

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
LUFKIN DIVISION**

**BRANDON FINCHUM,** )  
    *Plaintiff,* )  
  ) )  
v. ) **CASE NO: 9:21-cv-285**  
  ) )  
**NACOGDOCHES COUNTY,** )  
    *Defendant.* )  
\_\_\_\_\_ )

**PLAINTIFF’S BRIEF IN OPPOSITION TO DEFENDANT’S  
MOTION FOR SUMMARY JUDGEMENT**

Plaintiff Brandon Finchum, by and through his attorney, files this Brief in Opposition to Defendant Nacogdoches County’s Motion for Summary Judgment.

**I. INTRODUCTION**

While Plaintiff Brandon Finchum was incarcerated at Nacogdoches County Jail, the County Sheriff had a policy that allowed non-attorneys to listen to calls made with civil rights attorneys investigating potential civil rights claims against the Jail. Mr. Finchum understood that his calls with his attorneys were being recorded and even monitored for the limited purpose of determining if the call was actually with an attorney, but he did not consent to his calls with his attorneys being listened to. There is a difference. Calls may be recorded for posterity in case a need arises for them to be listened to in the future. But if the call, even if recorded for posterity, is between a client and his attorney, then a sacred privilege attaches, and the government may not listen to those recordings absent extreme circumstances that are not present in this case.

The Defendant violated Mr. Finchum’s sacred attorney client privilege when they listened to his calls and allowed non-lawyer employees to do the same. Newly uncovered evidence shows that this was not an isolated incident, rather the Defendant had a policy of listening to Finchum’s

calls with his civil rights attorneys who were investigating claims of civil rights violations committed by the Jail.

In this action, Mr. Finchum brings claims against the Defendant for violating the Federal and Texas Wiretap Acts, and for violating his Fourth Amendment Right against illegal searches and seizures.

## **II. RESPONSE TO STATEMENT OF ISSUES**

1. Nacogdoches County is not entitled to summary judgment on any of Plaintiff's claims for failing to exhaust his remedies because the remedies provided in the Jail handbook for grievances are not necessary for the claims against the non-Jail employees and even if they were, the grievance procedure was not available to him.

2. Nacogdoches County is not entitled to summary judgment on Plaintiff's Federal Wiretap Act claim because the calls at issue are covered by the Act.

3. Nacogdoches County is not entitled to summary judgment on Plaintiff's Texas Wiretap Act claim because Defendant's immunity has been waived under the Act and the calls at issue were covered by the Act.

4. Nacogdoches County is not entitled to summary judgment on Plaintiff's Fourth Amendment Claim because Plaintiff had a reasonable expectation of privacy.

## **III. SUMMARY JUDGMENT EVIDENCE**

Plaintiff includes and incorporates as evidence all exhibits submitted by Defendant. In addition, Plaintiff adds:

Plaintiff's Exhibit A: Declaration of Plaintiff Brandon Finchum

Plaintiff's Exhibit B: Declaration of Attorney Paul Anderson

Plaintiff's Exhibit C: Letter from Disabilities Rights Texas

Plaintiff's Exhibit D: Finchum Deposition

Plaintiff's Exhibit E: Fleming email to Anderson

Plaintiff's Exhibit F: Fleming letter to Luthor

Plaintiff's Exhibit G: Jasper transfer order

Plaintiff's Exhibit H: Capel deposition

Plaintiff's Exhibit I: Excerpt from IC Solutions Enforcer Manual

Plaintiff's Exhibit J: Garbe email to IC Solution support team

Plaintiff's Exhibit K: Fleming email to Garbe

Plaintiff's Exhibit L: Capel email to Garbe

Plaintiff's Exhibit M: Fleming Deposition

Plaintiff's Exhibit N: Finchum kiosk entries

Plaintiff's Exhibit O: Finchum handwritten grievance

**IV. RESPONSE TO STATEMENT OF UNDISPUTED MATERIAL FACTS**

1. Paul Anderson was Brandon Finchum's attorney while Mr. Finchum was an inmate at Nacogdoches County Jail (the "Jail"). P's Ex. A, B.
2. Mr. Finchum was also represented by Courtney Luthor of the Disability Rights of Texas. P's Ex. C.
3. Mr. Anderson and Ms. Luthor are both civil rights attorneys and were involved in investigating jail abuse in Nacogdoches County Jail. P's Ex. A, B, C.
4. Both attorneys spoke to Mr. Finchum on the phone while he was at the Jail about his conditions. P's Ex. A, B.
5. When Mr. Finchum called his attorneys, he did so in a way to ensure that he had privacy from other prisoners, including going to a secluded area where prisoners could not hear

his call, and, pursuant to the custom amongst the prisoners, draping a blanket over himself, thereby signaling to other prisoners that the call was private. P's Ex. D.

6. Mr. Finchum waived his right to have calls recorded, but did not waive his right to have the calls listened to. P's Ex. A.

7. Both attorneys' calls were recorded and the recordings were listened to by non-lawyer employees of the County. P's Ex. E, F.

8. There was no permission, waiver, or warrant that allowed for the calls to be listed to. P. Ex. B.

9. On May 19, 2021, John Fleming answered an open records request to Mr. Anderson and revealed that recorded calls containing attorney-client privilege had been listened to by non-lawyer employees of the County. P's Ex. E, F.

10. Plaintiff was transferred from the Nacogdoches County Jail to Jasper County Jail on October 26, 2021. P's Ex. G.

11. During this time, the Jail had an automated system connected to the phone system that had a feature labeled, "Do not record, privileged," that enabled the Jail to determine if a call from the Jail was to an attorney, and if so, to automatically instruct the system not to record the call. P's Ex. H, I.

12. At the time when Mr. Finchum's calls were recorded, that feature was not used by the Jail. P's Ex. H.

13. On June 23, 2021, the Defendant created an unofficial "do not record" list that included approximately 65 attorneys. When inmates made calls to these attorneys, the system was automatically instructed not to record their calls. P's Ex. K.

14. The list did not include Courtney Luthor or Paul Anderson. P's Ex. K.

15. The Jail knew that inmates had been represented by Courtney Luthor and Paul Anderson – both civil rights attorneys who investigate claims regarding civil rights violations – when they created the list excluding their names. P's Ex. E, F.

16. Courtney Luthor's number was added separately on June 29, 2021. P's Ex. K.

17. This lawsuit was filed on November 7, 2021. ECF No. 1.

18. Mr. Anderson's phone number was not added to the attorney list until after the lawsuit was filed, on January 19, 2022. P's Ex. L.

19. The County, to this day, has no official policy of not recording lawyers. Rather, they pick and choose which lawyers they want to record. P's Ex. M.

## **V. ARGUMENTS AND AUTHORITIES**

### **A. Summary Judgment standard**

In the Fifth Circuit, "[s]ummary judgment is appropriate when 'the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.'" Warren v. Fed. Nat'l Mortg. Ass'n, 932 F.3d 378, 382 (5th Cir. 2019) (citing Fed. R. Civ. P. 56(a)). Put another way, since the movant bears the burden on summary judgment, the movant's failure to wholly foreclose the existence of genuine disputes of material fact will preclude summary judgment. See id.; Fed. R. Civ. P. 56(a).

"A fact is material if it would affect the outcome of the case, and a dispute is genuine if the evidence is such that a reasonable jury could return a verdict for the non-moving party." Id. (quoting Renwick v. PNK Lake Charles, L.L.C., 901 F.3d 605, 611 (5th Cir. 2018)) (internal quotation marks omitted). "Evidence at the summary judgment stage must be viewed in the light most favorable to the non-moving party, and reasonable inferences must be drawn in that party's favor." Id. (citing Fisk Elec. Co. v. DQSI, L.L.C., 894 F.3d 645, 650 (5th Cir. 2018)).

While the Court is not required to search the record for facts not expressly addressed by the parties, material factual disputes that are readily apparent from the "underlying facts contained in the affidavits, depositions, and exhibits of record" will preclude summary judgment. *Greenwich Ins. Co. v. Capsco Indus., Inc.*, 934 F.3d 419, 422 (5th Cir. 2019).

To succeed on summary judgment, the movant must completely disclose any material factual disputes about either the "abiding" or "highly probable" nature of its allegations. See *id.*; *Miller*, 842 F.3d at 1257–58; *Colorado*, 467 U.S. at 316, 104 S.Ct. 2433. Conversely, when the nonmovant shows that an issue is not completely clear, or that there is a dispute as to the convincingness of the movant's evidence, summary judgment is inappropriate. See *Microsoft Corp.*, 564 U.S. at 101, 131 S.Ct. 2238; *Miller*, 842 F.3d at 1257–58; *Colorado*, 467 U.S. at 316, 104 S.Ct. 2433.

**B. Plaintiff is exempt from the requirement to exhaust the remedies set forth in the Jail handbook because those remedies were never available to him.**

As a preliminary matter, Mr. Finchum had no requirement to exhaust his remedies through the grievance procedure set forth in the Jail handbook, because the basis for the action is that the County attorneys allowed Mr. Finchum's recorded calls to be listened to by non-lawyers. The Jail's grievance system is for grievances against acts committed by the Jail staff. Therefore, the exhaustion requirement is inapplicable.

Even if the exhaustion requirement were applicable, the Defendant argues that Mr. Finchum did not exhaust the remedies that were available to him as set forth in the Jail's handbook, but the remedies of the Jail's handbook were not available to him.

"The PLRA requires exhaustion of 'such administrative remedies as are available.'" *Jones v. Bock*, 549 U.S. 199, 217 (2007) (citing 42 U.S.C. § 1997e(a)) (emphasis added). The Supreme Court has recently held that "[t]he PLRA contains its own, textual exception to mandatory

exhaustion. Under §1997e(a), an inmate's obligation to exhaust hinges on the 'availab[ility]' of administrative remedies." *Ross v. Blake*, 578 U.S. 632, 633 (2016).

[T]here are three kinds of circumstances in which an administrative remedy, although officially on the books, is not capable of use to obtain relief. First, an administrative procedure is unavailable when it operates as a simple dead end--with officers unable or consistently unwilling to provide any relief to aggrieved inmates. Next, an administrative scheme might be so opaque that it becomes, practically speaking, incapable of use--i.e., some mechanism exists to provide relief, but no ordinary prisoner can navigate it. And finally, a grievance process is rendered unavailable when prison administrators thwart inmates from taking advantage of it through machination, misrepresentation, or intimidation. Pp. 8 - 11, 136 S. Ct. 1850, 195 L. Ed. 2d, at 126-128.

*Id.* Accordingly, inmates who fail to exhaust can proceed in court by showing that administrative remedies were not "available." *Valentine v. Collier*, 978 F.3d 154, 160 (5th Cir. 2020). As used in the PLRA, "available" means "capable of being made use of, at one's disposal, within one's reach." *Ross*, 578 U.S. at 642 (quoting Oxford English Dictionary 812 (2d ed. 1989)). When determining whether a grievance system was available, as opposed to "officially on the books," courts consider "the real-world workings of prison grievance systems." *Id.* at 643. If one or more of the circumstances exist where the grievance procedure is not practically available to an inmate in the real world, an inmate's duty to exhaust "available" remedies "does not come into play." *Id.* The Nacogdoches handbook sets forth the grievance procedures.

