

STATE OF INDIANA:

IN THE WARRICK SUPERIOR COURT NO. 1

COUNTY OF WARRICK:

2012 TERM

CAUSE NUMBER: 87D01-1205-CT-000628

MARK KELLY PHILLIPS,  
Plaintiff

-vs-

NEXSTAR BROADCASTING GROUP, INC.  
AND MISSION BROADCASTING, INC.,  
Defendants

**FILED**

MAY 07 2012

SARA TOPPER  
CLERK WARRICK CIRCUIT AND SUPERIOR COURTS

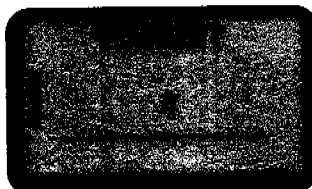
**CLAIM**

Comes now **Mark Kelly Phillips** and for his claim against the Defendants jointly and severally alleges and states as follows:

1) **Mark Kelly Phillips**, Plaintiff, is a practicing attorney in Boonville, Warrick County, Indiana. **Mark** is married to **Kim** and the father to three (3) children, **Brennan, Robert and A** all of whom reside in Boonville, Warrick County, Indiana. **Mark** has grown up in the community of Boonville, Warrick County, Indiana, and has maintained his family, professional practice and residence in this community for forty-eight years except for the periods of time when he was at school pursuing his higher education.

**Brennan** is a college graduate from University of Southern Indiana, Evansville; **Robert** is in his fourth year as a student at University of Southern Indiana, Evansville, and **A** is in the 6<sup>th</sup> grade at Boonville Middle School.

**Mark** and his family belong to and attend church at First Christian Church in Newburgh, Indiana, which has a membership in excess of three thousand (3,000) people. **Mark** and his family have an active social life in the tri-state area, belong to and participate in Special Olympics Basketball where **Mark** has been the coach for over eighteen (18) years, winning



State Championships for seventeen (17) of those years at Butler Field House in Indianapolis, and a National Championship at the first ever National Games in 2006, membership and participation at Rolling Hills Country Club, Boonville Country Club, Quail Crossing Golf Community, Eagle Creek Golf Club, Cambridge Golf Course, Fendrich Golf Course, Helfrich Golf Course, Warrick County, Indiana and American Bar Associations, National Council Defense Bar, National College for DUI Defense, and Mark has an extensive legal practice all over the tri-state, including Illinois, Indiana, Kentucky, South Carolina, and Hawaii, and in multiple counties throughout Indiana. Mark maintains an Internet website for his Law Office and belongs to the Indiana Better Business Bureau where he has an A+ rating and maintains information about his legal profession.

2) That the Defendant, **Nexstar Broadcasting Group, Inc.**, owns and operates the television station WEHT and Defendant, **Mission Broadcasting, Inc.**, owns and operates the television station WTVW. Defendant, **Nexstar Broadcasting Group, Inc.**, serves as the Operative Manager of **Mission Broadcasting, Inc.**'s television station, under a Service Agreement between the two corporations. Both television stations broadcast throughout the community of Boonville, Warrick County and the surrounding counties in the tri-state area of Indiana, Kentucky and Illinois.

3) That the Warrick County Prosecuting Attorney issued a Press Release, a copy of which is attached hereto and incorporated herein as Plaintiff's Exhibit "A", stating:

"Boonville, Indiana, November 30, 2011 - The Warrick County Prosecutor's Office announces that on November 29, 2011, Mark S. Birge entered a guilty plea in two (2) separate cases to Child Molesting. The Defendant is represented by Mark Phillips.

The State filed charges against Mark Birge on June 29, 2010 and September 29, 2010 after investigations were conducted by the Boonville Police Department. Two children had disclosed the molesting during interviews conducted at Holly's House.

Trial Deputy Jennifer Greer is assigned the case. Prosecutor JoAnn Krantz commended Deputy Greer for her work on the cases.

