



Proskauer Rose LLP 1585 Broadway New York, NY 10036-8299

May 7, 2010

By ECF

Jason D. Gerstein
Attorney at Law
d 212.969.3134
f 212.969.2900
jgerstein@proskauer.com
www.proskauer.com

The Honorable George H. Lowe
United States Magistrate Judge
U.S. District Court for the Northern District of New York
P.O. Box 7346
Syracuse, New York 13261-7346

Re: Yoder, et al. v. Town of Morristown, et al., Civil Case No.: 09-cv-00007 (TJM/GHL)

Dear Judge Lowe:

We, along with our co-counsel, the Becket Fund For Religious Liberty, represent the Plaintiffs in the above-referenced matter and write pursuant to Local Rule 7.1(b)(2) to request a conference before your Honor. The reason for this request is because Defendants have failed to comply with the Court's February 26, 2010 Order requiring Defendants to:

- (1) Produce a privilege log.
- (2) Provide any additional responsive documents identified as a result of Defendant's thorough forensic search of their computers.
- (3) Provide supplemental responses to Plaintiffs' Interrogatories 2, 5, 6 and 7. These Interrogatories request: identification of the documents Defendants intend to use at trial to support the defenses set forth in their Answer (Interrogatory 2); a description of the "compelling governmental interest" that Defendants reference in Paragraph 177 of their Answer (Interrogatory 5); a description of the means Defendants used to identify and further any "compelling governmental interest" (Interrogatory 6); and a listing and description of all the inspections Defendants conducted pursuant to the Building Code (Interrogatory 7).
- (4) Produce documents responsive to Plaintiffs' document requests pursuant to a time period to be provided by Plaintiffs after the February 26, 2010 conference.

We have attempted to confer in good faith with Defendants' counsel on multiple occasions:

By email dated March 5, 2010, Plaintiffs requested, pursuant to (4) above, that Defendants produce documents responsive to Plaintiffs' documents from January 1, 2000 through the present, and also requested that Defendants explain Bates number gaps in their earlier document production. *See Exhibit 1. Defendants provided no response.*

The Honorable George H. Lowe
Page 2 of 3
May 7, 2010

By letter dated April 22, 2010, Plaintiffs reminded Defendants that they had not yet complied with the Court's February 26, 2010 Order and requested that they do so by April 28, 2010. *See* Exhibit 2.

Two months after the Court's Order, on April 26, 2010, Defendants first requested a telephone conference for the following week "to discuss the issues set forth in [Plaintiffs' April 22] letter as well as a reasonable timetable for responses." *See* Exhibit 3.

Plaintiffs responded by email on April 28, 2010, stating that they were available on May 5, 2010 to confer with Defendants about the gaps in Defendants' document production, but that Defendants should comply with the Court's Order by May 4, 2010. *See* Exhibit 4.

Defendants did not respond until the afternoon of May 5, 2010 and stated that they would not produce any documents before May 14, 2010 and would not fully comply with the Court's Order until June 30, 2010. Defendants also objected for the first time to Plaintiffs' request for documents relating back to January 1, 2000 on the grounds that they were not "relevant." *See* Exhibit 5.

On May 6, 2010, Plaintiffs responded, stating that: (a) having had two and a half months to comply with the Court's Order, another two month delay was unreasonable; (b) Defendants still have not provided *any* explanation for the Bates number gaps in their document production; and (c) Defendants' objection to producing documents relating back to January 2000 was unfounded because the Amish have resided in the area for over thirty years and, in any event, even if they had not, the requested documents would lead to relevant evidence establishing the Town's policies and procedures and enforcement thereof. Finally, Plaintiffs requested confirmation by noon, May 7, 2010, that Defendants will fully comply with the Court's February 26 Order by May 14. *See* Exhibit 6. *Defendants have not responded.*

Because it has been approximately two and a half months since the Court's February 26, 2010 Order, and Defendants have stated that they will not comply completely until June 30, 2010, we respectfully request a conference before your Honor pursuant to Local Rule 7.1(b)(2).

