

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

John Freshwater, et al.,	)	
	)	CASE NO. 2:09 cv 464
Plaintiff,	)	
	)	JUDGE FROST
vs.	)	MAGISTRATE JUDGE KING
	)	
Mount Vernon City School District Board of	)	
Education, et al.,	)	
	)	
Defendants.	)	

**DECLARATION OF SARAH J. MOORE**

Sarah J. Moore, pursuant to 28 U.S.C. § 1746, declares as follows:

1. I am a member of the law firm of Britton, Smith, Peters & Kalail, Co., L.P.A. and one of the attorneys representing Defendants Mount Vernon City School District Board of Education, Ian Watson, Jody Goetzman, Stephen Short and William White (hereinafter "Defendants"), in this case.

2. I have knowledge regarding the events surrounding Defendants' counsels' service of Defendants' various document requests upon Plaintiffs John and Nancy Freshwater.

3. On May 3, 2010, Defendants, through counsel, served the following onto Plaintiffs attorney, R. Kelly Hamilton: *Defendant Mount Vernon City School District Board of Education's First Set of Interrogatories Propounded to Plaintiff Nancy Freshwater; Defendant Mount Vernon City School District Board of Education's First Request for Production of Documents Propounded to Plaintiff Nancy Freshwater; and Defendant Mount Vernon City School District Board of Education's First Request for Production of Documents Propounded to*

*Plaintiff John Freshwater*. A true and accurate copy of the above mentioned items is attached as Exhibit 1 to Defendants' Motion to Compel.

4. On May 10, 2010, Defendants, through counsel, served the following onto Plaintiffs' attorney, R. Kelly Hamilton: *Defendant Mount Vernon City School District Board of Education's First Set of Interrogatories Propounded to Plaintiff John Freshwater; Defendant Ian Watson's First Set of Interrogatories Propounded to Plaintiff John Freshwater; Defendant Jody Goetzman's First Set of Interrogatories Propounded to Plaintiff John Freshwater; Defendant Stephen Short's First Set of Interrogatories Propounded to Plaintiff John Freshwater; and Defendant William White's First Set of Interrogatories Propounded to Plaintiff John Freshwater*. A true and accurate copy of the above mentioned items is attached as Exhibit 2 to Defendants' Motion to Compel.

5. On June 5, 2010, I sent R. Kelly Hamilton a letter indicating that his clients' responses to Defendants' May 3, 2010 discovery requests were due June 2, 2010. The discovery responses were not provided as of that date and I requested that he provide his clients' responses by the end of the day on June 11, 2010. A true and accurate copy of the June 5, 2010 letter is attached to this declaration.

6. On June 9, 2010, I received an email response from R. Kelly Hamilton indicating that he had been unable to address my emails concerning the discovery in question due to his work with his client's administrative hearing. A true and accurate copy of the June 9, 2010 letter is attached to this declaration.

7. On June 15, 2010, I sent Mr. Hamilton an email indicating that his clients had not yet provided their responses to Defendants' May 3, 2010 and May 10, 2010 discovery requests. I indicated that I would not extend the response time any further and demanded that his clients

provide the discovery requested by June 16, 2010. A true and accurate copy of the June 15, 2010 email is attached to this declaration.

8. Mr. Hamilton emailed me on June 15, 2010 in response to my email sent earlier that day. He indicated that he had been busy and was unable to provide the requested discovery. He indicated in the email that he would provide the requested discovery before or on June 21, 2010. A true and accurate copy of Mr. Hamilton's June 15, 2010 letter is attached to this declaration.

9. After the mediation on June 21, 2010, I approached Mr. Hamilton for the outstanding discovery responses. Mr. Hamilton stated he did not have the responses, was working on them, but refused to give a date certain by which the responses would be given. In one breath Mr. Hamilton stated I could expect some items would be made available to me the next day and some others within a few days, and in then in the very next breath he stated his clients would give responses they had when they were ready (with no date certain) and had an obligation to supplement – giving the impression Plaintiffs' intended to engage in a discovery game of cat and mouse. I asked Mr. Hamilton whether all audio recordings would be produced and he explained that he had some of the audio recordings requested in his possession, but not all of them. When I finally asked Mr. Hamilton to clarify if what he was saying meant that I could expect the responses by Friday, June 25, 2010, he simply reiterated his previous statements and repeated himself about supplementation. He would not provide a date certain despite repeated request. I responded that if I did not receive the discovery responses at my office by close of business on June 25, 2010, I would have no choice but to file a motion to compel.

