

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

**THOMAS D'ANGELO,**

Plaintiff,

v.

**PAUL PARENT, CLINTON TOWNSHIP,**  
a municipal entity, **NICHOLAS DYKAS,**  
**JASON FIGURSKI** and **KEITH WATSON,**  
in their official and individual capacities,  
jointly and severally,

Defendants.

**CASE No. 2:10-cv-12195**  
**HONORABLE LAWRENCE P. ZATKOFF**  
**MAGISTRATE MONA E. MAJZOUB**

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**AMOS E. WILLIAMS (P39118)**  
**THOMAS E. KUHN (P37924)**  
**AMOS E. WILLIAMS, P.C.**  
Attorneys for Plaintiff  
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**PETER W. PEACOCK (P37201)**  
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Attorneys for Defendants Clinton Township  
Dykas, Figurski and Watson  
10 S. Main Street, Suite 400  
Mt. Clemens, Michigan 48043  
(586) 466-7605

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**NOTICE OF HEARING**

PLEASE TAKE NOTICE that the *PLAINTIFF'S MOTION TO COMPEL DISCOVERY AND FOR SANCTIONS* in the above-captioned cause will be brought to hearing at a time and place set by the Court.

s/Amos E. Williams  
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(P39118)

Dated: February 25, 2011

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**THOMAS D'ANGELO,**

Plaintiff,

v.

**PAUL PARENT, CLINTON TOWNSHIP,**  
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**MOTION TO COMPEL DISCOVERY AND FOR SANCTIONS**

NOW COMES Plaintiff, by and through his attorneys, AMOS E. WILLIAMS, P.C., and pursuant to Federal Rules of Civil Procedure, moves this Honorable Court for sanctions against Defendants. In support of his motion the Plaintiff says:

1. Plaintiff filed a complaint alleging violation of Plaintiff's civil rights as well as various state tort claims.
2. Plaintiff sent his First Interrogatories and Requests.
3. Defendant did not respond to the discovery.

4. Plaintiff contacted Defendants with a request for concurrence in an order, but got no response.
5. Only after a court order did Defendants provide some documentation.
6. During depositions of Defendants it became obvious that the Defendant Township had been withholding significant discovery. **(Ex. 1)**
7. In particular, Defendants testified that the Township had audio and video of the booking and intake areas of the Township police department, which records were never provided to Plaintiff. Further, Defendants testified to daily logs, daily lineups, fingerprint/photograph information, booking sheet, arrest book and other information directly related to Plaintiff's arrest, which Defendant had failed to produce.
8. Defendants also testified to a citizen complaint process, and several citizen complaints made against Defendants. None of these were produced despite court orders.
9. Plaintiff contacted Defendants with a request for concurrence in order covering these missing records, and Defendants agreed to an order producing the records on or before January 24, 2011.
10. Despite the order, Defendants have failed to produce any records.
11. Plaintiff has contacted Defendants to get the records or proceed with a motion, but have gotten no response

**WHEREFORE**, Plaintiff respectfully requests that this Court order defendants to provide the requested discovery within seven (7) days and that the Court sanction

Defendants as allowed under Federal Rules of Civil Procedure, including, but not limited to default, preclusion of Defendants from testifying at trial, preclusion of Defendants from contesting their wrongful conduct, and/or to require defendants to pay reasonable attorney fees and expenses for forcing the bringing of this motion.

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### **BRIEF IN SUPPORT OF MOTION TO COMPEL**

Plaintiff has brought claims against Defendants for violation of civil rights, including claims against the Defendant Township for municipal liability under its custom, policy and practice. This incident arose when Plaintiff

Plaintiff sent his First Interrogatories & Requests, and Defendants refused to respond. Only after a court order did Defendants provide some documentation.

During depositions of Defendants it became obvious that the Defendant Township had been withholding significant discovery. In particular, Defendants testified that the Township had audio and video of the booking and intake areas of the Township police department, which records were never provided to Plaintiff. Further, Defendants testified to daily logs, daily lineups, fingerprint/photograph information, booking sheet, arrest book and other information directly related to Plaintiff's arrest, which Defendant had failed to

produce. Defendants also testified to a citizen complaint process, and several citizen complaints made against Defendants. None of these were produced despite court orders. Plaintiff contacted Defendants with a request for concurrence in order covering these missing records, but got no response.