**18.00 Grievance Procedures:**

1. The following constitutes grounds for initiation of grievance: Violation of civil rights, criminal act, unjust denial or restriction of inmate privileges, Prohibited act by facility staff.
2. Any inmate may initiate a grievance by requesting an inmate Grievance Form from any officer.
3. Once the inmate has obtained the inmate Grievance Form, the inmate will fill out the form.
4. The inmate should include all information, date(s), times(s), name(s) and any other pertinent information.

5. When the grievance is written and signed, and submit the grievance to any officer.
6. The grievance will then be delivered to the Grievance Officer who will review the grievance to determine whether it is an emergency, where delay could subject the inmate to personal injury or other damages, and then to determine whether there are legitimate grounds for a grievance.
7. The Grievance Officer will respond to the inmate in writing with at least an interim response within 15 days. In no case will any grievance response be held longer than 60 days.
8. If the inmate disagrees with the response by the Grievance Officer, he/she may appeal to the Grievance Review Board, which is comprised of staff known to be neutral regarding the issue at hand. An inmate may also be a member of the Board. The Grievance Review Board will respond to the appeal in writing within 15 days. If the inmate continues to disagree with this response, he/she may appeal in writing to the Sheriff, whose decision is final.
9. If the inmate continues to disagree with this response, he/she may appeal in writing to the Sheriff, whose decision is final.
10. Inmates whose grievance(s) are substantiated will be provided with meaningful relief, such as reinstatement of good time, additional violation privileges, etc.
11. Any reprisals by Facility Staff against an inmate for filing a grievance will result in disciplinary action.
12. Grievance information regarding inmate and employees will be kept strictly confidential. In no case will information be released without the specific approval of the Sheriff or his designee.
13. Nacogdoches County has a 3 grievance per inmate per week policy. This means that you are allowed three (3) Grievances per week. If more than 3 Grievances are sent in each week by a particular inmate, these grievances will be filed into the inmate's Permanent File with a notation that the inmate has exceeded the Grievance Limit for that particular week.

Exhibit P, Nacogdoches County "Handbook" at 14-15.

Mr. Finchum was told that there was no grievance officer in the jail. P's Ex. A. Accordingly, there was nobody to review the grievances or to respond to them. Moreover, there were no grievance forms to fill out, so Mr. Finchum improvised and communicated his grievances through the Jail Kiosk system and on hand written notes. P's Ex. A, N, O. As shown from the



record provided by the Jail, the Kiosk was not an available grievance procedure as the Jail only provided a one-line response to one of Mr. Finchum's twenty grievances submitted between August and October of 2021. P's Ex. N. Moreover, the kiosk did not provide any means to appeal a grievance that was not responded to. P's Ex. A. While Mr. Finchum was in jail, the handbook provided a grievance procedure that was "officially on the books," but in the real world, Mr. Finchum and the other inmates had no means of submitting grievances to a grievance officer for review or for appealing grievances pursuant to the procedures.

As the claims do not involve acts committed by the Jail staff, and even if they did, the grievance process was unavailable to him, Finchum was not required to exhaust his remedies.

**C. Summary judgment should be denied for the Federal Wiretap act because the law enforcement exception does not include calls that are attorney-client privileged and where the Plaintiff did not consent to be listened to.**

Defendant cites the law enforcement exemption to the Federal Wiretap Act, but the Federal Wiretap Act does not except listening to recorded telephone calls between an incarcerated client and their attorney absent a warrant or clear waiver from the client. The Wiretap Act authorizes civil liability for statutory violations. 18 U.S.C. § 2520(a). The law enforcement exception only allows a person acting under color of law to intercept a communication where one of the parties has given prior consent to the interception. *Id.* § 2511(2)(c).

If Mr. Finchum wanted to use the phone to communicate with his attorney, he was forced to consent to the calls being "recorded." But neither Mr. Finchum nor his attorneys consented to allow anyone to *listen* to recordings that were known to be calls between him and his attorney. Finchum affidavit; Anderson Affidavit. Accordingly, the law enforcement exception does not apply.

All calls between Mr. Finchum and his attorneys began with words that immediately signaled that the call was between Mr. Finchum and his attorneys. P's Exhibit A. Beyond that

point, Mr. Finchum and his attorneys had a reasonable expectation that anyone monitoring the call or listening to the recording would immediately stop listening, and the call would thereafter be covered by the attorney-client privilege.

The calls recorded between Brandon Finchum and attorneys Courtney Luther and Paul Anderson were distributed to others. John Fleming's May 19th, 2021 email to attorney Courtney Luther admits there were at least three or more calls listened to by a non-lawyer Nacogdoches County Attorney Office employee and a "law school intern." P's Exhibit E, F. The content of those calls is privileged and should never be disclosed. The evidence shows that the calls were about the same issue, Finchum's complaints about jail abuse. P's Ex. B, C.

The telephone calls intercepted by Nacogdoches County and made between Brandon Finchum and Attorneys Paul Anderson and Courtney Luther were not only recorded, but those calls were also listened to and information was obtained that was believed to be confidential. Nacogdoches County has admitted that its employees listened to five or more recorded telephone calls between Brandon Finchum and attorneys Paul Anderson and Courtney Luther. P's Ex. E, F.

The Nacogdoches County Jail Handbook says that all telephone calls into and out of the Jail are "recorded," but there is no mention that those recorded calls will be listened to, much less shared with others. *See Garza v. Bexar Metro. Water Dist.*, 639 F. Supp.2d 770, 774-75 (W.D. Tex. 2009). In *Garza*, the court read a government employee handbook narrowly when interpreting the expectation of privacy afforded to a government employee. Though the handbook stated that the government had "the right to monitor and access any phone or email messages," the court found that it was objectively unreasonable for the government to "intercept and listen to" entire telephone conversations, and therefore denied the government's qualified immunity defense. *Id.*

The distinction between recording and listening is clearly illustrated in *Granviel v. Lynaugh*, 881 F.2d 185 (1989). In that case, a serial killer challenged the admissibility of the testimony of two guards who were present during a “confidential conference” between the serial killer and his attorney, arguing that the substance of the conference was covered by the attorney-client privilege. The Court allowed the testimony because the guards’ testimony was limited to testifying that the serial killer struck his attorney during the conference. However, the Court noted, “attorney-client confidentiality must be jealously protected,” and that because “striking his attorney was not related to the rendering of legal representation” it was not protected by the attorney-client privilege or the Constitution. The case shows that guards may be present in the room and, presumably, able to *hear* the conversation without *listening* to the conversation and maintaining the expectation of privacy necessary for the attorney-client privilege. Unlike *Granviel* where human beings were able to hear the calls, here, a machine recorded the calls. Accordingly, even though the calls were recorded and, in theory, were able to be monitored by a person, Mr. Finchum had a reasonable expectation that the recordings would not be listened to once the call was identified at the outset as an attorney-client call.

Recently, in *Evans v. Skolnik*, 997 F.3d 1060 (2021), the Ninth Circuit has also recognized the distinction between monitoring and listening to attorney-client calls. In that case, the prison had a policy of screening and “intermittently check[ing] in on” phone conversations between inmates and attorneys. *Id.* at 1062. Like this case, the plaintiff brought claims that the Jail violated his Fourth Amendment Right and engaged in unlawful wiretapping. *Id.* Like this case, the inmates understood that the guards had unfettered access to monitor the calls by simply flipping a switch that allowed them to listen in to the call. Like here, even though in theory the guards could potentially listen to the entire call, the inmates had an expectation of privacy because they

believed that the guards, though monitoring the calls, would only flip the switch so that they could determine if the call was a legal call, and if so, immediately hang up. And in fact, the court found that, unlike in this case, where the guards adhered to the policy and only monitored the calls without listening, no violations were found. Presumably, a violation would have been found if the guard routinely allowed a law student to flip the switch and listen to entire calls between an inmate and his attorney.

Mr. Finchum consented to his calls being monitored and/or recorded, but he did not consent to his calls being listened to. Accordingly, when the County allowed a law student to listen to Mr. Finchum's calls with his attorney, the County violated the Federal Wiretap Act.

**D. Summary Judgment should be denied for the Texas Wiretap Act claims because the law enforcement exception does not apply where the Plaintiff did not consent to be listened to and because the County does not have immunity.**

- i. The law enforcement exception does not apply where Plaintiff did not consent.

Courts have held that the Texas Wiretap Act should be interpreted the same way as the Federal Wiretap Act. *Cf. Steve Jackson Games, Inc. v. U.S. Secret Services*, 36 F.3d 457, 461-62 (5th Cir. 1994); *Anthony Francis & Matrix Metrology Grp., Inc. v. Api Technical Servs., LLC*, No. 4:13-CV-627, at \*5 (E.D. Tex. Sep. 11, 2014); *Tolbert v. Taylor*, 629 S.W.3d 318, 341 n.64 (Tex. App. 2020); *Chavis v. State*, No. 08-10-00026-CR, at \*6 (Tex. App. Aug. 26, 2011). Accordingly, the same arguments made above regarding the Federal Wiretap Act apply equally to the Texas Wiretap Act. Moreover, the law enforcement exception to the Texas and Federal wiretap statutes only applies when interceptions by law enforcement of are "routinely made pursuant to a policy that results in recording of all calls, rather than a particular call being singled out for recording." *Amyx v. State*, No. 05-17-00513-CR, at \*10-11 (Tex. App. Oct. 31, 2018) (citing *Siddiq v. State*, 502 S.W.3d 387, 393 (Tex. App. 2016)). Here, the allegation is that the County

singled out for interception and listening calls between inmates and civil rights attorneys who were investigating claims against the Jail, such as Mr. Anderson and Ms. Luthor.

“A defendant violates the Texas Wiretap Act when they “[I]ntercepts, attempts to intercept, or employs or obtains another to intercept or attempt to intercept the communication;” and “uses or divulges information that he knows or reasonably should know was obtained by interception of the communication.” (Tex. Civ. Prac. & Rem. Code § 123.002(a). Neither Plaintiff Brandon Finchum nor Attorneys Courtney Luther nor Paul Anderson ever consented to any conversation being recorded by Nacogdoches County, much less has any party consented to recorded telephone calls being listened to and information from those call being distributed by Nacogdoches County employees. Nacogdoches County’s practice of listening to recorded calls made between attorneys and Brandon Finchum was intentional, malicious and intended to obtain information was damaging and harmful to Brandon Finchum’s legal defense in any matter.

Defendants have violated, and may be continuing to violate, Plaintiff’s rights and all other inmates’ rights under the Texas Wiretap Act. Defendants have intercepted more than five telephone calls between Plaintiff Brandon Finchum and his Attorneys, Courtney Luther and Paul Anderson. Paul Anderson, Courtney Luther and Brandon Finchum are directly affected by the information divulged or used by Nacogdoches County. That information includes discussions of allegations of jail abuse at the Nacogdoches County Jail.

