## IN THE CIRCUIT COURT FOR THE FOURTH JUDICIAL CIRCUIT EFFINGHAM COUNTY, ILLINOIS

ALTAMONT AMBULANCE SERVICE, INC.,	)	*
Plaintiff,	) No. 14-CH-45	
vs.	)	FILED
EFFINGHAM COUNTY ILLINOIS and	)	APR 0 9 2015
EFFINGHAM COUNTY BOARD	}	CLERK OF THE CIRCUIT COURT FOURTH JUDICIAL CIRCUIT EFEINGHAM COUNTY, ILLINOIS
Defendants.	)	FOURTH JUDICIAL CIRCUIT

## **ORDER**

The court conducted a hearing on plaintiff's motions to disqualify defendants' counsel, Christopher Koester, filed on February 17, 2015, and on plaintiff's motion to compel discovery filed via fax on 4-7-15. No objection was made by defendants to the lack of compliance with the three day notice requirement per local rule to proceeding on the latter motion. The court took these matters under advisement. The court now takes the matter off of advisement. The court has considered the arguments of counsel, case authority and statutory authority. The court finds as follows:

## 1. Motion to disqualify Attorney Koester

It is clear that the State's Attorney (SA) along with the Effingham County Board (Board) desire to have Attorney Koester provide representation in this litigation. Plaintiff first argues that the defendants have failed to comply with the Illinois Open Meetings Act and any actions taken to retain Attorney Koester are void. Prior to adjourning for the afternoon, the SA advised the court and the Plaintiff that the meeting was properly noticed. The court advised the SA to retrieve that proof by the close of business and it would be considered prior to ruling on this motion. Plaintiff had no objection to that.

The SA did provide two certified copies of notices of the meeting at issue to the court that seem to support the defendants' position. Plaintiff's counsel had already left the courthouse. In light of this information, the court can not find that the Board violated Open Meetings Act. The minutes of said meeting, however, state the Board voted to hire attorney Christ Koester. The minutes do not state that this was done with the consent of the SA or that Attorney Koester would be an assistant state's attorney.

Information provided via fox by TT on 4-10-15 does not change the courts finding.

Plaintiff correctly argues that the SA is the sole legal representative of the County and its officers pursuant to 55 ILCS 5/3-9005 with certain exceptions. The court agrees with the Plaintiff that the situation in this case is not an exception. The Board is authorized, however, to set the number of assistant state's attorneys pursuant to 55 ILCS 5/4-2003. Although the minutes of the December 18, 2014, Board meeting are silent as to the position of the SA, it is clear to the court that the SA concurred in and encouraged this decision as evidenced by his presence in court with Attorney Koester at today's hearing.

The court does not agree with defendants' position that the "services" language of 55 ILCS 5/3-9006 empowers the SA to hire attorneys outside of the assistant state's attorney realm. This section must be read in conjunction with Section 5/4-2003. The defendants' interpretation would render Section 5/4-2003 meaningless. Even if Section 5/4-2003 does not authorize it, the Board minutes say that the Board would hire Attorney Koester.

The court believes the Board attempted to comply with the spirit of the law although it did not follow the letter of the law. The court will allow the defendants until April 21, 2015, to remedy this issue and properly authorize the SA to employ one additional assistant state's attorney, assuming the SA still concurs with that process. The court will reserve ruling on this motion until that time. Assuming this issue is corrected, plaintiff's motion will be denied. Ruling otherwise would likely result in a delay to the underlying litigation which no one desires.

## 2. Plaintiff's motion to compel discovery

It is acknowledged by the parties that defendants owe the plaintiff additional discovery materials. While the court is not pleased with the defendants' lack of diligence, the court can not find that the defendants have intentionally delayed compliance with discovery. At this time, no sanction will be imposed. Defendants are ordered to provide any outstanding discovery to Plaintiff no later than April 15, 2015.

The Clerk is directed to forward this order via fax and mail the parties instanter.

Entered

Associate Judge