity to consult with counsel concerning its terms. This Agreement shall not be strictly interpreted against any one Party on the grounds that it drafted the Agreement.

5. Recitals and Headings. All parts and provisions of the Agreement, including the recitals and paragraph headings, are intended to be material parts of the Agreement.

6. Authority to Settle. The undersigned represent and warrant that they are authorized to enter into this Agreement on behalf of the Parties to this Agreement.

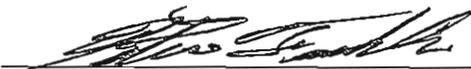
7. Effective Date. This Agreement shall be effective as of the day and year on which is it adopted and approved by the Parties.

8. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective legal representatives, successors, and assigns.

9. Approval by Board. Defendant acknowledges that all steps necessary for approval of this Agreement by the Yancey County Board of Commissioners have been met, including all voting requirements.

SIGNATURE PAGE TO FOLLOW

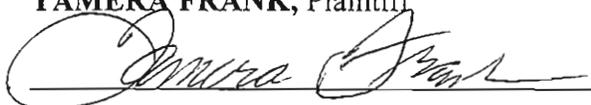
PETER FRANKLIN, Plaintiff



09 May 2011

Date

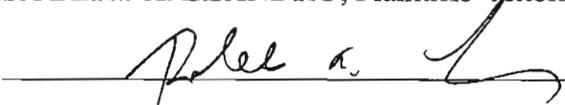
TAMERA FRANK, Plaintiff



5-9-11

Date

ROBERT A. LEANDRO, Plaintiffs' Attorney



May 9, 2011

Date

JOHNNY RIDDLE, Chairman Yancey County Board of Commissioners



5-9-11

Date

DONNY J. LAWS, Yancey County Attorney



5-9-11

Date