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TO: **Mayor Jordan**
City Council

CC: **Don Marr**, Chief of Staff
Paul Becker, Chief Financial Officer
Garner Stoll, Development Services Director
Mark Whitaker, Building Safety Director
David Carver, Code Compliance Administrator

FROM: **Kit Williams**, City Attorney

DATE: **December 12, 2017**

RE: **Harold Harmon v. Mayor and City of Fayetteville,**
Washington County Circuit Court Case No. 72CIV-17-1914-2

City's Motion for Summary Judgment Granted Case Dismissed with Prejudice

After two City Council Meetings in which the Public Hearing concerning the dilapidated, unsafe, unsanitary and detrimental to public welfare nature of Harold Harmon's rent house was continued pursuant to Mr. Harmon's request, the final public hearing was held on June 20, 2017. After excellent presentations of their inspections of Mr. Harmon's rent house by David Carver, Code Compliance Administrator and Matthew Cabe, City Building Official, the Fayetteville Building Safety Division and Code Compliance Division requested that the City Council determine that the house was so dilapidated and unsafe that it should be razed and removed. The City Council agreed and passed the raze and removal Resolution unanimously.

Over two months later when Mr. Harmon had still not remedied the problems that made this house unsafe and dilapidated, the City's contractor went to this house to begin the ordered demolition and removal of this structure. Harold and Rosetta Harmon then attempted to file suit against Mayor Jordan and the City of Fayetteville and asked for an Ex Parte (which means without notice to the City) Temporary Restraining Order. Circuit Judge Threet denied that request

on September 11, 2017 and thereafter the house was razed and removed by the City's contractor.

I filed an Answer on behalf of the Mayor and City of Fayetteville pointing out how patient and careful City staff and the City Council had been before the raze and removal of this dilapidated and unsafe rent house. I also sought a Summary Judgment because Mr. and Mrs. Harmon had failed to follow State statutes and their requirement that an appeal of the City Council's decision must be filed within 30 days of the decision. This is similar to the 30-day time limit to appeal from an adverse decision by either the District Court or the Circuit Court. Failure to file an appeal within that thirty days always dooms an appeal which cannot be considered if filed too late.

Mr. and Mrs. Harmon failed to respond to the City's Motion for Summary Judgment with its affidavits proving what had occurred. I wish to thank the City Clerk's Office, the Code Compliance Division and the Building Safety Division for providing certified copies of the City Council minutes and affidavits I needed for my Summary Judgment Motion.

In light of these affidavits and minutes, Circuit Judge John Threet today granted the City's Motion for Summary Judgment and Dismissed the Harmons' Petition for Declaratory and Injunctive Relief with Prejudice ending this litigation successfully for the Mayor and the City of Fayetteville. A copy of that Order is attached.

IN THE CIRCUIT COURT OF WASHINGTON COUNTY, ARKANSAS
CIVIL DIVISION

HAROLD TYRONE HARMON and
ROSETTA HARMON

v.

Case No. 72CV-17-1914-2

LIONELD JORDAN,
MAYOR for CITY of FAYETTEVILLE

PLAINTIFF
WASHINGTON COUNTY ARKANSAS
CIRCUIT CLERK
SYLVESTER
2017 DEC 12 AM 11:46
FILED FOR RECORD
12
DEFENDANT

**ORDER GRANTING SUMMARY JUDGMENT
TO MAYOR JORDAN AND THE CITY OF FAYETTEVILLE**

Now on this 12th day of December, 2017, comes on before this Court Defendant Mayor Lioneld Jordan for and with the City of Fayetteville's Motion for Summary Judgment and Motion for Dismissal of Plaintiffs' Petition. From the pleadings, motions, briefs and affidavits filed with the Circuit Clerk's Office and supplied to this Court, the Court finds as follows:

1. The Defendant City of Fayetteville and its Mayor Lioneld Jordan properly followed the requirements of A.C.A. § 14-56-203 and § 173.09 (A) of the Fayetteville Code to inspect and analyze the condition of the Plaintiffs' rent house at 265 West Nonnamaker, Fayetteville, Arkansas.

2. This analysis was properly presented to the Fayetteville City Council after proper notice to Plaintiffs during public hearings held at Fayetteville City Council Meetings of May 16, 2017, June 6, 2017, and June 20, 2017 when the Fayetteville City Council unanimously determined that Plaintiffs' rent house was dilapidated, unsafe, unsanitary and detrimental to public welfare and ordered that it be razed and removed pursuant to A.C.A. § 14-56-203.

3. The City Council minutes of its June 20, 2017 meeting were approved at the July 6, 2017 City Council Meeting.

4. The Plaintiffs waited over sixty days after that July 6, 2017 meeting to file its Petition for Declaratory Judgment with injunctive relief at the Circuit Court of Washington County Circuit Clerk's Office.

5. The Plaintiffs failed to comply with the required form of summons pursuant to Rule 4 of the Arkansas Rules of Civil Procedure.

6. Mayor Jordan for himself and the City of Fayetteville timely answered this petition and asserted the defenses of insufficiency of process and insufficiency of service of process pursuant to Rule 12(b)(4) and (5).

7. Mayor Jordan for himself and the City of Fayetteville further pointed out that Plaintiffs had violated A.C.A. § 14-56-425 and Rule 9 of the District Court Rules by failing to timely appeal the City Council decision to enforce the raze and removal of the rent house pursuant to A.C.A. § 14-56-203. This failure is fatal to Petitioners' attempted appeal which must be dismissed for lack of subject matter jurisdiction.

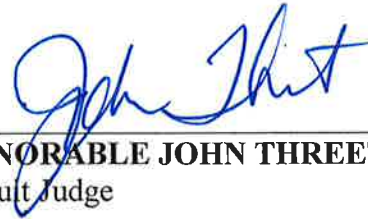
8. Mayor Jordan for the City of Fayetteville filed a Motion for Summary Judgment on October 4, 2017 on grounds of Plaintiffs' failure to timely appeal and because of their insufficiency of process and service of process.

9. Plaintiffs have failed to make any response to Mayor Jordan and the City's Motion for Summary Judgment, and the allowed time to respond expired more than a month ago.

10. On the basis of the undisputed facts cited above, this Court finds that Plaintiffs have failed to properly serve Mayor Jordan with a legal summons which failure requires dismissal of their Petition. Furthermore, even if Plaintiffs had properly served Mayor Jordan on September 6, 2017 when the Petition was filed for record, such petition being in clear violation of A.C.A. § 14-56-425 **Appeals to Circuit Court** and Rule 9(f) of the *District Court Rules* must

be dismissed with prejudice. “(T)he filing requirements of Rule 9 are mandatory and jurisdictional and that failure to comply prevents the Circuit Court from acquiring subject-matter jurisdiction.” *Green v. City of Jacksonville*, 357 Ark. 517, 521 (2004).

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Mayor Lioneld Jordan’s and the City of Fayetteville’s Motion for Summary Judgment is Granted and Plaintiffs’ Petition is Dismissed with Prejudice.



HONORABLE JOHN THREET
Circuit Judge