

Law No. 23-cv-03058
905-192 TMP/DAD

IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
SPRINGFIELD DIVISION

CHAD HAMMOND,

Plaintiff,

v.

BRIAN MCREYNOLDS, MONICA DURAN AND
CATHY STEPHENS,

Defendants.

Law No. 23-cv-03058-KLM

**DEFENDANT BRIAN MCREYNOLDS' MOTION TO PRECLUDE
PLAINTIFF FROM ISSUING FOIA REQUESTS DIRECTLY TO DEFENDANT**

NOW COMES Defendant BRIAN MCREYNOLDS, by THERESA M. POWELL of HEYL, ROYSTER, VOELKER & ALLEN, P.C., his attorneys, and for his Motion to Preclude Plaintiff from Issuing FOIA Requests Directly to Defendant or the Shelby County's Sheriff's Office, states:

1. This lawsuit arises out of the alleged violation of Plaintiff's 14th Amendment Rights and deliberate indifference to his medical needs against this Defendant, BRIAN MCREYNOLDS, and co-defendants, Monica Duran and Cathy Stephens.

2. This Defendant is the Sheriff of the Shelby County Sheriff's Office.

3. In addition to sending a Request to Produce to this Defendant, Plaintiff also has issued FOIA requests directly to the Shelby County's Sheriff's Office. See 8/12/2024 FOIA Request.

4. This amounts to an ex-parte communication, essentially invading the attorney-client privilege. Further, this discovery tactic circumvents proper discovery channels and abuses the discovery process.

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5. Illinois Supreme Court Rule 4.2, which is identical to the American Bar Association Rule 4.2, states: "In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order." Ill. R. Prof'l Conduct (2010) R. 4.2 (eff. Jan.1, 2010).

6. Illinois courts have held that this rule applies to *pro se* Plaintiffs: "Although Rule 4.2 references the conduct of a "lawyer," we note that the rule's title, "Communication with Person Represented by Counsel," suggests that the focus of the rule is less the status of the party doing the communicating than the status of the person with whom the party is trying to communicate. In any event, it is axiomatic that *pro se* litigants must comply with the same rules and are held to the same standards as licensed attorneys. Plaintiff, a party who chooses to represent himself, is therefore subject to Rule 4.2." *Zemater v. Vill. of Waterman*, 2020 IL App (2d) 190013, ¶¶ 18-19 (internal citations and quotations omitted).

7. Further, "Rule 34 establishes a procedure whereby, upon motion of any **party** showing good cause therefor and upon notice to all other parties, the court may order **any party** to produce and permit the inspection and copying or photographing of any designated documents, etc., not privileged, which constitute or contain evidence material to any matter involved in the action and which are in his possession, custody or control." *Hickman v. Taylor*, 329 U.S. 495, 502 (1947) (emphasis added).

8. However, "discovery, like all matters of procedure, has ultimate and necessary boundaries. As indicated by Rules 30(b) and (d) and 31(d), limitations inevitably arise when it can

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be shown that the examination is being conducted in bad faith or in such a manner as to annoy, embarrass or oppress the person subject to the inquiry." *Id.* at 507–08.

9. Plaintiff is communicating with this Defendant through FOIA requests to the Shelby County Sherriff's Office, his place of work in which he is the top official. This is in violation of Rule 4.2 and invades the attorney-client privilege. Plaintiff must communicate to this Defendant through his attorney pursuant to Rule 4.2.

10. Further, Rule 34 is the proper discovery channel in which parties obtain documents from other parties. Plaintiff's discovery tactic of sending a Request to Produce and FOIA requests to obtain information from this Defendant is improper as it is oppressive, duplicative, and burdensome. Thus, this Court should bar Plaintiff from sending FOIA requests to this Defendant and/or the Shelby County's Sherriff's Office.

WHEREFORE, for the foregoing reasons, Defendant prays for an order precluding Plaintiff from issuing FOIA Requests directly to Defendant or the Shelby County's Sheriff's Office, together with any such further relief deemed appropriate.

Respectfully Submitted,

BRIAN MCREYNOLDS, Defendant

s/ Theresa M. Powell

Theresa M. Powell, IL ARDC #: 6230402
HEYL, ROYSTER, VOELKER & ALLEN, P.C.
4205 Wabash Avenue
Springfield, IL 62711
Phone: 217.522.8822, Ext. 2222
Primary Email: sprexf@heyloyster.com
Secondary Email #1: tmpowell@heyloyster.com
Secondary Email #2: cskaggs@heyloyster.com

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PROOF OF SERVICE

I hereby certify that on August 27, 2024, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Peter R. Jennetten
QUINN JOHNSTON
227 NE Jefferson Avenue
Peoria, IL 61602
Email: jennettenpleadings@quinnjohnston.com; pjennetten@quinnjohnston.com
Counsel for Defendants Monica Duran and Cathy Stephens

I hereby certify that I have mailed a copy, by United States Postal Service, postage prepaid, to the following non-CM/ECF participant:

LEGAL MAIL
Chad Hammond, #K03998
Graham Correctional Center
12078 Illinois Route 185
Hillsboro, IL 62049
Plaintiff Pro Se

s/ Theresa M. Powell

Theresa M. Powell

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