The range of sentencing for the C Felonies is 4-16 years at the Indiana Department of Correction. The Defendant is set for Sentencing on January 12, 2012 at 8:30 a.m. before the Honorable Judge Robert R. Aylsworth."

4) That both Defendants on or about November 30, 2011 and December 1, 2011 published verbally by broadcast on the news, and by written release posted on their website, on multiple occasions, the following statement about **Mark Kelly Phillips**, a copy of which is attached hereto and incorporated hereby as Plaintiff's Exhibit "B":

"BOONVILLE, IN - A Boonville man is awaiting sentencing for two counts of child molesting.

According to the Warrick County Prosecutor's Office, Mark Phillips pleaded guilty to the two charges Tuesday.

Two children told Holly's House representatives about the molestations in 2010.

Phillips faces 4 to 16 years in prison. He will be sentenced January 12<sup>th</sup>."

**COUNT 1**  
**SLANDER PER SE**

5) That the Plaintiff, **Mark Kelly Phillips**, restates and incorporates herein, by reference, the factual allegations setforth in rhetorical paragraphs 1 through 4.

6) That the Defendants published on their news broadcasts, on multiple occasions, the statement that **Mark Phillips** is awaiting sentencing for two counts of child molesting, that **Mark Phillips** pleaded guilty to the two charges Tuesday, and that two children told Holly's

House representatives about the molestations in 2010, and that **Phillips** faces 4 to 16 years in prison. He will be sentenced January 12<sup>th</sup>. Said published statements by the Defendants that **Mark Phillips** was a convicted child molester were published with knowledge of its falsity and the Defendants acted with reckless disregard for the truth.

7) That the Defendants committed slander per se by falsely claiming that **Mark Phillips** committed a crime of moral turpitude.

8) That Plaintiff, **Mark Kelly Phillips**, has suffered humiliation, indignation, emotional distress, and grievous and substantial damages to his reputation and character as a result of the false reporting by the Defendants of being a convicted child molester, has suffered ridicule, damage to his professional and personal reputation within the community and the tri-state area, emotional and physical pain, disgrace, and stress within his marriage and with his family, embarrassment and loss of opportunity to achieve his potential as a professional and will continue to sustain substantial damages into the future.

**COUNT II**  
**LIBEL PER SE**

9) That Plaintiff, **Mark Kelly Phillips**, restates and incorporates herein, by reference, the factual allegations setforth in rhetorical paragraphs 1 through 8.

10) That the Defendants published the written false statement that **Mark Phillips** is awaiting sentencing for two counts of child molesting, that according to the Warrick County Prosecutor's Office, that **Mark Phillips** pleaded guilty to two charges Tuesday, that two children told Holly's House representations about the molestations in 2010, and that **Phillips** faces 4-16 years in prison and will be sentenced on January 12<sup>th</sup>. On the website of the two television stations, the Defendants transmitted the false statement over the Internet.

11) That by their actions, Defendants committed libel per se by falsely printing and publishing the statement that **Mark Phillips** committed a crime of moral turpitude, child molesting.

12) That **Mark Kelly Phillips** has suffered substantial damages as setforth in paragraph 8 and incorporated herein by reference.

**COUNT III**  
**DEFAMATION**

13) That Plaintiff, **Mark Kelly Phillips**, restates and incorporates herein, by reference, the factual allegations setforth in rhetorical paragraphs 1 through 12.

14) That the Defendants have published spoken and written false statements that **Mark Phillips** of Boonville is awaiting sentencing on two counts of child molesting, that **Mark Phillips** pleaded guilty to the two charges Tuesday, that two children told Holly's House representatives about the molestations in 2010, and that **Phillips** faces 4-16 years in prison and will be sentenced on January 12<sup>th</sup>, all as set forth in Exhibit "B".


15) That said statements were made by the Defendants with knowledge of their falsity and acted with reckless disregard for the truth and with malice; that said false statements have imputed defamation to the reputation and character of **Mark Kelly Phillips** within the community and the surrounding tri-state and has resulted in damages to the Plaintiff as enumerated in rhetorical paragraph 8 of this Claim.

