

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

AMOS E. WILLIAMS (P39118)
THOMAS E. KUHN (P37924)
AMOS E. WILLIAMS, P.C.
Attorneys for Plaintiff
615 Griswold St., Suite 1115
Detroit, Michigan 48226
(313) 963-5222

PETER W. PEACOCK (P37201)
PLUNKETT COONEY
Attorneys for Defendants Clinton Township
Dykas, Figurski and Watson
10 S. Main Street, Suite 400
Mt. Clemens, Michigan 48043
(586) 466-7605

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

615 Griswold, Suite 1115
Detroit, Michigan 48226-3998
(313) 963-5222
AEWPC@aol.com
(P39118)

Dated: August 31, 2010

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

AMOS E. WILLIAMS (P39118)
THOMAS E. KUHN (P37924)
AMOS E. WILLIAMS, P.C.
Attorneys for Plaintiff
615 Griswold St., Suite 1115
Detroit, Michigan 48226
(313) 963-5222

PETER W. PEACOCK (P37201)
PLUNKETT COONEY
Attorneys for Defendants Clinton Township
Dykas, Figurski and Watson
10 S. Main Street, Suite 400
Mt. Clemens, Michigan 48043
(586) 466-7605

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. **(Ex. 1)**

4. Plaintiff contacted Defendants with a request for concurrence in an order, but got 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.

s/Amos E. Williams
615 Griswold, Suite 1115
Detroit, Michigan 48226-3998
(313) 963-5222
AEWPC@aol.com
(P39118)

Dated: August 31, 2010

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.

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 (8th Cir. 1987); Haberthur v. City of Raymore, Mo., 119 F3d 720 (8th 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 (8th 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 (3rd 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 (3rd 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 (6th 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.

s/Amos E. Williams

615 Griswold, Suite 1115
Detroit, Michigan 48226-3998
(313) 963-5222
AEWPC@aol.com
(P39118)

CERTIFICATE OF SERVICE

I hereby certify that on August 31, 2010, 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.

s/Amos E. Williams

615 Griswold, Suite 1115
Detroit, Michigan 48226-3998
(313) 963-5222
AEWPC@aol.com
(P39118)