10. I confirmed with Mr. Hamilton the June 21, 2010 conversation I had with him that day via email on June 22, 2010. In that email, I stated my clients expected his clients' full and

adequate responses would be at my office by 5:00 p.m. on June 25, 2010 and that I would seek court intervention if he failed to do so. A true and accurate copy of my June 22, 2010 letter is attached to this declaration.

11. On June 23, 2010, Mr. Hamilton sent me an email containing what he purported to be "Plaintiffs' first responses to discovery." Mr. Hamilton blamed his untimely responses on an event out of his control, this time, a fatal accident on State Route 71 that delayed his return to his office by hours. Upon inspection of the attached items, it was apparent that Plaintiffs' "discovery responses," were in fact, unresponsive, with the exception of Plaintiff Nancy Freshwater's answers to Interrogatory Nos. 1-5 and 13-14. John Freshwater's sole discovery response was: "As to each of the numerated [sic] items requested for production, Plaintiff will supplement by Friday, June 25, 2010." A true and accurate copy of Mr. Hamilton's June 23, 2010 email is attached to this declaration. A true and accurate copy of the relevant pages of Plaintiffs' June 23, 2010 discovery responses is attached as Exhibit 4 to Defendants' Motion to Compel.

12. I replied to Mr. Hamilton's June 23, 2010 email, notifying him that his clients' responses did not meet the requirements of Civ. R. 33 and Civ. R. 34, with the exception of Plaintiff Nancy Freshwater's answers to Interrogatory Nos. 1-5 and 13-14. A true and accurate copy of my June 23, 2010 email is attached to this declaration.

13. By June 25, 2010 at 5:00 p.m., Plaintiffs failed to produce at my office their responses to my clients' May 3, 2010 and May 10, 2010 discovery requests in accordance with Civ. R. 33 and Civ. R. 34, with the exception of Plaintiff Nancy Freshwater's answers to Interrogatory Nos. 1-5 and 13-14. Further, Mr. Hamilton refused, failed, and neglected to contact me as of the time of this filing to inform me of the status of his clients' discovery responses.

14. Defendants, through counsel, made numerous good faith attempts to resolve this discovery dispute without court intervention.

15. I declare under the penalty of perjury that the foregoing is true and correct.

Executed on June 26, 2010.

/s/ Sarah J. Moore

Sarah J. Moore

**Britton Smith Peters & Kalail** CO., L.P.A.  
ATTORNEYS AT LAW

Direct Dial: 216-503-5068  
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Sherrie Clayborne Massey  
Sarah J. Moore  
Kathryn I. Perrico  
Scott C. Peters  
David Kane Smith  
Michael E. Stinn  
Andrea E. Stone  
Peter T. Zawadski

June 5, 2010

*Via E-mail transmission*

R. Kelly Hamilton, Esq.  
Bowshier Hamilton, LLC  
4030 Broadway  
Grove City, Ohio 43123

RE: *John D. Freshwater v. Mount Vernon City School Dist. Bd. of Edn. et al.*, U.S. Dist. Court for the Southern District of Ohio Case No. 2:09 cv 464

Dear Mr. Hamilton,

On May 3, 2010, you were served with the following discovery requests:

1. *Defendant Mount Vernon City School District Board of Education's First Set of Interrogatories Propounded to Plaintiff Nancy Freshwater;*
2. *Defendant Mount Vernon City School District Board of Education's First Request for Production of Documents Propounded to Plaintiff Nancy Freshwater; and*
3. *Defendant Mount Vernon City School District Board of Education's First Request for Production of Documents Propounded to Plaintiff John Freshwater.*

Your clients' responses were due June 2, 2010. To date, the responses have not been provided and you have not contacted us in regard to their status.

Kindly provide your clients' full and complete responses no later than June 11, 2010. Should you not have the responses to this office by close of business on June 11, 2010, we will be forced to seek the Court's intervention.

Sincerely,



Sarah J. Moore

June 5, 2010

Page No. 2

cc: David Smith  
Krista Keim  
Paul Deegan  
Nicole Donovsky  
Joe McCullough  
Larry Greathouse

**Sarah Moore**

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**From:** R. Kelly Hamilton [hamiltonlaw@sbcglobal.net]  
**Sent:** Wednesday, June 09, 2010 7:42 AM  
**To:** Sarah Moore  
**Subject:** In Re John Freshwater - (Various Items)

As you many know I have been involved in the state hearing for the last five (5) business days and for many days preceding those five hearing dates. Accordingly I have been unable to address your emails. As I am catching up with many different tasks today and tomorrow I expect to fully respond to your email inquiries also. Thank you for your patience.