**COUNT IV**  
**PUNITIVE DAMAGES**

16) That Plaintiff, **Mark Kelly Phillips**, restates and incorporates herein, by reference, the factual allegations setforth in rhetorical paragraphs 1 through 15.

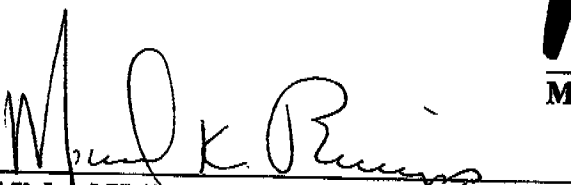
17) That the publications by Defendants of the false statements of moral turpitude, child molesting by **Mark Phillips**, as setforth in Exhibit "B", demonstrated that Defendants engaged in purposeful misconduct, constituting malice, fraud and gross negligence which is so reprehensible as to warrant the award of punitive damages.

WHEREFORE, Plaintiff, **Mark Kelly Phillips**, prays that the Court enter judgment, jointly and severally, against both Defendants and in favor of the Plaintiff, for compensatory and punitive damages, for the costs of this action and for all other just and proper relief in the premises.



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**Mark Kelly Phillips, Plaintiff**



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**Michael K. Phillips**, Attorney No. 5730-87  
Attorney for the Plaintiff, **Mark Kelly Phillips**  
**PHILLIPS AND PHILLIPS, P.C.**  
301 West Main Street  
Post Office Box 525  
Boonville, Indiana 47601  
Telephone: 812-897-3500  
FAX: 812-897-2990

**Plaintiff's Exhibit "A"**

Warrick County Prosecutor's Office

Media Release: November 30, 2011



Boonville, Indiana, November 30, 2011—The Warrick County Prosecutor's Office announces that on November 29, 2011, Mark S. Birge entered a guilty plea in two (2) separate cases to Child Molesting. The Defendant is represented by Mark Phillips.

The State filed charges against Mark Birge on June 29, 2010 and September 29, 2010 after investigations were conducted by the Boonville Police Department. Two children had disclosed the molesting during interviews conducted at Holly's House.

Trial Deputy Jennifer Greer is assigned the case. Prosecutor JoAnn Krantz commends Deputy Greer for her work on the cases.

The range of sentencing for the C Felonies is 4-16 years at the Indiana Department of Correction. The Defendant is set for Sentencing on January 12, 2012 at 8:30 a.m. before the Honorable Judge Robert R. Aylsworth.

Contact Information:

*JoAnn Jacob Krantz, Prosecuting Attorney  
Office of the Prosecuting Attorney for the  
Second Judicial Circuit of Indiana  
One County Square, Suite 180  
Boonville, Indiana 47601*

*Telephone: (812)897-6199*

*Fax: (812)897-6198*

*Email: [criminaldivision@warrickprosecutor.org](mailto:criminaldivision@warrickprosecutor.org)*

## Plaintiff's Exhibit "B"

[<< Back](#)



### Child Molestor Pleads Guilty

Posted: Dec 01, 2011 5:48 AM CST

Updated: Dec 01, 2011 5:48 AM CST

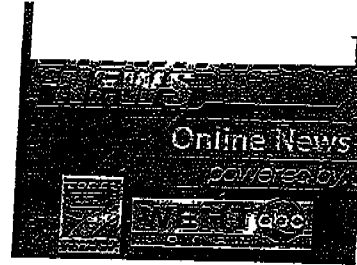
By Mike Fehn - bio | email

BOONVILLE, IN - A Boonville man is awaiting sentencing for two counts of child molesting.

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Phillips faces 4 to 16 years in prison. He will be sentenced January 12th.



