IN THE SUPERIOR COURT OF COLQUITT COUNTY
STATE OF GEORGIA

DR. WILLIAM LEAMON MADISON *Plaintiff,* v. **COLQUITT COUNTY SCHOOL DISTRICT;** *Defendant.*	Civil Action No. 2021CV0431

PLAINTIFF'S MOTION FOR SANCTIONS AND MOTION TO COMPEL DEFENDANT AND ENJOIN DEFENSE COUNSEL FROM COMMANDING HIS CLIENTS "NOT TO ANSWER"

COMES NOW Plaintiff, Dr. William Leamon Madison, and files this Motion to Compel and Motion to Sanction Defendant due to sanctionable conduct at the Deposition of Defendant's Board Member Jon Schwalls on June 15, 2022. As of the time of filing, Defendant has not filed a motion for protective order. Plaintiff further seeks this Court to not only sanction Defendant but to compel Defendant to engage in proper discovery in the future.

FACTS:

Dr. William Leamon Madison graduated from Colquitt County Schools as a football athlete, then working his way up for nearly two decades within the school system from a paraprofessional all the way to elementary school principal. For 17 years, Dr. Madison received stellar job evaluations until he spoke out against race discrimination, where he was subjected to a hostile work environment and explicit discrimination. *See* Complaint ¶8, 15-20. Dr. Madison was threatened with lynching and reported this hate crime. Three days after reporting the lynching threat, the Board of Education voted to non-renew Dr. Madison's contract. *See* Complaint, ¶15-20. Dr. Madison requested emails and texts messages that concerned him

exchanged between the Superintendent, various Board members, and certain District employees. *See* Complaint ¶24.

To date, Defendant continues to evade and withhold Open Records in violation of the Georgia Open Records Act. See Complaint ¶24. Evidence to show their motive and intent for doing so is relevant and discoverable.

In a neighboring case, the Chief Judge of the Superior Court of Charlton County Schools issued an order after a trial/bench hearing finding the School District in violation of the Georgia Open Records Act in the case of *Dr. Sherilonda Green v. Charlton County Schools*, Civil Action No. SUCV202000211, Superior Court of Charlton County (February 22, 2022). Here, the Court discussed the evidence of race discrimination throughout the Order as "compelling and relevant" to establish motive in the case. *See*, Exhibit 1, Trial Order, p. 8:

> **This record is replete with evidence of systemic discrimination and discrimination against Dr. Green personally. The Court finds Dr. Green's testimony and evidence of systemic and personal discrimination compelling and relevant to establish motive in this case. However, the existence of racial discrimination or the lack thereof does not give rise to proof of an ORA violation. Motive—here, racial discrimination—is a mere factor which the Court considers, as it does all other facts in the case.**

Motive and intent are particularly relevant as a Court, pursuant to the Georgia Open Records Act must determine whether a party acted "without substantial justification" or with "good faith reliance" in determining whether attorney fees and cost will be assessed in favor of the complaining party. O.C.G.A. § 50-18-73 (b)(c).

Counsel for the Defendant, Mr. Apu Paul should be sanctioned because he improperly directed his client, Jon Schwalls, a Board Member who wrote an extremely critical letter against Plaintiff Dr. Madison for speaking out against race discrimination, "not to answer" questions pertaining to race discrimination. *See* Exhibit 2, Schwalls letter; Exhibit 3, Schwalls Dep. 33-47.

Jon Schwalls was noticed for a deposition as well as subpoenaed to bring all documents in his possession relevant to the facts set forth in the complaint (which of course included facts of race discrimination.) *See* Exhibit 3, Notice and Subpoena of Jon Schwalls.

It is wholly improper, a violation of the Georgia Civil Practices Act, and sanctionable conduct for Defense counsel to instruct his client not to answer questions pertaining to race discrimination, relevant, discoverable information that goes to show the intent and motive of the Defendant.

Under the Georgia Civil Practice Act, a party can obtain discovery regarding any matter, not privileged, relevant to the subject matter of the pending action. O.C.G.A. § 9-11-26. Notably, Georgia courts have also held that, where relevance is doubtful, the evidence should normally be admitted, and its weight left to the determination of the jury. *Kalish v. King Cabinet Co.*, 140 Ga. App. 345, 346, (1976). Concerning discovery however, the information **sought need not be admissible at trial, only reasonably calculated to lead to the discovery of admissible evidence**. *E.g., Ambassador College v. Goetzke*, 244 Ga. 322, 323 (1979) (Court affirmed it was not error to compel discovery Appellant (a College) arguing disclosures sought would violate its constitutional rights of free exercise and non-establishment of religion; freedom of association; privacy; and/or security in their persons, houses, paper and effects against unreasonable searches and seizures.) "Discovery is an integral and necessary element of our civil practice. **Wide latitude is given to make complete discovery possible**. **The broad purpose** of the discovery rules, under the Civil Practice Act, **is to enable the parties to prepare for trial** so that each party will know the issues and be fully prepared on the facts. Discovery is specifically designed to fulfill a two-fold purpose: issue formulation and factual revelation. The use of the discovery process has been held to be **broadly construed**." § 15:2. Scope of discovery: in general, Ga.