Respectfully,

R. Kelly Hamilton  
BOWSHIER † HAMILTON, LLC  
4030 Broadway, Grove City, Ohio 43123  
Mail to: P.O. Box 824, Grove City, Ohio 43123  
Phone 614-875-4174, Fax 614-875-4188

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**Sarah Moore**

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**From:** Sarah Moore  
**Sent:** Tuesday, June 15, 2010 7:25 AM  
**To:** hamiltonlaw@sbcglobal.net  
**Cc:** 'Nicole Donovan'; 'Larry Greathouse'; jmccullough@wgmlpa.com; David J. Millstone; David K. Smith; Krista K. Keim; Paul J. Deegan  
**Subject:** Freshwater v. Mt. Vernon City School Dist. Bd. of Edn.  
**Attachments:** bannerlogo.gif

**Britton Smith Peters & Kalail** CO., L.P.A.  
ATTORNEYS AT LAW

Dear Mr. Hamilton:

This correspondence seeks response on several outstanding matters.

- 1) In my client's mediation response, sent June 4, 2010, my clients requested all parties agree to a joint motion for a gag order. We informed all parties we would file a motion for the gag order and to continue the mediation if any party did not agree to a gag order in regard to settlement matters. To date, the other Defendants counsel have all notified me they are in agreement with the proposed joint motion and gag order. You remain silent on the issue.
- 2) Certain discovery responses from your clients were due on June 2, 2010. Having not received either the responses or any communication from you regarding them, I wrote you June 5, 2010 insisting we receive those responses no later than June 11, 2010. To date, the responses have not been received nor have you communicated in regard to their status. While I recognize you emailed me on June 9, 2010 indicating you would respond to my inquiries either that day or the following, you have not provided the promised communication nor have you substantively addressed the outstanding issues.
- 3) Certain discovery responses from John Freshwater were due on June 10, 2010. To date, no responses or any communication from you regarding them has been received.

As you know, Judge Frost is stringent on his timelines. We must insist on receiving the responses that had been due June 4, 2010 and June 10, 2010 no later than close of business tomorrow. We will not extend the response time any further and will seek the Court's assistance on the discovery response deficiencies, along with the associated attorney fees and expense, should you responses not be received in our office by tomorrow at 5:00 p.m.

Additionally, should you not agree to the proposed joint motion for a gag order and the associated order by close of business tomorrow, Defendants will file a motion seeking that relief along with a motion to continue the mediation set for Monday, June 21, 2010.

Sincerely,

Sarah Moore

**Sarah Moore**

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**From:** R. Kelly Hamilton [hamiltonlaw@sbcglobal.net]  
**Sent:** Tuesday, June 15, 2010 10:32 AM  
**To:** ndonovsky@mbblaw.com; Sarah Moore  
**Subject:** Freshwater v. Mt Vernon BOE, et al - Discovery Responses

I want to update you about the progress being made in Plaintiffs John and Nancy Freshwater's discovery responses. It is important to note that on behalf of the Freshwater's I received multiple discovery requests from all of the defendants. All of the discovery requests arrived within one week of each other. The arrival of the discovery requests coincided with preparations that were taking place in the state administrative hearing. Thus, it has been difficult to fully progress each of the competing demands. Couple the above demands with the personal demands of preparing a son for active military duty, a daughter for a missions trip to Nicaragua and my own family demands, and the task of completing all of the discovery has become overwhelming. It is my intent to provide you with responses to the discovery before or on the scheduled mediation date of June 21, 2010. I appreciate your cooperation in this matter.

R. Kelly Hamilton  
BOWSHIER † HAMILTON, LLC  
4030 Broadway, Grove City, Ohio 43123  
Mail to: P.O. Box 824, Grove City, Ohio 43123  
Phone 614-875-4174, Fax 614-875-4188

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**Sarah Moore**

---

**From:** Sarah Moore  
**Sent:** Tuesday, June 22, 2010 7:04 PM  
**To:** hamiltonlaw@sbcglobal.net  
**Cc:** David K. Smith; Krista K. Keim; Paul J. Deegan; 'Nicole Donovan'; 'Larry Greathouse'; jmccullough@wgmlpa.com  
**Subject:** Freshwater v. Mt. Vernon City Sch. Dist. Bd. of Edn.  
**Attachments:** image001.gif

**Britton Smith Peters & Kalail** CO., L.P.A.  
ATTORNEYS AT LAW

Dear Mr. Hamilton:

This serves to confirm our discussion after the mediation yesterday. Despite your representation last week, your clients' answers to our discovery requests were not provided to us before or on June 21, 2010. When questioned when the answers will be available, you refused to provide a date certain. I stated we expected the answers to be provided to us at our office no later than 5:00 p.m. Friday, June 25, 2010.