None of the parties consented to the listening of their calls, and therefore, and they were privileged calls, so the law enforcement exception does not apply.

**ii. Defendant does not have immunity.**

As a preliminary matter, the Defendant on the one hand argues that there exists a law enforcement exception to the Texas Wiretap Act, which implies that Government is typically not

immune unless the wiretapping is done while engaging in routine law enforcement. On the other hand, the Defendant wants to argue that all Government is immune from actions under the Act. Obviously, if the law enforcement exception to the rule exists, than the rule is that Government is ordinarily not immune. Otherwise, there would be no need for a law enforcement exception.

Defendants cite to *City of Oak Ridge North v. Mendes*, 339 S.W.3d 222 (2011) to argue that the legislature did not intend to include a waiver of immunity to the government against claims under the Texas Wiretap Act. However, that opinion by an intermediate state court did not conclusively rule that the government is immune. Instead, the Court merely found that in that particular case the Plaintiff failed to meet the burden of establishing that immunity had been waived based on the language of the statute. In its final analysis, the court merely stated, "We are unable to conclude that the Legislature intended to waive governmental immunity for Texas Wiretap Statute claims based on the language contained in the statute." *Id.* at 234.

This Court is not bound by the intermediate state court's decision.

When the state's highest court has not spoken on an issue, a federal court must determine as best it can how that court would rule if the issue were before it. *Id.* at 268. "[W]e are bound by an intermediate state appellate court decision only when we remain unconvinced by other . . . data that the highest court of the state would decide otherwise." *Id.* (internal citations and quotations omitted). Thus, an intermediate state appellate court decision is not controlling per se, but is more accurately described as a guide to assist the federal court in its goal of determining how the state's highest court would decide the issue. *Id.* at 268 n. 14 (citing *Green v. Walker*, 910 F.2d 291, 294 (5th Cir. 1990)).

*Richards v. Louisiana Citizens Property Ins. Co.*, 623 F.3d 241, 244 (5th Cir. 2010).

Rather than look to the intermediate state court that did not arrive at a definitive decision, the Court should look to the well-reasoned decision on the same matter from the Western District of Texas, in *Garza v. Bexar Metro. Water Dist.*, 63 F.Supp.2d 770 (W.D. Tex. 2009). In *Garza*, the Court expressly held that government immunity is waived, because "the Texas Wiretap Act

was fashioned after the Federal Wiretap Act. The Texas statute mirrors the federal statute in several respects and makes reference to it. Moreover, the definition of a "person" who may be sued under the Texas Wiretap Act includes the government or a governmental subdivision or agency. Tex. Civ. Prac. & Rem. Code Ann. § 123.002 (Vernon 2005); Tex. Gov't Code Ann. § 311.005(2) (Vernon 2005). This same definition of "person" was applied in *City of Kerrville*, 803 S.W.2d at 382-83. See also *Tex. Dept. of Health v. Doe*, 994 S.W.2d 890, 893 (Tex. App.--Austin 1999, pet. dism'd)."

Further, the statute has a section called "Defense" which conspicuously fails to mention government immunity. See, Sec. 123.003. The fact that the statute allows uncapped actual damages and punitive damages does not definitively preclude a waiver of immunity, as even the state intermediate court acknowledged.

As there exists a law enforcement exception, government immunity is not listed as a defense, the Texas Supreme Court has not ruled on the matter, and at least one federal court in Texas has found that immunity is waived, it follows that this Court should find that the intent of the Legislature in enacting the Texas Wiretap Act was that the government waives immunity.

**E. Plaintiff is entitled to declaratory and injunctive relief under the Federal and Texas Wiretap Acts.**

Injunctive relief is available under both the Texas and Federal Wiretap Acts for the reasons given above as to why the acts are applicable, and both allow for injunctive relief. See 18 U.S.C. § 2520; Tex. Civ. Prac. & Rem. Code § 123.04. The issue is not moot and injunctive relief is still available because the County is still in possession of confidential recordings of Plaintiff speaking with his attorneys, and Plaintiff therefore appeals for declaratory judgment that listening to those recordings violates the Wiretap Acts, and injunctive relief prohibiting the County from listening

to them further. Moreover, Plaintiff wants declaratory judgment so that the County institutes a policy whereby it ceases to listen to confidential attorney-client conversations.

**F. Defendants are not entitled to summary judgment regarding the Fourth Amendment claim because there was an expectation of privacy and the search was unreasonable.**

The Defendant confuses the issue by citing caselaw regarding a prisoner's subjective expectation of privacy. As mentioned above, Mr. Finchum is not bringing this action against the Jail. He is bringing this action against the County attorneys for listening to his calls.

Mr. Finchum made his calls according to the customs of the jail whereby prisoners create amongst themselves an expectation of privacy. P's Ex. A, D. He found a secluded area and covered himself with a blanket. Other prisoners understood that this meant that another prisoner was making a private call, they respected the privacy, and they provided appropriate distance so that they could not hear the call. But all that is irrelevant because the County attorneys had no way of knowing that. All they knew was that Mr. Finchum was on a call with his attorney. That should have been enough for them to immediately stop listening to the calls. Accordingly, even though Mr. Finchum knew the call was being recorded, he had a reasonable expectation that calls clearly identified as between him and his attorney would not be listened to by the County. *U.S. v. Smith*, 978 F.2d 171, 179-80 (5th Cir. 1992) ("The fact that [Listening] Toms abound does not license the government to follow suit.").

As he had a reasonable expectation of privacy, and Nacogdoches County had no warrant or compelling reason to listen to his calls, the County violated Finchum's Fourth Amendment rights by listening to his private calls between him and his attorneys.

**VI. CONCLUSION**

For the foregoing reasons, Defendant's motion for summary judgment should be DENIED.





**BRANDON FINCHUM'S UNSWORN DECLARATION**

**TAKEN UNDER THE PENALTY OF PERJURY**

**PURSUANT TO 28 U.S.C. § 1746**

My name is Brandon Finchum. I am over the age of 18 and I am fully competent in all respects to swear this affidavit. I have personal belief, information and knowledge of the facts of this affidavit. The facts, statements and representations made in this Affidavit are true and correct.

1. While in prison, I spoke with Ms. Luthor and Mr. Anderson, both civil rights attorneys, about my conditions in the jail and about investigating potential civil rights actions against the Jail.
2. Whenever I called my attorneys, I did so in a way to ensure that I had privacy from other prisoners, including going to a secluded area where prisoners could not hear my voice, and according to the custom amongst the prisoners, I would drape a blanket over myself, thereby signaling to other prisoners that the call was private. Prisoners know that means the call is private, and they respect the privacy and keep a distance from the caller.
3. I did not waive my right to privacy with those calls, and even though I knew the calls were being recorded, I expected that they would never be listened to it was clear from the call that the calls were between me and my attorney.
4. All calls to my attorney were preceded by a statement that said "law office" which I understood to mean that any listener would know that the receiver of the call was an attorney or attorney staff and immediately hang up the phone.
5. When I was in prison, I was told that there was no grievance officer.
6. The procedures in the jail's handbook for grievances were completely inapplicable.
7. The only way for me to communicate my grievances was electronic text messages through the Jail's kiosk system.
8. There were no paper grievance forms to fill out.
9. The kiosk did not provide any means to appeal a grievance that was not responded to.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on December 16, 2022.

/s/ Brandon Finchum

**PAUL ANDERSON'S UNSWORN DECLARATION**

**TAKEN UNDER THE PENALTY OF PERJURY**

**PURSUANT TO 28 U.S.C. § 1746**

My name is Paul Anderson. I am over the age of 18 and I am fully competent in all respects to swear this affidavit. I have personal belief, information and knowledge of the facts of this affidavit. The facts, statements and representations made in this Affidavit are true and correct.

1. I represented Brandon Finchum while he was in Nacogdoches County Jail.
2. While he was in the Jail, I spoke with Mr. Finchum about his conditions in the jail and about investigating potential civil rights actions against the Jail.
3. All calls to my office are answered clearly with the words, "law office" signaling that the call is to an attorney.
4. There was no permission, waiver, or warrant that allowed for the calls to be listed to.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on December 16, 2022.

/s/ Paul Anderson



## MEMORANDUM OF UNDERSTANDING

Disability Rights Texas ("DRTx") and the Nacogdoches County Attorney's Office enter into the following agreement:

### Agreement

#### *Recordings between DRTx staff and B.F.*

1. The Nacogdoches County Sheriff's Office and/or the Nacogdoches County Attorney's Office were made aware on or around May 23, 2021 regarding recorded phone calls between B.F. and DRTx staff. DRTx and the Nacogdoches County Attorney's Office agree that no recordings of telephone conversations between DRTx and B.F. in the Nacogdoches County Attorney's possession shall be destroyed while litigation involving B.F. and Nacogdoches County is pending.
2. Following receipt of notice that the current litigation involving B.F. and Nacogdoches County has been dismissed or resolved (to include the expiration of any and all dates for appellate relief), the Nacogdoches County Attorney's Office agrees, as allowed by Texas law, to destroy any and all recordings of telephone conversations in its possession (original and any and all copies) between DRTx and B.F., as well as any and all documents containing notes or summaries of the content of the conversations between DRTx and B.F. within seven (7) days. The Nacogdoches County Attorney's Office will notify DRTx confirming the destruction of the recordings and any related documents within seven (7) days thereafter.
3. The Nacogdoches County Attorney's Office instructed any and all staff persons who listened to the recording(s) of the telephone conversation not to divulge the contents of the conversations to any other person unless ordered to do so by a Court.
4. If employees or agents of the Nacogdoches County Attorney's Office who listened to the recording of the telephone call(s) itself receive a subpoena or other discovery request related to the previously recorded conversations, the County Attorney's Office will notify DRTx within five (5) business days of receipt of the subpoena or discovery request. The County Attorney's Office will object to the subpoena or discovery request, will file a motion to quash if necessary and will not testify about the recordings unless ordered to do so by a court. If the party serving the subpoena or requesting the discovery files a motion to compel, the County Attorney's Office will notify DRTx within five (5) business days of receipt of the motion and any notice of the hearing so that DRTx can defend its communications. If DRTx files a motion to quash a request for discovery, the County Attorney's Office agrees not to oppose the motion to quash the request for the discovery.

*Future Communications between DRTx staff and Nacogdoches County Jail Inmates*

5. The Nacogdoches County Attorney Office coordinated with vendor ICSolutions in order to prevent the recording of inmate calls with DRTx by providing the following phone numbers:

713-974-7691

800-252-9108

512-454-4816

Phone numbers identified by DRTx, then provided to the Nacogdoches County Sheriff's Office, are expected to be immediately added to ICSolutions' (or subsequent vendor which services inmate telephone communication) database. It is anticipated that no inmate telephone calls involving phone numbers added to the database will be recorded. DRTx agrees that only its authorized staff may communicate with a Nacogdoches County inmate using the above identified telephone number(s). It is the responsibility of DRTx to inform the Nacogdoches County Sheriff's Office of any changes to the telephone numbers that are to be considered exempt from recording (as identified above).