## **II. Plaintiffs' Constitutional Claims**

Plaintiff has alleged a violation of their constitutional rights, particularly his Constitutional right to be free from retaliation, harassment, wrongful arrest, wrongful prosecution and excessive use of force by Defendant police officers. A municipality may be held liable for an officer's wrongful treatment, retaliation, and violation of civil rights when it fails to receive, investigate and act on citizen complaints. See, e.g., Harris v. City of Pagedale, 821 F2d 4999 (8<sup>th</sup> Cir. 1987); Haberthur v. City of Raymore, Mo., 119 F3d 720 (8<sup>th</sup> Cir. 1997).

A municipality's prior notice of misconduct by officers creates an issue of fact regarding its custom of not doing anything to investigate or discipline this kind of complaint. Harris v. City of Pagedale, 821 F2d 4999 (8<sup>th</sup> Cir. 1987); Czajkowski v. Chicago, 810 Fed Supp 1428 (N.D. Ill, 1992).

Plaintiffs are required to show a persistent pattern of misconduct and a failure by the policymakers to adequately address the problem. As the court in Britton stated:

Unlike a 'policy', which comes into existence because of affirmative decision of a policymaker, a custom develops from the bottom up. Thus, the liability of the municipality for customary constitutional violations derives not from its creation of the custom, but from its tolerance of or acquiescence in it.

Britton, 901 F Supp 444, 450 (D Mass 1995)

See also, City of Canton v. Harris, 489 U.S. 378 (1989).

The courts have established two (2) different approaches on failure to train cases. First, a Plaintiff may establish a failure to train officials in a specific area where there is an obvious need for training to avoid Constitutional violations. See, e.g., Doe v. Estes, 926 Fed Supp 979, 988 (D Nev, 1996); Bolon v. Rolla Public Schools, 917 Fed Supp 1423, 1431 (ED Mo. 1996); Reynolds v. Borough of Avalon, 799 Fed Supp 442, 447 (DNJ, 1990).

Second, a Plaintiffs may establish a pattern of unconstitutional conduct that is so pervasive as to imply actual or constructive knowledge by policy makers who fail to act on the obvious need for training. Several courts establish criteria for that kind of pervasive pattern. See, e.g., Beck v. City of Philadelphia, 89 F3d 966 (3<sup>rd</sup> Cir. 1996).

The CITY'S investigation of the misconduct can't merely be a sham. See, e.g., Beck v. City of Philadelphia, 89 F3d 966 (3<sup>rd</sup> Cir. 1996).

Even if a City supplies minimal training that may not be adequate to preclude its § 1983 liability. See, e.g., Russo v. City of Cincinnati, 953 F2d 1036, 1047 (6<sup>th</sup> Cir. 1992).

In the present case, Defendant CITY refuses to provide the very information that Plaintiffs are required to present to prove a case of an un-Constitutional custom.

The Thomas court pointed out the importance of discovery concerning misconduct and the municipality's response to that misconduct:

Defendants argue that there is no practice or custom of permitting sexual harassment or assault because the District of Columbia regulations expressly prohibit intimate relations. . . This argument misses the point. While the regulations may exist, violations of them, or a pattern of such violations, may themselves be a practice or custom. The District of Columbia is not off the hook merely because regulations exist.

Thomas V. District of Columbia, 887 F Supp 1, 5 (DDC, 1995)

In the present case, Plaintiff's requests are relevant to showing a pervasive pattern of retaliation and constitutional violations by the City Police Department and to showing the inadequacy of the Department's response to that type of misconduct. All the requested discovery is therefore relevant and discoverable.

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### **CERTIFICATE OF SERVICE**

I hereby certify that on February 25, 2011, I served ***Notice of Hearing, Motion to Compel Discovery and For Sanctions, Brief in Support of Motion to Compel and Certificate of Service on*** with the Clerk of the Court using the ECF system, which will send notification of such filing to Peter W. Peacock, Esquire.

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