This serves to notify you that my office will not wait until Monday, June 28, 2010 to file the Motions to Compel should your clients remain non-compliant. Rather, we intend on filing said motions Saturday June 26, 2010 in the event the outstanding discovery responses are not provided.

Last, your comment that you will supplement your answers as needed seemed to imply you intend on not providing full and complete answers when your clients finally respond to the outstanding discovery. Your involvement on behalf of the Freshwater family has been documented since April 17, 2008. To say you are intimately aware of all documents and information related to their claims is an understatement. Should your clients' answers not be full and complete, my clients will not hesitate to involve the Court. Judge Frost made quite clear to your clients in the other pending matter that discovery is not a shell game. Rather, full and candid disclosure is mandated. Should you and your clients refuse to comply with the letter, intent and spirit of Rules 33 and 34, we will pursue the appropriate remedies, including sanctions.

We look forward to receiving your clients' full and complete responses, inclusive of the requested metadata no later than 5:00 p.m. Friday, June 25, 2010.

Sincerely,

Sarah Moore

**Sarah Moore**

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**From:** R. Kelly Hamilton [hamiltonlaw@sbcglobal.net]  
**Sent:** Wednesday, June 23, 2010 6:37 AM  
**To:** Sarah Moore  
**Subject:** 2:09 CV 464 - Freshwater v. MTBOE, et al  
**Attachments:** D-BOE 1st Interr to NF RESPONSES - Copy.pdf; D-BOE 1st RPD NF RESPONSES - Copy.pdf; D-BOE 1st RPD to JF 1st RESPONSES - Copy.pdf; D-BOE 1st Set of Interrs to Pltff RESPONSES - Copy.pdf; D-Goetzman 1st Set of Interrs to JF RESPONSES - Copy.pdf; D-Short 1st Set of Interrs to JF RESPONSES - Copy.pdf; D-Watson 1st Set of Interrs to Pltff RESPONSES - Copy.pdf; D-White 1st Set of Interrs to JF RESPONSES - Copy.pdf

Sarah Moore,

Attached please find Plaintiff's first responses to discovery. After the hearing yesterday there was a shutdown of Interstate 71 southbound for several hours due to a fatal accident around Polaris which caused my delay in getting back to office and delaying my response last evening. As discussed at the mediation on Monday, June 21, 2010, Plaintiffs supplemental responses will be available on Friday, June 25, 2010. As previously explained, both Plaintiffs and I have been very busy with the state hearing and other matters. Now that the state hearing evidentiary phase has concluded, Plaintiffs and I can dedicate more time to this case.

R. Kelly Hamilton  
BOWSHIER † HAMILTON, LLC  
4030 Broadway, Grove City, Ohio 43123  
Mail to: P.O. Box 824, Grove City, Ohio 43123  
Phone 614-875-4174, Fax 614-875-4188

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**Paul J. Deegan**

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**From:** Sarah Moore  
**Sent:** Wednesday, June 23, 2010 8:52 AM  
**To:** hamiltonlaw@sbcglobal.net  
**Cc:** Nicole Donovsky; 'Larry Greathouse'; jmcullough@wgmlpa.com; David K. Smith; Krista K. Keim; Paul J. Deegan  
**Subject:** Freshwater v. Mt. Vernon City Sch. Dist. Bd. of Edn. - outstanding discovery

**Britton Smith Peters & Kalail** CO., L.P.A.  
ATTORNEYS AT LAW

Dear Mr. Hamilton:

We have reviewed the materials you sent this morning. Your characterization of these items as "Plaintiff's first responses to discovery" is misleading and wholly inaccurate. Replicating the original request with a line item reading: "As to each of the numerated items requested, Plaintiff will supplement by Friday June 25, 2010" does not constitute a response under Rules 33 or 34.

Further, we consider Nancy Freshwater's answers to interrogatories deficient as to Interrogatory Nos. 6, 7, 8, 9, 10, 11, 12(b), 12(c), and 12(d). Please be sure to provide full and complete responses as to these items by Friday, June 25, 2010.

From our perspective, Mr. Freshwater has not provided any responses to the outstanding discovery to date and Mrs. Freshwater has only provided responses to Interrogatory Nos. 1 – 5, 13, and 14.

Sincerely,

Sarah

**Britton Smith Peters & Kalail** CO., L.P.A.  
Sarah J. Moore  
Attorney  
3 Summit Park Dr. Suite 400  
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