6. If the Nacogdoches County Attorney's Office receives a Texas Public Information Act request for records to which recorded inmate calls with DRTx (that have not been destroyed) would be responsive, the County Attorney's Office will withhold the requested information and request an opinion from the Texas Attorney General pursuant to Texas Government Code Chapter 552. The request for an Attorney General's Opinion shall include §552.305 (*Information Involving Privacy or Property Interests of Third Party*) in addition to any other grounds the Nacogdoches County Attorney's Office raises. The County Attorney's Office will notify DRTx within five (5) business days that they received the request so that DRTx can submit information to the Attorney General's Office pursuant to Texas Government Code § 552.305(b).
7. If the Nacogdoches County Attorney's Office receive a subpoena or other discovery request in a legal proceeding for any recorded inmate calls with DRTx that have not been destroyed, the County Attorney's Office will notify DRTx within five (5) business days of receipt of the subpoena or discovery request. The County Attorney's Office will object to the subpoena or discovery request, will file a motion to quash if necessary, and will not testify about or produce the requested recording(s) unless ordered to do so by a court. If the party serving the subpoena or requesting the discovery files a motion to compel, the County Attorney's Office will notify DRTx within five (5) business days of receipt of the motion and any notice of the hearing so that DRTx can defend its communications. If DRTx files a motion to quash a request for discovery, the County Attorney's Office agrees not to oppose the motion to quash the request for the discovery.

<sup>County</sup>  
NACOGDOCHES ATTORNEY'S OFFICE

DISABILITY RIGHTS TEXAS

By: John Fleming  
JOHN FLEMING  
Nacogdoches County Attorney  
Date: 1/20/2022

By: Mary Troutman  
Date: 1/20/2022

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
LUFKIN DIVISION

BRANDON FINCHUM,  
Plaintiff,

\*

\*

\*

V.

\*CIVIL ACTION NO. 9:21-CV-285

\*

NACOGDOCHES COUNTY,  
Defendant.

\*JURY DEMANDED

\*

\*\*\*\*\*

ORAL AND VIDEOTAPED DEPOSITION OF

BRANDONKEITH J. FINCHUM

JUNE 3, 2022

\*\*\*\*\*

ORAL AND VIDEOTAPED DEPOSITION OF BRANDONKEITH J.  
FINCHUM, produced as a witness at the instance of the  
Defendant, and duly sworn, was taken in the above-styled  
and numbered cause on the 3rd day of June, 2022, from  
11:09 a.m. to 2:29p.m., before Shelly Stephenson, CSR,  
in and for the State of Texas, reported by machine  
shorthand, pursuant to the Federal Rules of Civil  
Procedure and the provisions stated on the record or  
attached hereto.

1 THE WITNESS: That wasn't all of them.

2 Q. (By Mr. Davis) And I'm sure that these -- these  
3 things that you're recalling, these four things, they  
4 were the most important things to you?

5 A. Yes, sir. When I get in trouble and cut is  
6 pretty important.

7 Q. And that's why you wrote all those; correct?

8 A. Yes, sir.

9 Q. But nothing else that you can recall filing a  
10 grievance about or writing on the kiosk system about  
11 other than what you've seen disclosed in our  
12 disclosures, which I think your counsel showed you,  
13 requests for trusty status, other things like that?

14 A. Yeah.

15 Q. Is there anything else besides these four missing  
16 things that you're claiming are missing out of your jail  
17 file?

18 A. Yes, sir. They were there. I know they were  
19 there.

20 Q. Those four things?

21 A. Yes, sir.

22 Q. But is there anything beside those four things  
23 that you're claiming is --

24 A. Not that I can remember. Until he gets something  
25 from IC Solutions, I won't remember.



From: **John Fleming** <jfleming@co.nacogdoches.tx.us>  
Date: Wed, May 19, 2021 at 7:23 PM  
Subject: PIA Request Dated May 5, 2021, Re: Brandon Finchum  
To: <paul@paulanderson.law>

Paul:

In connection with responding to your open records request dated May 5, 2021, a non lawyer employee of our office listened to a jail call between you and Mr. Finchum. I do not believe it was listened to with any ill intent. It is my understanding that the employee did not hear anything of substance. It is my understanding the employee heard two statements that I will summarize: that you would meet with your client at 1:30 p.m. and that you would try to call Mr. Finchum's dad. Although the employee was not directed to listen to the call, I take responsibility for what employees of this office do or don't do.

As stated, I take responsibility for anything that happens in this office as I should. Obviously, I did not emphasize to the employee the significance of privileged communications. I have discussed this with the employee and instructed the employee not to disclose to anyone anything heard in the recording. In addition, I have taken steps to avoid this happening again. I believed that you needed to know this had happened.

Thank you.

John Fleming

--

John Fleming  
Nacogdoches County Attorney  
101 W. Main Street, Room 230  
Nacogdoches, Texas 75961  
Phone 936 560 7789  
Facsimile 936 560 7809

--

John Fleming  
Nacogdoches County Attorney  
101 W. Main Street, Room 230  
Nacogdoches, Texas 75961

Phone 936 560 7789  
Facsimile 936 560 7809

From: **John Fleming** <jfleming@co.nacogdoches.tx.us>  
Date: Wed, May 19, 2021 at 8:04 PM  
Subject: Jail Calls between Ms. Luther and Brandon Finchum  
To: <cluther@disabilityrightstx.org>

Ms. Luther:

Thank you for taking my call today and I am sorry for the long call but I felt it was warranted.

In connection with responding to an open records request from attorney Paul Anderson, one non lawyer employee and one law school intern within our office listened to jail calls between you and Brandon Finchum. I do not believe there was any ill intent at all. The employee has a recollection of listening to 3 calls between you and Mr. Finchum but may have listened to more. The law school intern listened to one call. Although neither person was directed to listen to privileged communications, I take responsibility for not emphasizing the significance of privileged communications. And, naturally, I take full responsibility for anything that happens in this office.

Once I realized what had happened, we separated the intern and the employee from any work on the open records response.

Obviously, I did not emphasize to the employee or the intern the significance of privileged communications. I have discussed this with the employee and the intern and instructed both not to disclose to anyone anything heard in the recording. In addition, I have taken steps to avoid this happening again. As I mentioned, we contacted the ethics helpline and they were very knowledgeable in my opinion. We appreciated their thoughts and suggestions and will take the steps they suggested so that something like this will never happen again.

I am very willing to talk to any of your supervisors. I will answer any questions that need to be answered. I am happy to furnish your office with details of what we are doing to rectify this circumstance and prevent repetition. If there is any information you need from me, please let me know. As you know, there are a lot of details and this is really more of a summary of what I mentioned.

I am sorry for this circumstance and want to make sure that you and your office get any questions answered.

Thank you.

John F.

--

John Fleming

NC397

Nacogdoches County Attorney  
101 W. Main Street, Room 230  
Nacogdoches, Texas 75961  
Phone 936 560 7789  
Facsimile 936 560 7809

--

John Fleming  
Nacogdoches County Attorney  
101 W. Main Street, Room 230  
Nacogdoches, Texas 75961  
Phone 936 560 7789  
Facsimile 936 560 7809

**NOTICE OF CONFIDENTIALITY:**

The information contained in and transmitted with this email is: 1) SUBJECT TO THE ATTORNEY/CLIENT PRIVILEGE; 2) ATTORNEY WORK PRODUCT; AND/OR 3) CONFIDENTIAL.

This communication and any document, file or previous email message attached hereto, constitute an electronic communication within the scope of the Electronic Communication Privacy Act, 18 USCA 2510. This communication may contain non-public, confidential or legally privileged information intended for the sole use of the designated recipient(s). The unlawful interception, use or disclosure of such information is strictly prohibited under 18 USCA 2511 and any applicable laws. If you have received this message in error, please notify us immediately by return email and delete and destroy all copies of the original message.

NACOGDOCHES COUNTY JAIL  
JASON BRIDGES SHERIFF

2306 DOUGLASS HIGHWAY  
NACOGDOCHES, TEXAS 75961



David Crisp, Jail Administrator  
OFFICE: 936-560-779  
JAIL MAIN LINE 936-560-777  
FAX: 936-560-7803

DATE 10/26/21

**PRISONER TRANSFER**

PRISONER NAME Finchum, Brandon SEX M RACE W BIRTHDAY 5/21/1980

OFFICER/AGENCY RELEASED TO: Jasper County

SUBJECT TO BE RETURNED TO NACOGDOCHES COUNTY JAIL WHEN READY FOR RELEASE BY YOUR AGENCY.

THERE ARE NO PENDING CASES IN NACOGDOCHES COUNTY JAIL, SUBJECT NOT TO BE RETURNED.

SUBJECT HAS RECEIVED A STATE JAIL SENTENCE OF \_\_\_ YEARS \_\_\_ MONTHS. COMMITMENT PAPERS HAVE BEEN SUBMITTED TO TDCJ/ID. PLEASE TRANSPORT THIS SUBJECT TO STATE JAIL WHEN READY FOR RELEASE BY YOUR AGENCY.

SUBJECT HAS RECEIVED A TDCJ SENTENCE OF \_\_\_ YEARS \_\_\_. COMMITMENT PAPERS HAVE BEEN SUBMITTED TO TDCJ/ID. PLEASE TRANSPORT THIS SUBJECT TO TDCJ WHEN READY FOR RELEASE BY YOUR AGENCY.

CHARGES ARE PENDING AT THE FOLLOWING AGENCIES, PLEASE PLACE THE FOLLOWING HOLDS:

WARRANTS# STATE	CHARGE	COUNTY/MUNICIPALITY

FOLLOWING CLASSIFICATION APPLIES TO THE SUBJECT (CHECK ALL THAT APPLY)

ASSAULTIVE  ESCAPE RISK  DISCIPLINARY PROBLEM

MENTAL HEALTH SERVICES REQUIRED

TRUSTEE STATUS WITH THE FOLLOWING JOB ASSIGNMENT \_\_\_\_\_

RECEIVING OFFICER'S SIGNATURE [Signature]

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
LUFKIN DIVISION

BRANDON FINCHUM, )  
)  
Plaintiff, )  
) CIVIL ACTION  
VS. ) NO. 9:21-CV-285  
) JURY DEMAND  
NACOGDOCHES COUNTY, )  
)  
Defendant. )

-----

ORAL AND VIDEOTAPED DEPOSITION OF  
KEVIN CAPEL  
SEPTEMBER 2, 2022

-----

ORAL AND VIDEOTAPED DEPOSITION OF KEVIN CAPEL,  
produced as a witness at the instance of the PLAINTIFF,  
and duly sworn, was taken in the above-styled and  
numbered cause on September 2, 2022, from 9:07 a.m. to  
10:14 a.m., before Jan Newman Carter, CSR in and for the  
State of Texas, reported by machine shorthand, at the  
Nacogdoches County Courthouse Annex, 203 West Main  
Street, Nacogdoches, Texas, pursuant to the Federal  
Rules of Civil Procedure and the provisions stated on  
the record or attached hereto.

