

**IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:12 CV 334**

P.B., as lawful Guardian *ad litem* of)
Minor Child, JANE DOE,)
)
Plaintiff)
)
v)
)
BURKE COUNTY PUBLIC SCHOOLS)
BOARD OF EDUCATION, LINDA)
BRADSHAW, JOHN ROES 1-10, and)
MICHAEL ANDREW ALEXANDER,)
)
Defendants)

ORDER

THIS MATTER has come before the undersigned pursuant to a Motion for Order Regarding Release of Burke County District Attorney’s Office Investigation Records (#31) filed by Plaintiff. In the motion the Plaintiff asked that this Court issue an order directing the Burke County District Attorney to release to Plaintiff’s counsel records which are described only as Burke County District Attorney Office Investigation Records.

Discussion: An examination of the motion of the Plaintiff shows that the motion should be denied for the following reasons:

- (1) The motion of the Plaintiff is not supported by a brief as required by

LCvR 7.2(C). The motion does reference a case issued by the Supreme Court of North Carolina News and Observer Publishing Company v. State ex rel. Starling, 312 N.C. 276, 322 S.E.2d 133 (1984) but a reading of that case does not show any support whatsoever for the motion of Plaintiff;

- (2) If the Plaintiff seeks the documents of a person or entity who is not a party in this case, the Plaintiff would be well advised to first consult Rules 45 and 30 of the Federal Rules of Civil Procedure. The application of those rules would appear to this Court to be the appropriate procedure for the Plaintiff to use to seek the production of the records of a third party. Those rules would allow the District Attorney to present any objections that the District Attorney might have to the Plaintiff's requests and for those objections to be heard by the court.
- (3) The motion of the Plaintiff does not show there has been any service of the Plaintiff's motion upon the represented Defendants or Michael Andrew Alexander who is representing himself in this matter and more importantly does not show there has been any service or notice of the Plaintiff's motion served upon the Burke County District Attorney. It appears from an examination of the motion that the Plaintiff has completely failed to comply with the service provisions of Rule 5 of the Federal Rules of Civil Procedure

which reads as follows:

Rule 5. Serving and Filing Pleadings and Other Papers

(a) Service: When Required.

(1) In General. Unless these rules provide otherwise, each of the following papers must be served on every party:

(D) a written motion, except one that may be heard ex parte.

It appears to this Court that the Plaintiff is attempting to obtain a court order directing a third party who is an elected public official to distribute what would be that public official's confidential investigative records and files without providing the third party an opportunity to object or to be heard by the court.

For the foregoing reasons the Plaintiff's motion will be denied.

ORDER

IT IS, THEREFORE, ORDERED that the Motion for Order Regarding Release of Burke County District Attorney's Office Investigation Records (#31) is hereby **DENIED**. It is also **ORDERED** that the Clerk of this Court shall provide a copy of this Order and the Plaintiff's motion to James C. Gather, Jr., District Attorney, Burke County Courthouse, 201 S. Greene Street, Morganton, NC 28655 and to the Defendant Michael Andrew Alexander.

Signed: May 14, 2013

Dennis L. Howell

Dennis L. Howell
United States Magistrate Judge