We thank the Court for its attention to this matter.

Respectfully,



Jason D. Gerstein

cc: All By Electronic Case Filing & Electronic Mail

Gregg T. Johnson, Esq.
Jacinda H. Conboy, Esq.



The Honorable George H. Lowe

Page 3 of 3

May 7, 2010

Lori H. Windham, Esq.

Eric C. Rassbach, Esq.

Michael T. Mervis, Esq.

Russell L. Hirschhorn, Esq.

Jason D. Gerstein, Esq.

Daniel P. Goldberger, Esq.

Rachelle L. Laroche, Esq.

Exhibit 1

From: Goldberger, Daniel P.
Sent: Friday, March 05, 2010 4:41 PM
To: 'Jacinda Conboy'
Cc: 'Lori Windham'
Subject: Yoder v Morristown

Jacinda:

Two quick things:

1. On the call with Magistrate Judge Lowe, we told you that we would provide you with a cutoff date for your document searches. That date is January 1, 2000.

2. Defendants' production appears to be missing documents. Specifically, the following Bates ranges are missing:

- D0054 - D0065
- D0101 - D0103
- D0111
- D3030 - D3161
- D5954
- D8139 - D8164
- D8526 - D8536
- D8556

Please let us know the status of these documents.

Thanks,

Dan

Daniel P. Goldberger
Attorney at Law | [Proskauer](#)
1585 Broadway
New York, NY 10036-8299
d 212.969.3174
f 212.969.2900
dgoldberger@proskauer.com

Exhibit 2



BOARD OF ADVISORS

Hon. William P. Barr
Former Attorney General
of the United States

Prof. Stephen L. Carter
Yale Law School

His Eminence
Francis Cardinal George, O.M.I.,
Archbishop of Chicago

Hon. Orrin G. Hatch
United States Senator

Prof. Douglas Laycock
University of Michigan Law School

Rev. Richard John Neuhaus[†]

Eunice Kennedy Shriver[†]

Sargent Shriver
Chairman of the Board,
Special Olympics International

Dr. Ronald B. Sobel
Senior Rabbi, Congregation Emanu-El
of the City of New York

John M. Templeton, Jr., M.D.
Bryn Mawr, Pennsylvania

April 22, 2010

By Electronic Mail and First Class Mail

Jacinda H. Conboy, Esq.
Lemire Johnson, LLC
2534 Route 9
P.O. Box 2485
Malta, NY 12020

Dear Ms. Conboy:

We write to follow-up on our discussion during the telephone hearing held on February 26, 2010 and in Mr. Goldberger's subsequent March 5 email to you. As you recognized by sending us an additional document on April 20, document discovery is not stayed, and we want to ensure that the outstanding discovery issues are resolved so that depositions may proceed in a timely manner after the stay of depositions is lifted.

Our records reflect that the following five issues remain outstanding:

1. We have not received the privilege log promised to Plaintiffs during the February 26th hearing.
2. During the February 26th hearing, you stated that a forensic expert had been retained to ensure that Defendants' computers were searched thoroughly for responsive documents. Please provide us with any additional responsive documents that have been identified.
3. We have not received Defendants' supplemental responses to Interrogatories 2, 5, 6, and 7, as required by Magistrate Judge Lowe during the February 26th hearing.
4. In Mr. Goldberger's March 5 email, he identified several gaps in the Bates numbers of documents provided to us during discovery and requested that the documents bearing those Bates numbers be produced, or an explanation for the gaps be provided, but we have yet to receive a response from Defendants.

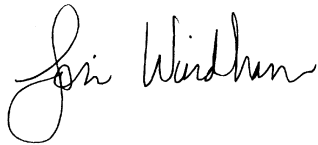
3000 K St., NW, Suite 220
Washington, DC 20007-5109
Phone: 202-955-0095
Fax: 202-955-0090
www.becketfund.org

Jacinda H. Conboy
Page 2 of 2
April 22, 2010

5. At the February 26th hearing, we discussed the production of certain Town documents, which you had objected were too voluminous because of the timeframe requested. As Mr. Goldberger confirmed in his March 5 email, Plaintiffs seek the production of town documents dating to January 1, 2000.