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CLERK WARRICK CIRCUIT AND SUPERIOR COURTS

**APPEARANCE**

Party Classification: Initiating  Responding \_\_\_\_\_ Intervening \_\_\_\_\_

1) The undersigned attorney and all attorneys listed on this form now appear in this case for the following party member(s): **Plaintiff, Mark Kelley Phillips**

**Michael K. Phillips** Attorney Number: 5730-87  
**PHILLIPS AND PHILLIPS, P.C.** Telephone: 812-897-3500  
301 West Main Street FAX: 812-897-2990  
Post Office Box 525  
Boonville, Indiana 47601

2) Applicable attorney information for service as required by Trial Rule 5(B)(2) and for case information as required by Trial Rules 3.1 and 77(B) is as follows:

Name: \_\_\_\_\_ Attorney Number: \_\_\_\_\_  
Address: \_\_\_\_\_ Telephone: \_\_\_\_\_  
FAX: \_\_\_\_\_ E-mail Address: \_\_\_\_\_

[List on continuation page the additional attorneys appearing for the above party member(s)]

3) There are other party members: Yes \_\_\_\_\_ No \_\_\_\_\_ [If yes, list on continuation page]

4) If first initiating party filing this case, the Clerk is requested to assign this case the following Case Type under Administrative Rule 8(b)(3): \_\_\_\_\_

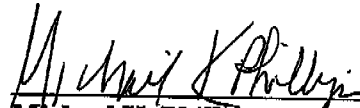
5) I will accept service by FAX at the above noted address: Yes \_\_\_\_\_ No

6) This case involves support issues: Yes \_\_\_\_\_ No

7) There are related cases: Yes \_\_\_\_\_ No  [If yes, list on continuation page]

8) This form has been served on all other parties. Certificate of service attached:  
Yes \_\_\_\_\_ No \_\_\_\_\_

9) Additional information required by Local Rule: \_\_\_\_\_  
\_\_\_\_\_



**Michael K. Phillips, Attorney No. 5730-87**  
Attorney for the Plaintiff, **Mark Kelly Phillips**  
**PHILLIPS AND PHILLIPS, P.C.**  
301 West Main Street, Post Office Box 525  
Boonville, Indiana 47601  
Telephone: 812-897-3500 FAX: 812-897-2990

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**SUMMONS PURSUANT TO TRAIL RULE  
4.10(A)(1), RULE 4.11 AND RULE 4.2**

**SERVE: Mission Broadcasting, Inc.  
c/o Registered Agent Corporation  
Service Company  
251 East Ohio Street  
Suite 500  
Indianapolis, Indiana 46204**

You have been sued by the person named "Plaintiff", in the Court stated above.

The nature of the suit against you is stated in the Claim which is attached to this document. It also states the demands which the Petitioner has made and wants from you.

You must answer the Claim in writing, by you or your attorney, within twenty (20) days, commencing the day after you receive this Summons, or judgment may be entered against you for what the Plaintiff has demanded

If you have a claim for relief against the Plaintiff arising from the same transaction or occurrence, you must assert it in your written answer.

The following manner of service of Summons is hereby designated: Certified Mail, Return Receipt Requested to Mission Broadcasting, Inc., c/o Registered Agent Corporation, Service Company, 251 East Ohio Street, Suite 500, Indianapolis, Indiana, 46204.

Dated: May , 2012.

Sarah E. Topper, Clerk, Warrick County Courts

BY: \_\_\_\_\_ (Deputy)  
(SEAL)

Attorney for the Petitioner:  
Michael K. Phillips, Attorney No. 5730-87  
PHILLIPS AND PHILLIPS, P.C.  
301 West Main Street  
Post Office Box 525  
Boonville, Indiana 47601  
Telephone: 812-897-3500 FAX: 812-897-2990

**CERTIFICATE OF MAILING**

I hereby certify, that on the \_\_\_\_\_ day of \_\_\_\_\_, 2012, I mailed a copy of this Summons and a copy of the Petition to the Respondent, by Registered or Certified mail, requesting a return receipt signed by the addressee only, addressed to the Respondent, at the address furnished by the Petitioner.