1 I'm going to ask one question. Lieutenant, right there  
2 I've highlighted a button on the menu, what does that  
3 button say?

4 A. It says, "Do not record, privileged."

5 Q. Do you recall when you were leafing through  
6 seeing this little tiny notation in the user's guide?

7 A. No. I mean, like I said, I was just leafing  
8 through it.

9 Q. Fair enough. I can move on if I can just  
10 conclude, is it fair to say that you understand that  
11 there was a feature in the system that allowed the  
12 assigning of privileged status to attorneys's numbers?

13 A. As of two days ago, yes, sir, that is what I'm  
14 aware of.

15 Q. And you also understand is it also of two days  
16 ago that it has a do not record feature in the system as  
17 well?

18 A. Yes.

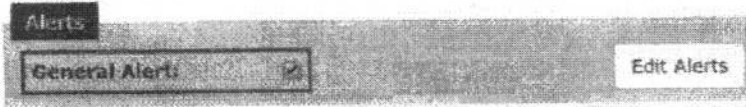
19 Q. Do you have any knowledge or awareness that  
20 this feature has ever been used by you or Molly Brown or  
21 any of your predecessors?

22 A. None whatsoever.

23 Q. Okay. When you pull up these call records for  
24 your attorney or whoever you pull them up -- I didn't  
25 mean to reference your attorney -- are you using the

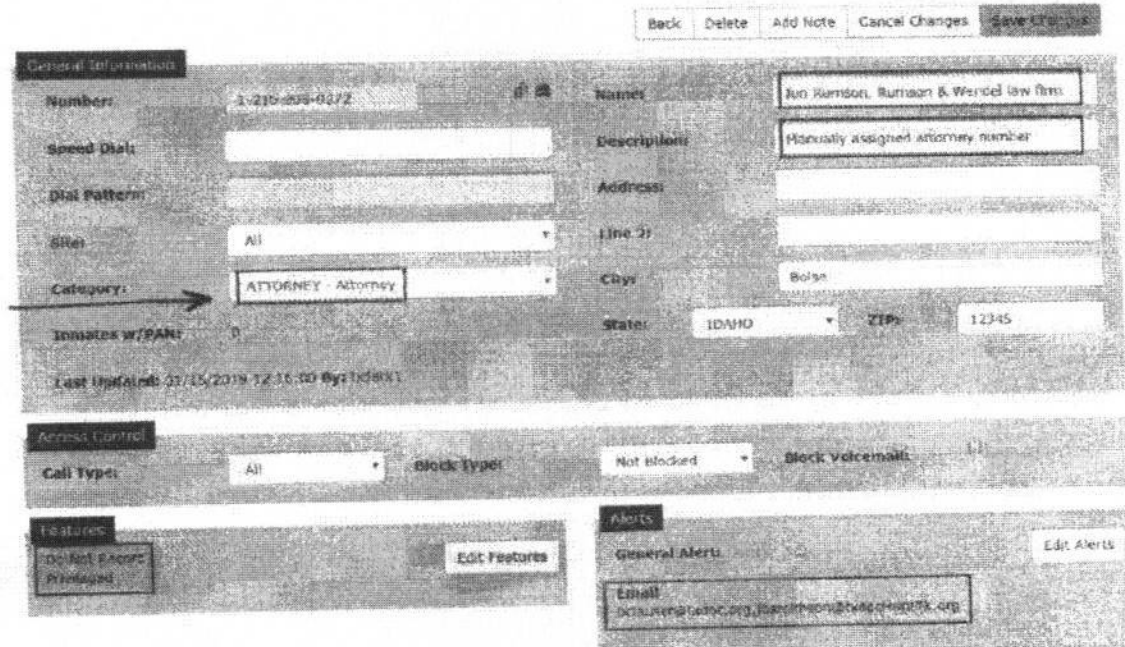
The ENFORCER® Quick Reference

Option	Description
General Alert (check box)	When checked, this setting displays an <i>alert flag</i> in all call records (for calls placed to the number). If a call to the number is still in progress, the alert flag displays on the line item for the call in <i>The Observer™</i> live call monitoring module. To activate <i>General Alerts</i> , select the <i>General Alert</i> : check box shown in the following example.



## Setting Up an Attorney Number

You can manually set up an attorney number by creating a new *Number Detail Record* in the *Global Numbers* library, and then assigning the appropriate attributes to the number. These attributes are shown in red boxes in the following example.



NOTE: Depending on state regulations or facility restrictions, inmate calls to a registered attorney *may* or *may not* be free (made at no cost to the inmate). To allow free calls to the number, you must access the *Number Detail Record* and then select 'Free Call' from the *Call Type* drop-down list.

### To manually create an attorney number

1. Go to Global Numbers > *Global Numbers*. The *Global Numbers Search* screen displays.



**The ENFORCER® Quick Reference**

2. Enter the attorney's 10-digit number in the main search field. Click **Search**.

The *Global Number Edit* screen displays, with the new phone number displaying in the *Number:* field.

3. In the *Name:* field, enter the name of the attorney and name of the group or firm.
4. In the *Description:* field, enter the text string "manually assigned attorney number."
5. Select 'ATTORNEY' from the *Category:* drop-down list.
6. If you are at a multi-site facility and you want to restrict the number to inmates at one site only, select a site from the *Site:* drop-down list.
7. If you want to set the attorney number as a free (no cost) call for the inmate, select 'Free Call' from the *Call Type:* drop-down list.
8. To assign the Privileged status to the Attorney Number, click **Edit Features**.
9. Select (check) the *Privileged* check box.
10. If the attorney/inmate calls should not be recorded, select (check) the *Do Not Record* check box.
11. Click **Close** to close the *Edit Features* dialog box.
12. Click **Edit Alerts** to set up any alerts you want to set for the number.
13. Click **Save Changes** above the *General Information* window. The attorney number will now be available for use by inmates at the facility or selected site.

## Inmate Calling Accounts

When an inmate makes a "pay-per-call" phone call using The ENFORCER®, the inmate is required to select a payment method for the call *prior to* placing the call. The ENFORCER® is configured to prompt the user to identify the type of call, and to provide information necessary to correctly bill the call.

Unless the inmate call is free, each call is billed per a corresponding *account type*. Currently, four account types are available in The ENFORCER®. Two account types enable *inmates* to pay for calls; two account types enable *called parties* to pay for calls.

- **Inmate Debit** (account funded *by* the inmate or *for* the inmate)

----- Forwarded message -----

From: **Garbe, Joe** <[jgarbe@icsolutions.com](mailto:jgarbe@icsolutions.com)>  
Date: Wed, Jun 23, 2021 at 2:22 PM  
Subject: FW: Lawyer/Attorney Phone List (Nacogdoches County, TX)  
To: ICS Support <[ICSupport@icsolutions.com](mailto:ICSupport@icsolutions.com)>, Coleman, Latoya  
<[ldcoleman@icsolutions.com](mailto:ldcoleman@icsolutions.com)>, Boyle, Angeline <[aboyle@icsolutions.com](mailto:aboyle@icsolutions.com)>  
Cc: Kevin Capel <[kcapel@nac-sheriff.com](mailto:kcapel@nac-sheriff.com)>, Jason Bridges <[jbridges@nac-sheriff.com](mailto:jbridges@nac-sheriff.com)>,  
David Crisp <[dcrisp@nac-sheriff.com](mailto:dcrisp@nac-sheriff.com)>

Please see attached list of attorneys for Nacogdoches County, TX to put on the no record privileged call list. Also for calls that were previously recorded on these #'s hide them from the County staff for now. Also open up all listening capabilities for county staff and let all parties on this email know when it is completed. Please feel free to give me a call with any questions.

Thanks,  
Joe

Joe Garbe  
Regional Account Manager  
ICSolutions  
817-505-9070

NC402

----- Forwarded message -----

From: **Coleman, Latoya** <[ldcoleman@icsolutions.com](mailto:ldcoleman@icsolutions.com)>  
Date: Fri, Jun 25, 2021 at 3:07 PM  
Subject: RE: Lawyer/Attorney Phone List (Nacogdoches County, TX)  
To: Garbe, Joe <[jgarbe@icsolutions.com](mailto:jgarbe@icsolutions.com)>, ICS Support <[ICSupport@icsolutions.com](mailto:ICSupport@icsolutions.com)>, Boyle, Angeline <[aboyle@icsolutions.com](mailto:aboyle@icsolutions.com)>  
Cc: Kevin Capel <[kcapel@nac-sheriff.com](mailto:kcapel@nac-sheriff.com)>, Jason Bridges <[jbridges@nac-sheriff.com](mailto:jbridges@nac-sheriff.com)>, David Crisp <[dcrisp@nac-sheriff.com](mailto:dcrisp@nac-sheriff.com)>

The requested updates have been made and I have reverted all changes to ensure users are allowed to listen to calls. Please let me know if additional updates should be made.

*Please feel free to contact me if you have any further questions or concerns.*

**ICSolutions**  
*Advanced Technology Provider*  
**LaToya Coleman**  
Technical Support Manager  
Direct: 210-572-9547  
Helpdesk: 866-228-4031  
[icsupport@icsolutions.com](mailto:icsupport@icsolutions.com)

From: Garbe, Joe <[jgarbe@icsolutions.com](mailto:jgarbe@icsolutions.com)>  
Sent: Wednesday, June 23, 2021 2:22 PM  
To: ICS Support <[ICSupport@icsolutions.com](mailto:ICSupport@icsolutions.com)>; Coleman, Latoya <[ldcoleman@icsolutions.com](mailto:ldcoleman@icsolutions.com)>; Boyle, Angeline <[aboyle@icsolutions.com](mailto:aboyle@icsolutions.com)>  
Cc: Kevin Capel <[kcapel@nac-sheriff.com](mailto:kcapel@nac-sheriff.com)>; Jason Bridges <[jbridges@nac-sheriff.com](mailto:jbridges@nac-sheriff.com)>; David Crisp <[dcrisp@nac-sheriff.com](mailto:dcrisp@nac-sheriff.com)>  
Subject: FW: Lawyer/Attorney Phone List (Nacogdoches County, TX)  
Importance: High

Please see attached list of attorneys for Nacogdoches County, TX to put on the no record privileged call list. Also for calls that were previously recorded on these #'s hide them from the County staff for now. Also open up all listening capabilities for county staff and let all

NC403

parties on this email know when it is completed . Please feel free to give me a call with any questions.