Please provide Defendants' responses and documents, to the extent they exist, no later than April 28. In the event you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Lori Windham". The signature is written in black ink and is positioned to the left of the typed name.

Lori H. Windham
Senior Counsel

cc: Russell L. Hirschhorn
Daniel P. Goldberger
Jason D. Gerstein
Michael Mervis
Eric Rassbach
Rachelle L. Laroche

Exhibit 3

From: Jacinda Conboy [mailto:jhc@lemirejohnsonlaw.com]
Sent: Monday, April 26, 2010 3:44 PM
To: Lori Windham
Cc: Deb
Subject: Yoder v. Morristown

Lori,

I am in receipt of your letter of last week regarding discovery issues. Perhaps we can set up a telephone conference next week to discuss the issues set forth in your letter as well as a reasonable timetable for responses. Please coordinate with my paralegal Debbie Lewenden (who is copied on this correspondence) with respect to a date for a conference as I am not going to be available for a conference this week.

Thanks,
Jacinda

Jacinda H. Conboy, Esq.
LEMIRE JOHNSON, LLC
Attorneys at Law
2534 Rte. 9, PO Box 2485
Malta, NY 12020
phone 518.899.5700
fax 518.899.5487
email: jhc@lemirejohnsonlaw.com

This electronic message contains information that may be legally confidential and/or privileged. The information is intended solely for the individual or entity named above and access by anyone else is unauthorized. If you are not the intended recipient, any disclosure, copying, distribution, or use of the contents of this information is prohibited and may be unlawful. If you have received this electronic transmission in error, please reply immediately to the sender and then delete the message.

Exhibit 4

From: Lori Windham [lwindham@becketfund.org]
Sent: Wednesday, April 28, 2010 11:48 AM
To: Jacinda Conboy; Deb
Cc: Hirschhorn, Russell L.; Goldberger, Daniel P.; Gerstein, Jason D.; Laroche, Rachelle L.; Mervis, Michael; Eric Rassbach
Subject: Yoder v. Morristown

Jacinda,

I can schedule a time to confer on issue #4 (the missing bates numbers) next week. Please advise as to your availability during the afternoon of Wednesday, May 5.

As to the remaining items, we have already conferred at length on those issues, and the result was Magistrate Judge Lowe's order directing you to provide us with those documents. Two months have passed since that order, and we have yet to receive even a single responsive document. Please ensure that those documents reach us no later than COB on Tuesday, May 4. If we have not received those documents at that time, we will begin proceedings to compel their disclosure.

Sincerely,
Lori

Lori Windham
Senior Counsel
Becket Fund for Religious Liberty
3000 K St., NW
Suite 220
Washington, DC 20007
(202) 955-0095 x202

NOTICE: This e-mail is from a law firm, The Becket Fund for Religious Liberty, and is intended solely for the use of the person(s) to whom it is addressed. If you believe you received this e-mail in error, please notify the sender immediately, delete the e-mail from your computer and do not copy or disclose it to anyone else. If you are not an existing client of The Becket Fund, do not construe anything in this e-mail to make you a client unless it contains a specific statement to that effect and do not disclose anything to The Becket Fund in reply that you expect or want it to hold in confidence. If you properly received this e-mail as a client, co-counsel or retained expert of The Becket Fund, you should maintain its contents in confidence in order to preserve the attorney-client or work product privilege that may be available to protect confidentiality.