Practice & Procedure § 15:2 (2018-2019 ed.); *E.g., Travis Meat & Seafood Co. v. Ashworth*, 127 Ga. App. 284, 285 (1972).

In the case at bar, it is essential that individuals s be deposed in order to obtain discovery concerning the Defendant's intentional conduct in thwarting the Open Records Act due to their motive to hide evidence of race discrimination.

Every party is entitled to discover *all* relevant, non-privileged information in the possession or control of any person, including a corporate defendant. O.C.G.A. §9-11-26. "Relevance," in the context of discovery, is a far less stringent burden than "admissibility" at trial. *Id* at (b)(1). ("Relevant" includes all evidence that "appears reasonably calculated to lead to the discovery of admissible evidence."); *Bullard v. Ewing*; 158 Ga. App. 287, 291 (1981) ("The discovery procedure is to be given a liberal construction in favor of supplying a party with the facts without reference to whether the facts sought are admissible upon the trial of the case.")

In our case at bar, the evidence shows that the Defendant is engaged in thwarting the Georgia Open Records Act to hide evidence of race discrimination against a Principal who was threatened with lynching and terminated after speaking out against discrimination. Consequently, Plaintiff should be entitled to ask such questions pertaining to race discrimination to show intent and motive for thwarting Open Records as it is reasonably calculated to lead to the discovery of admissible evidence, a standard that is to be given "wide latitude" and to be "broadly construed." § 15:2. Scope of discovery: in general, Ga. Practice & Procedure § 15:2 (2018-2019 ed.); *see, e.g., Travis Meat & Seafood Co. v. Ashworth*, 127 Ga. App. at 285.

SANCTIONABLE CONDUCT BY DEFENDANT'S COUNSEL

Defendant's Counsel has a history of instructed his client "not to answer" questions and has had motion for sanctions filed against him in a separate case for such conduct. *Kristie Hilton*

v. Brooks County Schools, et al, Civil Action No. 7:20-cv-00227, Doc. 35, Middle District of Georgia (January 28, 2022).

Trial courts have broad discretion to control discovery, including the imposition of sanctions. *Daniel v. Corporate Property Investors,* 234 Ga.App. 148 (1998). Absent the showing of a clear abuse of discretion, a court's exercise of that broad discretion will not be reversed. Id. Here, no abuse has been shown. *Tompkins v. McMickle,* 172 Ga.App. 62, 64(2) (1984).

"The law authorizing the imposition of sanctions for discovery-related abuses is not ambiguous, uncertain, or arcane. OCGA § 9–11–37(d)(1). …Among several other options, subsection (b)(2)(C) authorizes a court to enter an order "dismissing the action or proceeding or any part thereof." OCGA § 9–11–37(b)(2)(C). Moreover, an order compelling discovery is not a condition precedent for the imposition of sanctions under subsection (d). *Cook v. Lassiter,* 159 Ga.App. 24, 25, 282 S.E.2d 680 (1981). All that is required is a motion, notice, and a hearing." *Rivers v. Almand*, 241 Ga. App. 565, 566, 527 S.E.2d 572, 574 (1999)

Moreover, "the United States Supreme Court has recognized a court's inherent power to impose sanctions, including dismissal, in response to abusive litigation practices. *Link v. Wabash Railroad Co.,* 370 U.S. 626, 632–33, 82 S.Ct. 1386, 8 L.Ed.2d 734 (1962); *see also Malautea,* 987 F.2d at 1545 (any court has the inherent power to impose reasonable sanctions upon litigants)." *Parrish v. Freightliner, LLC*, 471 F. Supp. 2d 1262, 1268 (M.D. Fla. 2006).

PLAINTIFF SEEKS THE FOLLOWING SANCTIONS AND COMPEL ORDER

1) Plaintiff seeks the cost of attorney fees and expenses of deposition having to be conducted a second time.
2) Plaintiff seeks the Court to Order Defendant to answer Plaintiff's questions concerning race discrimination and enjoin Defense Counsel from commanding his

client "not to answer."

CONCLUSION

WHEREFORE, Plaintiff requests that this Court grant his Motion and impose sanctions as stated herein.

Respectfully submitted this 16th day of June 2022,

WILLIAMS OINONEN LLC

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CERTIFICATE OF SERVICE

This is to certify that I have this day served a true and correct copy of the within and foregoing PLAINTIFF'S MOTION FOR SANCTIONS AND MOTION TO COMPEL DEFENDANT AND ENJOIN DEFENSE COUNSEL FROM COMMANDING HIS CLIENTS "NOT TO ANSWER" to the following individuals by email through PeachCourt eService system:

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Respectfully submitted this 16th day of June 2022,

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