Thanks,  
Joe

Joe Garbe  
Regional Account Manager  
ICSolutions  
817-505-9070

Jeffery Adams	936-598-9400	936-598-6122	
Kay Alderman	936-639-5293	936-639-8884	
Jeff Badders	936-564-6181	936-564-8095	
Thomas Belanger	936-564-1825	936-305-5070	
Paula Brumbelow	936-560-1455	936-560-5385	
Gene Caldwell	903-581-7112	903-939-0433	903-520-3891
Jimmy Cassels	936-634-8466	936-639-1939	936-675-9262
Al Charanza	936-634-8568	936-634-0306	
Noel Cooper	936-564-9000	936-715-6022	936-553-2350
Jeremy Crew	936-633-7583	936-639-3049	936-229-9114
Jeremy Crew	(936)633-7583	(936)639-3049	(936)229-9114
R. Brandon Davis	(936)632-3381	(936)632-6545	
Ryan Deaton	(936)637-7778	(936)637-7784	
Billy J. Earley	(936)564-4500	(936)564-5955	
Richard S. Fischer	(936)564-2222	(936)564-1346	
Jim Garrett	(936)559-1188	(936)559-0099	
Tim Garrigan	(936)560-6020	(936)560-9578	
William D. Guidry	(936)560-6954	(936)560-5996	
David Guillory	(936)559-9600	(936)559-9606	
Clayton Haley	(936)569-2327	(936)569-7932	(936)554-7302
Victor Haley	(936)569-2327	(936)569-7932	
Melissa Hannah	(936)632-6350	(936)632-6355	
John R. Heath Sr.	(936)564-8744	(936)564-1569	(936)554-1859
John R. Heath Jr.	(936)564-8744	(936)564-1569	(936)554-5383
Sean Hightower	(936)560-3300	(936)560-5600	(936)371-2310
Chris Hughes	(936)564-8785	(936)559-5000	(936)645-2148
Tim James	(936)560-3300	(936)560-5600	(936)552-1213
James Lostracco	(936)564-4315	(936)560-0280	
Douglas Mccarver	(936)560-4555	(936)552-8990	
Bill Mcwhorter	(936)564-2676	(936)564-6455	
Carter Meyers	(936)637-1054	(936)637-2951	(936)240-4835
Reynaldo Morin	(936)559-7100	(936)559-7103	
Heather Patterson	(936)569-2222	(972)236-0066	(936)553-2017
Bill Pedersen, Jr	(936)5640445	(936)569-1232	
David Rankin	(936)715-9333	(936)715-9339	
John D. Reeves	(936)632-1609		
Joe Lee Register	(936)632-7600	(936)632-9480	
Paul Robbins	(936)637-0800	(936)637-1172	
Leigh Roberts	(936)632-7731	(936)632-7745	
Dan Simmons	(936)234-0795	(936)-553-7440	
Winfred Simmons	(936)632-3242	(936)414-6881	(936)414-6881
Russell Smith	(936)569-2327	(936)569-7932	
Jim Squyres	(936)633-7582	(817)887-3800	(936)414-0982
John Henry Tatum	(936)634-5594	(936)639-4480	
Clay Thomas	(936)715-7144	(936)552-8990	(936)715-7144
Dean Watts	(936)559-9288	(936)559-0959	(936)553-4859
Lee Westmoreland	(936)250-0776	(936)205-4060	(214)334-7433

Jeremy Willis	(936)569-7944	(936)569-0323	(936)371-9231
Jerry Baker	936-564-2500	936-564-2507	
Jeff Bates	936-560-6954	936-560-5996	
Travis Clardy	936-564-2500	936-560-2507	
Wade Flasowki	936-569-2327	936-569-7932	
Jennie Hyatt	936-305-5164	936-305-5402	
Jeff Deason	936-221-5170	512-423-8334	
Herbert Hancock	936-652-3159		
Seth Johnson	832-474-3740		
Kalee Gilbert	214-663-1544		

**From:** John Fleming <[jfleming@co.nacogdoches.tx.us](mailto:jfleming@co.nacogdoches.tx.us)>  
**Date:** June 29, 2021 at 11:55:49 AM CDT  
**To:** [igarbe@icsolutions.com](mailto:igarbe@icsolutions.com)  
**Cc:** Kevin Capel <[kcapel@nac-sheriff.com](mailto:kcapel@nac-sheriff.com)>, David Crisp <[derisp@nac-sheriff.com](mailto:derisp@nac-sheriff.com)>, Jason Bridges <[jbridges@nac-sheriff.com](mailto:jbridges@nac-sheriff.com)>  
**Subject:** Attorney Office Phone Numbers

Joe - Can your office add to the DO NOT RECORD DO NOT MONITOR LIST.  
the following numbers from the Disability Rights Texas office?

1 512 454 4816  
1 800 315 3876

This is an outfit that employs attorneys who assist a variety of clients including  
inmates housed in jails.

Thanks for any assistance you can provide.

John F.

--  
John Fleming  
Nacogdoches County Attorney  
101 W. Main Street, Room 230  
Nacogdoches, Texas 75961  
Phone 936 560 7789

NC399

Facsimile 936 560 7809

**NOTICE OF CONFIDENTIALITY:**

The information contained in and transmitted with this email is: 1) SUBJECT TO THE ATTORNEY/CLIENT PRIVILEGE; 2) ATTORNEY WORK PRODUCT; AND/OR 3) CONFIDENTIAL.

This communication and any document, file or previous email message attached hereto, constitute an electronic communication within the scope of the Electronic Communication Privacy Act, 18 USCA 2510. This communication may contain non-public, confidential or legally privileged information intended for the sole use of the designated recipient(s). The unlawful interception, use or disclosure of such information is strictly prohibited under 18 USCA 2511 and any applicable laws. If you have received this message in error, please notify us immediately by return email and delete and destroy all copies of the original message.



----- Forwarded message -----  
From: **Kevin Capel** <[kcapel@nac-sheriff.com](mailto:kcapel@nac-sheriff.com)>  
Date: Wed, Jan 19, 2022, 2:27 PM  
Subject: Attorney Phone #  
To: Joe Garbe <[jgarbe@icsolutons.com](mailto:jgarbe@icsolutons.com)>

This is to confirm that Paul Anderson's Office number is on the no record list (936) 305-5600

07/08/2022  
01:16 PM (CT)

**Conversation Activity**

History for Nacogdoches TX

ID: 45215

All posts from 1/7/2021 to 7/8/2022

ALL OF YOU THINK IM CRYING ABOUT THIS OUR THAT BUT THINK ABOUT THIS TO GET A PERMITE AN CITY INSPETOR TO OVER SEE THE HOLE THE TOWN IS WORKING TOGETER AN YALL ARE HELPING A MAN FEED HIS FAMILY TO DO THIS AN ITS A TAX WRITE OFF ALL SO DOING THIS YOU CAN GO TO CLAIMS DAD THAT OWNS A ER IN OUR TOWN AN ASK HEM FOR HELP TO HEM ITS ALL A TAX WRITE OFF AN THE JOB IS PUTING BACK IN OUR TOWN NOT A KICK BACK AT THE END OF THE YEAR FOR CO THAT SPIT IT JB FACE AN DO IT THERE WAY SEE BET NOT ONE OF YOU THOUGHT I MENT IT FOR THAT REASON 2 YEARS I AN GOING TO LAY DOWN WAY YALL F OUR TOWN YALL GOT ME OFF DOPE AN IM MY FATHERS SON THROW AN THROW JUST HAD TO LIVE THE DOPE ALONE I LOVE MY TOWN JUST LOST SITE OF THAT	45215	FINCHUM, BRANDON	8/23/2021 4:58 AM (CT)	28122619
--	-------	------------------	------------------------	----------

<b>Investigator</b>	<b>I HAVE BEEN A PAIN FOR YALL BUT HEAR ME OUT PLEASE</b>	45215	FINCHUM, BRANDON	12476020
---------------------	---	-------	------------------	----------

I AM IN HEAR ON A FAMILY VIOLENCE ASK YOUR SELF HOW NELLIE VEST CALLS 911 ON A VERBAL DISAGREEMENT COPS LOOKS IN TO IT NOTHING TO LOOK IN TO .THEN I AM SOPOST TO HAVE BEAT HER LITTLE GIRL AN SHE SEEN HER LITTLE GIRL HURT BUT DID NOT CALL 911WHEN HER LITTLE GIRL IS SOPOST TO HAVE GOT HURT COME ON YALL IF SHE CALLED YALL ON A VERBAL ORDEAL WAY IN THE HELL WOULD SHE HAVE NOT CALLED YALL THEN	45215	FINCHUM, BRANDON	8/19/2021 9:32 AM (CT)	28079067
---	-------	------------------	------------------------	----------

2 Years of my life over this girl runing off the rode going to ER an haven dope in her system to telling lullkin one thing to yall s nother please see throw there BS AN LET ME OUT 2 year in hear is hell when you did not do what is being eead about you please yall i have been a F UP most of my life but i have all ways look my time when did wrong an 2 years hear is payment enough for what ever yall thought i was caught up in but this girl an her mom is playing yall Please let me get back to my life an show yall im done with the dope an the fast life	45215	FINCHUM, BRANDON	8/19/2021 9:41 AM (CT)	28079285
---	-------	------------------	------------------------	----------

<b>Investigator</b>	<b>IMPEDED BREATH F3 DOPE DEALING IN JAIL F2</b>	45215	FINCHUM, BRANDON	12497624
---------------------	--	-------	------------------	----------

HOW IS IT A LT IMPEDED BREATH A F3 AN NOTHING HAPPENS ???? OVER SIX MONTHS AN I WONT HER IN JAIL FOR WHAT SHE DID TO ME NOT MONEY IN A LAWSUIT, ALL SO HOW IS IT YOUR HEAD TRUSTY IS HAVEN SEX DEALING DOPE AN NOTHING IS BEING DONE TO HIM WHEN HE SET HER UP TO SAVE HIS SELF AN NOW YALL HAVE CO DEALING DOPE PUTING HANDS ON PEOPLE AN NOTHING IS BEING DONE HEAR WHAT IS IT YOUR STAFF IS BETTER THEN USE AN CAN GET AWAY WITH ANYTHING BUT USE WE SIT HEAR FOR YEARS? YEARS IN HEAR	45215	FINCHUM, BRANDON	8/23/2021 3:55 AM (CT)	28122475
---	-------	------------------	------------------------	----------

07/08/2022  
01:16 PM (CT)

**Conversation Activity**  
**History for Nacogdoches TX**  
**ID: 45215**

All posts from 1/7/2021 to 7/8/2022

NO GRIEVANCE GO THROW HEAR I HAVE DID MORE THEN ONE AN YOUR STAFF DOS NOT CARE AN THIS IS ON LOG TO LOOK AN WE HAVE RIGHTS BUT NO ONE CARE ABOUT THEM THE STAFF IS SPITING IN THE SHERIFFS FACE AN OPENING ALL KINDS OF DOORS FOR LAWSUITS ON THIS PLACE AN WHEN YOU GET A LAWSUIT GOING AN THERE IS NO LIEN IN IT AT THE END OF THE DAY WHO LOOKS BAD JB THE BOSS THE MAN THAT RUNS THIS TOWN AN ITS TIME ALL YALL BACKTHE MAN RUNING OUR TOWN BEFOR HE LOOKS BAD TO THE TOWN YALL PUT THAR GUN ON HE IS WHO YALL WORK FOR AN THE OLDEST TOWN IN TX DAMN IT SOMETHING HAS TO GIVE	45215	FINCHUM, BRANDON	8/23/2021 4:44 AM (CT)	26122575
--	-------	------------------	------------------------	----------