Dated: \_\_\_\_\_

Sarah E. Topper, Clerk, Warrick County Courts

BY: \_\_\_\_\_ (Deputy)

**RETURN ON SERVICE OF SUMMONS BY MAIL**

I hereby certify that service of Summons with return receipt requested as mailed on the \_\_\_\_\_ day of \_\_\_\_\_, 2012, and that a copy of the return was received on the \_\_\_\_\_ day of May, 2012, which copy is attached herewith.

Dated: \_\_\_\_\_

Sarah E. Topper, Clerk, Warrick County Courts

BY: \_\_\_\_\_ (Deputy)

**RETURN OF SERVICE ON SUMMONS BY SHERIFF**

I hereby certify that I have served the within Summons:

- 1) By delivering personally on the \_\_\_\_\_ day of May, 2012, a copy of the Summons and a copy of the Petition to the above named Respondent.
- 2) By leaving on the \_\_\_\_\_ day of May, 2012, for the above named Respondent, a copy of the Summons and a copy of the Petition at the respective dwelling place or usual place of abode with some person of suitable age and discretion whose duties or activities include prompt communication of such information of the person beings served.
- 3) By leaving on the \_\_\_\_\_ day of May, 2012, for the above named Respondent, a copy of the Summons and a copy of the Petition at the respective or usual place of business or employment with some person of suitable age and discretion whose usual duties or activities include prompt communication of such information to the person being served.

Whenever service is made on part 2 or 3, there shall be added:

That on the \_\_\_\_\_ day of May, 2012, I sent by first-class mail, a copy of the Summons without the Petition to the within named Respondent.

Brett Kruse, Warrick County Sheriff

BY: \_\_\_\_\_ (Deputy)

STATE OF INDIANA:

IN THE WARRICK SUPERIOR COURT NO. 1

COUNTY OF WARRICK:

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Plaintiff

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**SUMMONS PURSUANT TO TRAIL RULE  
4.10(A)(1), RULE 4.11 AND RULE 4.2**

**SERVE:**      **Connie Lawson, Secretary of State**  
**ATTENTION: Service of Process Clerk**  
**302 West Washington Street**  
**Room #108**  
**Indianapolis, Indiana 46204**  
**As Agent For Nexstar Broadcasting Group, Inc.,**  
**As An Unregistered Out Of State Corporation**  
**200 West Washington Street**  
**Indianapolis, Indiana 46204**  
**For Service To:**  
**Perry A. Sook, President, Chairman and CEO**  
**Nexstar Broadcasting Group, Inc.**  
**5215 North O'Connor Blvd., Suite 1400**  
**Irvin, Texas 75039**

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The nature of the suit against you is stated in the Claim which is attached to this document. It also states the demands which the Petitioner has made and wants from you.

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The following manner of service of Summons is hereby designated: Certified Mail, Return Receipt Requested to Connie Lawson, Secretary of State, ATTENTION: Service of Process Clerk, 302 West Washington Street, Room #108, Indianapolis, Indiana, 46204, As Agent For Nexstar Broadcasting Group, Inc., As An Unregistered Out Of State Corporation, 200 West Washington Street, Indianapolis, Indiana 46204, For Service To: Perry A. Sook, President, Chairman and CEO, Nexstar Broadcasting Group, Inc., 5215 North O'Connor Blvd., Suite 1400, Irvin, Texas 75039.

Dated: May           , 2012.

Sarah E. Topper, Clerk, Warrick County Courts

BY: \_\_\_\_\_ (Deputy)  
(SEAL)

Attorney for the Petitioner:  
Michael K. Phillips, Attorney No. 5730-87  
PHILLIPS AND PHILLIPS, P.C.  
301 West Main Street  
Post Office Box 525  
Boonville, Indiana 47601  
Telephone: 812-897-3500  
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