Exhibit 5

LEMIRE JOHNSON, LLC

Attorneys at Law

2534 Route 9, P.O. Box 2485, Malta, NY 12020
518.899.5700 ~ 518.793.9005
Fax 518.899.5487

May 5, 2010

Via Electronic Mail Only

Lori Windham, Esq.
The Becket Fund for Religious Liberty
1350 Connecticut Avenue N.W.
Washington, D.C. 20036

Re: *Yoder, et al. v. Town of Morristown, et al.*
Civil Case No.: 09-cv-0007 (TJM/GHL)

Dear Lori:

I had suggested a good faith conference, not to discuss substantively any of the issues, but merely to let you know when we can provide responses. As you indicated that you did not want to discuss this further, I write to advise that we will provide responses as follows:

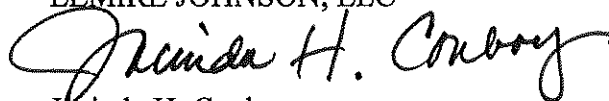
- May 14 – Supplemental responses to the limited Interrogatories as directed by the Court and privilege log;
- May 21 – we will review our production and advise if there are any documents that are omitted; and
- June 30 – we will provide you with supplemental documents as produced by our forensic expert.

Please provide me with a basis as to how documents relating back to January 1, 2000, are relevant. Upon information and belief, your clients did not even inhabit the Morristown Area until late in 2002.

Thank you.

Very truly yours,

LEMIRE JOHNSON, LLC



Jacinda H. Conboy
jhc@lemirejohnsonlaw.com

JHC:lmg

cc: (via electronic mail)
Proskauer Rose

Exhibit 6



BOARD OF ADVISORS

Hon. William P. Barr
Former Attorney General
of the United States

Prof. Stephen L. Carter
Yale Law School

His Eminence
Francis Cardinal George, O.M.I.,
Archbishop of Chicago

Hon. Orrin G. Hatch
United States Senator

Prof. Douglas Laycock
University of Michigan Law School

Rev. Richard John Neuhaus[†]

Eunice Kennedy Shriver[†]

Sargent Shriver
Chairman of the Board,
Special Olympics International

Dr. Ronald B. Sobel
Senior Rabbi, Congregation Emanu-El
of the City of New York

John M. Templeton, Jr., M.D.
Bryn Mawr, Pennsylvania

May 6, 2010

By Electronic Mail

Jacinda H. Conboy
Lemire Johnson, LLC
2534 Route 9
P.O. Box 2485
Malta, NY 12020

Dear Jacinda:

I am writing in response to your May 5, 2010 letter. As you know, during the Court conference held on February 26, 2010, Judge Lowe ordered Defendants to:

- (1) Produce a privilege log.
- (2) Provide any additional responsive documents identified as a result of Defendant's thorough forensic search of their computers.
- (3) Provide supplemental responses to Plaintiffs' Interrogatories 2, 5, 6 and 7.
- (4) Produce documents responsive to Plaintiffs' document requests pursuant to a time period to be provided by Plaintiffs after the February 26, 2010 conference. (By email dated March 5, 2010, Plaintiffs requested that Defendants produce documents responsive to Plaintiffs' documents from January 1, 2000 through the present.

We have attempted to confer in good faith with Defendants on multiple occasions. Having had over two and one-half months to comply with the Court's order, we believe a second two-month delay is unreasonable. Furthermore, despite multiple requests, Defendants still have not provided *any* explanation for the bates number gaps in their document production.

Please be advised that if we do not receive confirmation from Defendants by noon on Friday, May 7, that Defendants will fully comply with the Court's February 26 order by May 14, Plaintiffs reserve the right to seek an appropriate order from the Court compelling Defendants to do so and will seek all of their fees and costs in connection with doing so.

3000 K St., NW, Suite 220
Washington, DC 20007-5109
Phone: 202-955-0095
Fax: 202-955-0090
www.becketfund.org

May 6, 2010
Jacinda H. Conboy
Page 2 of 2

Finally, we note that your objection to producing documents relating back to January 2000 is unfounded because the Amish have resided in the area for over thirty years and, in any event, even if they had not, the requested documents would be relevant to establishing the Town's policies and procedures and enforcement thereof.

We look forward to hearing from you.

Sincerely,

A handwritten signature in cursive script that reads "Lori Windham". The signature is written in black ink and is positioned to the left of the typed name below it.

Lori Windham