BET NOT ONE OF YOU NO WHAT REALLY HAPPEN SO LET ME GIVE YOU THE GAME ONE TIME SADOVALL GOT IN STIVENS HEAD HAD HER CALL HIS MOM MADE HER FEEL HE DID NOT RAP THAT GAIL SO SHE STARTED DOING THINGS FOR HEM THEN ALL WAS GOOD HE HAD YOUR JAIL LIKE THE STREES BUT THE GIRL HE RAP SISTER COME IN AN SHE FLIPED OUT WHEN SHE SEEN HEM STIVENS SEEN THIS PULLED BACK FROM HEM SHE IS 19 YALL AN HER AN FIGLE GOT TO GETER SANDAVALL GOT PISSEST OFF BLACKMAILED HER THEN GOT YALL TO GIVE HEM MONEY TO SET THEM UP SHE WAS FUCK IN HER EYES SO SHE DID IT REAL TRUTH	45215	FINCHUM, BRANDON	8/24/2021 4:54 AM (CT)	26142103
--	-------	------------------	------------------------	----------

ALL SO 282 PEOPLE HEAR 80 IN OTHER COUNTYS AN OVER 100 HAS BEEN HEAR OVER A YEAR COVID IS BAD BUT THE STATE IS NOT SHUT DOWN WAY CAN THIS TOWN COME TOGETER AN FIX TNE WAY THE RULES ARE BEING BENDED	45215	FINCHUM, BRANDON	8/24/2021 5:34 AM (CT)	26142303
---	-------	------------------	------------------------	----------

Lt. Capel	<u>NEWS HOTDOGS TACK 38 MIN OFF OUR LIFE</u>	45215	FINCHUM, BRANDON	12505168
-----------	--	-------	------------------	----------

NEWS DONT LIE AN A HOTDOG IS TACKING LIFE AWAY FROM PEOPLE WHAT YALL GOING TO DO	45215	FINCHUM, BRANDON	8/24/2021 5:50 AM (CT)	26142395
--	-------	------------------	------------------------	----------

-	nac-sheriff.com	Capel, Kevin	8/21/2021 6:22 PM (CT)	28558825
---	-----------------	--------------	------------------------	----------

Investigators	<u>ADDRESS TO</u>	45215	FINCHUM, BRANDON	12596485
---------------	-------------------	-------	------------------	----------

CIVIL RIGHTS DIVISION AT THE FBI IN ATX CAN I PLEASE HAVE THERE ADDRESS YALL WONT HELP ME AN ARE DOING WHAT YALL WONT I WONT TO HAVE THEM LOCK IN TO A FEW THINGS I HAVE ASK YALL NOW ITS TIME TO GO PAST YALL NOT ONE OF YOU LOCK IT TO THE LETTER ABOUT MY KIDS AN I NO THE WILL AN NOT ONE OF YOU DID NOTHING ABOUT YALLS LT PUTING HER HANDS ON ME	45215	FINCHUM, BRANDON	9/7/2021 4:48 PM (CT)	26351145
--	-------	------------------	-----------------------	----------

07/08/2022  
01:16 PM (CT)

**Conversation Activity**

**History for Nacogdoches TX**

**ID: 45215**

**All posts from 1/7/2021 to 7/8/2022**

IF YOU GET HURT THE STORY DONT CHANGE YOU NO IF YOU WAS HIT ONE OUR TWO TIMES AN WHAT HAPPEN IF IT REALLY HAPPEN THIS SHE TOLD IS LIES AN YOU SEE IT DONT YOU???? I GOT ROBED AN HAVE DID TWO YEARS OVER IT IN COURT HOW ARE YOU GOING TO ANSWER FOR HOW YOU DID ME ????? ALL HOLE YOU OVER LOOKED SHE HURT MY GIRL SHE WAS BLACK MAILING FOR DOPE WORKING AS A CI OUT OF LUFKIN AN NOW YOU SEE YOU GOT PLAYED YOU PUT WORDS IN MY MOUTH AN IN COURT DONT CUT AROUND IT THIS WILL BEEN SHON IN TRIL	45215	FINCHUM, BRANDON	9/11/2021 5:26 PM (CT)	28410405
---	-------	------------------	------------------------	----------

WHEN YOU SEAD I WOULD KILL HER YOU WAS WRONG WITH NO FACTS I DID ANYTHING YOU WENT OUT OF LINE TO MACK A BS CASE COST ME TWO YEAR. IT MORE THEN LIKEY DONT MEAN NOTHING TO YOU BUT IN COURT TO USE MY MAWMAM TO HAVEN ME PICK UP ON GOOD FAITH IS OUT OF LINE AND THEN YOU SEAD HE WILL KILL YOU TO MACK A CASE IS THE MOST MESSED UP PART IT SHOWS YALL MACK YOUR ON RULES AN DONT GO BY THE LAW	45215	FINCHUM, BRANDON	9/11/2021 7:06 PM (CT)	28411289
---	-------	------------------	------------------------	----------

DONT BE MAD AT ME THERE ARE A FEW OF YOU THAT ARE LIKE MY UNKS YALL COULD HAVE PULLED UP ON ME AN I WOULD HAVE TALK TO YALL. BUT TWO YEAR GOT ME RIGHT IN MY MIND THINK YOU FOR THAT BUT DONT THROW MY LIFE AWAY OVER LIES UNK SOME OF YOU I WOULD TACK A BULLIT FOR IM ONLY ASKING LOOK BACK IN TO IT PLEASE YOU GOT PLAYED MAN SHE WAS A CI IN YOUR BACK YARD ASK YOUR SELF WAY THEY DID NOT TELL JB FALPLAY BROTHER	45215	FINCHUM, BRANDON	9/12/2021 4:21 PM (CT)	28427548
--	-------	------------------	------------------------	----------

<u>Investigators</u>	<u>FILING CHARGES</u>	<u>45215</u>	<u>FINCHUM, BRANDON</u>	<u>12691962</u>
----------------------	-----------------------	--------------	-------------------------	-----------------

I TALK TO A LADY TO DAY ON ZEMO I AM WITH IN MY RIGHT TO FILE ASSAULT CHARGES ON MOLLY BROWN AND I WONT TO IF YALL WILL NOT A REASON IS TO BE GIVEN TO ME WAY NOT PLEASE NO THIS MEAN SOMETHING TO ME AN ITS YOUR JOB TO PUT HER IN JAIL AN ME GET MY DAY IN COURT	45215	FINCHUM, BRANDON	9/21/2021 5:41 PM (CT)	28558383
--	-------	------------------	------------------------	----------

<u>Investigators</u>	<u>BING ASSAULTED IN JAIL</u>	<u>45215</u>	<u>FINCHUM, BRANDON</u>	<u>12692059</u>
----------------------	-------------------------------	--------------	-------------------------	-----------------

I HAVE HAD OUT SIDERS LOOK IN TO THIS THEY HAVE TOLD ME IM IN MY RIGHT TO FILE CHARGES ON MOLLY BROWN AN IF YALL WILL NOT A REASON IS TO BE GIVEN TO ME I HAVE MY RIGHTS TO PUT ASSAULT CHARGES ON HER AN HAVE THE RIGHT TO HAVE MY DAY IN COURT THE OUT SIDERS WILL OVER SEE WHAT ACTSHON YALL WILL TACK WE HAVE RIGHT IN HEAR AN ITS YALL JOB TO SEE WE GET OUR DAY IN COURT AS WELL YOU CANT WORK FOR THE LAW AN BRACK IT AN GET AWAY WITH IT	45215	FINCHUM, BRANDON	9/21/2021 5:55 PM (CT)	28558537
--	-------	------------------	------------------------	----------

07/08/2022  
01:16 PM (CT)

**Conversation Activity**  
**History for Nacogdoches TX**  
**ID: 45215**

All posts from 1/7/2021 to 7/8/2022

Investigator: I HAVE A LAWSUIT GOING AGINEST NACOGDOCHES 45215 FINCHUM, BRANDON 12728084

WAY DONT YALL SEND ME TO ANOTHER COUNTY PLEASE I HAVE A SUIT AGINST MOLLY AN A COP AN REALLY DONT FEEL SAFE IN THIS JAIL. I NO THERE IS NOTHING I CAN DO BUT ASK TO PLEASE HOUSE ME IN A NOTHER COUNTY??? I HAVE NOT BEEN IN TRUBLE ONE TIME BEING HEAR I GIVE CAPEL MY WORD I WOULD NOT AN HAVE STAYED TRUE TO THAT. MOLLY WILL LIE AN SAY OTHER WISE BUT PAPER WORK DONT LIE 2 YEARS AN I ANT BEEN TO LOCK UP ONE TIME . PLEASE I HAVE TACK TO MY LAWYER JAIL STANDER AN ZOOM WITH THEM BOUTH IM ASKING TO PLEASE THINK ABOUT THIS I DONT FEEL SAFE WITH MOLLY RUNNING THIS PLACE ALL KINDS OF THINGS COULD HAPPEN AN IN LIFE THINGS DO I DONT WONT TO GO TO BED NOT MOING IF ONE OF YOUR CO WILL LIE ON ME OUT

45215 FINCHUM, BRANDON 9/28/2021 1:01 AM (CT) 28638847

put there hands on me an nothing done about it 45215 FINCHUM, BRANDON 9/28/2021 1:02 AM (CT) 28638849

?????? 45215 FINCHUM, BRANDON 10/14/2021 12:06 AM (CT) 28684973

L.L. Patton no hot water 45215 FINCHUM, BRANDON 12735894

going on two days no hot water yall fix it for all of terr min 45215 FINCHUM, BRANDON 9/29/2021 9:30 AM (CT) 28658803

OK AND WE ARE AWARE OF THE SITUATION nac-sheriff.com Patton, Dejuan 9/30/2021 1:56 PM (CT) 28678935

thinks 45215 FINCHUM, BRANDON 9/30/2021 2:09 PM (CT) 28679214

YW nac-sheriff.com Patton, Dejuan 9/30/2021 2:11 PM (CT) 28679265

L.L. Capel JOBETHIC 45215 FINCHUM, BRANDON 12748339

I WONT A JOBETHIC SIR AN I HAVE KEEP MY WORD IN GETING IN TO NO TROUBLE IN A VERY LONG TIME. I HAVE ONLY BEEN TO SCHOOL FOR WAXING AN DOING FLOORS AN I CAN HAVE YOUR FLOORS LOOKING BETTER THEN THE COURT HOUSE IN GIVEN TIME. I ASK MOLLY SHE DID NOT SAY YES OUR NO BUT I NO WE GET ALONG AN YOUR OVER THE NIGHTS AN TO DO THE FLOORS RIGHT I NEED THE NIGHT SHIFET PLEASE THINK ABOUT IT I WONT QUIT OUR BRACK YOUR RULES THATS MY WORD AN MY WORD SHOULD ME SOMETHING TO YOU AFTER KEEPING IT FOR SO LONG. PLEASE HELP ME TO GET A JOBETHIC SIR HAVE A GOOD NIGHT

45215 FINCHUM, BRANDON 10/1/2021 4:16 AM (CT) 28685302

To whom it may concern:

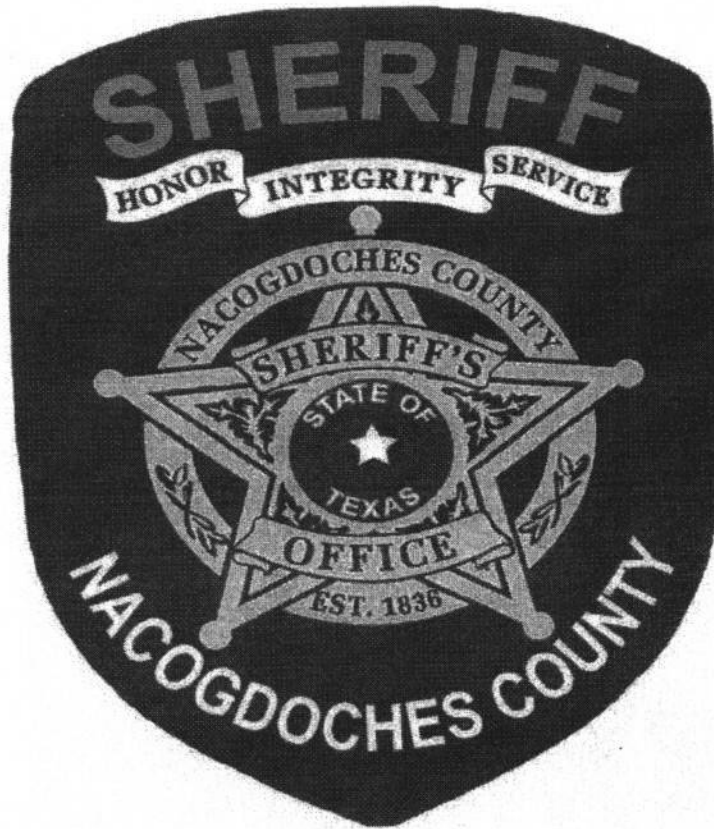
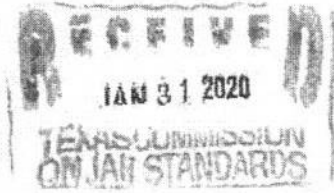
I am writing this letter to address an issue with the way I was treated by Wake County Jail staff. On or about the 3<sup>rd</sup> of this month I was in H-tank they told us to pack up we are moving. They moved me to 6 Dorm when I walk in the Dorm I was told there would be trouble if I stayed in that Dorm. I walk to the front of the Dorm told the Boss. They told me they did not care. You can roll the camera back, other people moved my stuff up front because I was not wanted there. I told the Boss again I can not be in here. I was told I was not moving. Well when the door opened I walked out and sat down on the floor and told them I will not fight any more and that I called my Dad and he told me to walk away. The cop they sent down to tell me I was not moving made fun of me about calling my Dad. They took me up front put me in a chair a strap down chair and all this on camera. Then a little later they took me out of the chair. Took me in Lt. Brown's office. Boy was she going off, all in my face I told Lt. Brown I will not fight or disrespect her. I walk away back to the Boss that was next to me, then out of nowhere I was run into a wall. I was hit, I was choked to the point that I told Lt Brown I can not breathe. Then out of nowhere Major Crisp broke it up. We talked in his office. Then he brought in Lt Brown and we talk. Then I was sent to a new Dorm. For the last week or two I have felt that what happened was not right. Everything is over.

Camera and my Constitutional Rights have been infringed. There has been nothing done about what happened. All of the Bosses that run this place seen this our took part in it & did nothing. I feel after I hang this phone up retaliation will begin. Last week I wanted to go up about this but after praying on it I feel you are the best person to let me about this. I am telling you this because something needs to be done. All of the Bosses that run this place took part our set there & seen this. You can see all of this clear as day on camera. The whole time my hands were behind my back. Please look at this for yourself and please help me. Please don't push this matter to the side. Impediment of Brait is a F-3 when this took place I told the Boss I could not breathe. Such matters as this are very serious.

Thank you for your time and  
concern.

Brandon Finchem

NACOGDOCHES COUNTY JAIL  
2306 DOUGLASS HIGHWAY  
NACOGDOCHES, TEXAS 75964  
INMATE HANDBOOK



4<sup>th</sup>. EDITION  
January 2020

REV. REQ. APPROVED

Replacement Price \$10.50

DATE: 2/2/20

BY: [Signature]

Destroy all Previous Editions as Previous Editions are No Longer Valid



**15.00 Inmate Work Program/Trustee:**

- 00.01 Many different jobs within this facility are performed by inmates who are assigned to the Inmate Work Program or Trustee Status. Assignment to the inmate Work Program or Trustee Status is a privilege, not a right. Not everyone who applies will be selected as a Trustee or participate in the Work Program.
- 00.02 In order to be considered as a Trustee you must fill out a Trustee Application and sign this application, do not use a Request Form to ask for consideration as a Trustee. Only one application per inmate will be accepted during your incarceration period. These applications will not be returned to the inmate, nor will an answer be sent to the requesting inmate. These applications will remain on file. These applications are screened and forwarded to the appropriate Administrator.
- 00.03 Trustees shall not take anything to work with them when reporting to their assigned duties. Outside Trustees shall leave all boots, gloves, jackets and protective gear outside the secure area of the Jail. Work Crew Supervisors will provide areas for you to place this gear. Trustees cannot take anything with them when they leave their housing areas:
- |             |          |         |         |
|-------------|----------|---------|---------|
| No Blankets | No Books | No Cups | No Food |
|-------------|----------|---------|---------|

**16.00 Safety and Security:**

- 00.01 Whenever you believe that your personal safety or that of another may be in jeopardy, you should notify the detention staff immediately.
- 00.02 All inmates in all areas of the facility are subject to being searched at the discretion of Jailers. You are expected to cooperate with any officer who advises you that you must be searched. Unannounced searches of your cell, your property and your block/dorm/tank will be conducted to maintain the safety and security of the facility, staff and inmates.
- 00.03 Any contraband or other property in excess of what is allowed will be confiscated and you may face disciplinary action up to and including disciplinary lockdown and loss of privileges. You are expected to cooperate with staff during these searches. You do not have a right to be present when these searches take place. If contraband is found in your possession or bunk it will be discarded. Disciplinary action may be taken if there are violations of the Inmate Rules and Regulations.

**17.00 Contraband:**

- 00.01 Contraband is any item of itself illegal and any item that is not permitted within the Nacogdoches County Jail by policies, procedures, rules and regulations. You are prohibited from having in your possession or under your control any items which are not: Issued to you by Jail Administration or the Sheriff, Purchased by you from the commissary service, Authorized by the detention facility administration or in their original condition (modifying or altering any items, whether issued or purchased is not allowed).

**18.00 Grievance Procedures:**

1. The following constitutes grounds for initiation of a grievance:  
Violation of civil rights  
Criminal act  
Unjust denial or restriction of inmate privileges  
Prohibited act by facility staff
2. Any inmate may initiate a grievance by requesting an Inmate Grievance Form from any officer.
3. Once the inmate has obtained the Inmate Grievance Form, the inmate will fill out the form.
4. The inmate should include all information, date(s), time(s), name(s) and any other pertinent information.
5. When the grievance is written and signed, and submit the grievance to any officer.
6. The grievance will then be delivered to the Grievance Officer who will review the grievance to determine whether it is an emergency, where delay could subject the inmate to personal injury or other damages, and then to determine whether there are legitimate grounds for a grievance.

**18.00 Grievance Procedures Continued:**

7. The Grievance Officer will respond to the inmate in writing with at least an interim response within 15 days. In no case will any grievance response be held longer than 60 days.
8. If the inmate disagrees with the response by the Grievance Officer, he/she may appeal to the Grievance Review Board, which is comprised of staff known to be neutral regarding the issue at hand. An inmate may also be a member of the Board. The Grievance Review Board will respond to the appeal in writing within 15 days.
9. If the inmate continues to disagree with this response, he/she may appeal in writing to the Sheriff, whose decision is final.
10. Inmate's whose grievance(s) are substantiated will be provided with meaningful relief, such as reinstatement of good time, additional visitation privileges, etc.
11. Any reprisals by Facility Staff against an inmate for filing a grievance will result in disciplinary action.
12. Grievance information regarding inmates and employees will be kept strictly confidential. In no case will information be released without the specific approval of the Sheriff or his designee.
13. Nacogdoches County has a 3 grievance per inmate per week policy. This means that you are allowed three (3) Grievances per week. If more than 3 Grievances are sent in each week by a particular inmate, these grievances will be filed into the Inmate's Permanent File with a notation that the Inmate has exceeded the Grievance Limit for that particular week.

**19.00 Telephone Use:**

- 00.01 During the Booking Process you were allowed to make two (2) completed calls no later than 4 hours after arrival which are at no cost to you. If you remain in the Nacogdoches County Jail, any other calls you make will be collect, or prepaid from your Inmate Trust Fund. All requests for telephone use at no cost to the inmate will be in writing and will be reviewed for approval by Jail Administration on a case by case basis. All telephone calls into and out of the Jail are recorded.
- 00.02 There may be restrictions placed upon whom you may call. You are forbidden to call the victim of the crime for which you are accused, anyone who has a no contact order placed upon you, any persons who have requested that you not contact them by telephone, any County Official or County Office, and any employee of the Nacogdoches County Sheriff's Office or other Law Enforcement Officers.
- 00.03 Calls to your attorney may be made from the phones provided in the block/dorm. If you wish to contact any Judge, County Attorney or District Attorney's office, you must do so by mail or through your attorney.

**20.00 General Information:**

- 00.01 Request forms are available by asking a Jailer.
- 00.02 This is the Nacogdoches County Jail; we do not control any other Law Enforcement Agency and Officers. This includes Nacogdoches City Police Department or its officers, Constables, TABC, Department of Public Safety or any City or School Departments or Officers. We will attempt to contact the Agency for you, but cannot guarantee a response or reply.
- 00.03 Telephones will be turned off during head counts, meal times, transport of inmates and any time an officer believes it is necessary to do so. Telephones and Televisions shall not be turned on until housing areas are inspected and found to be kept near and clean.
- 00.04 Each cell is equipped with two (2) way intercom system which is to be used by inmates only to report an emergency situation (sickness, fighting, sexual threats and/or assaults, etc.). Inmates who use this for the purpose of harassing floor/control officers or disrupting routine operations or for non-emergency requests (e.g. asking for an in/out, what time is it, etc.) are subjected to disciplinary action.

