

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

JOHN DOE and JANE DOE, :
individually and as the Natural Parents :
and Next Friends of Their Minor Child, : **CASE NO. 08-CV-575**
JAMES DOE, :
 : **JUDGE FROST**
 :
Plaintiffs, : **MAGISTRATE JUDGE KING**
 :
v. :
 :
MOUNT VERNON CITY SCHOOL :
DISTRICT BOARD OF :
EDUCATION, ET AL. :
 :
 :
Defendants. :

**DEFENDANT/COUNTERCLAIMANT JOHN FRESHWATER'S RESPONSE TO
PLAINTIFFS' FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS**

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, Defendant/Counterclaimant John Freshwater, in his personal capacity, by and through counsel, states his responses and objections to Plaintiff's Request for Production of Documents. .

GENERAL OBJECTIONS

1. Defendant/Counterclaimant John Freshwater, in his personal capacity, objects to the Request for Production of Documents to the extent the request requires information reflecting conduct or circumstances prior to the 2007-2008 school year of the Mount Vernon City School District. Plaintiff has alleged the first cause of action accrued on December 6, 2007, and that Freshwater's conduct was violative through the remainder of the school year. Therefore, any

production of documents requesting information regarding conduct or circumstances prior to December 6, 2007, or after June 1, 2008, seek information that is irrelevant and such requests are overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence in determining whether or not Freshwater's conduct was violative.

2. Defendant/Counterclaimant John Freshwater, in his personal capacity, objects to the Request for Production of Documents, and any implied or express instruction or direction in the request, that impose or seeks to impose burdens greater than those imposed by the Federal Rules of Civil Procedure.

3. Defendant/Counterclaimant John Freshwater, in his personal capacity, objects to the Request for Production of Documents to the extent they seek disclosure of information protected under the attorney-client privilege, the work-product doctrine, or any other applicable privilege or immunity.

4. Defendant/Counterclaimant John Freshwater, in his personal capacity, objects to the Request for Production of Documents to the extent they are overly broad, unduly burdensome, or not reasonably calculated to lead to the discovery of admissible evidence.

5. Defendant/Counterclaimant John Freshwater, in his personal capacity, reserves all objections as to the competence, relevance, materiality, admissibility, or privileged status of any information provided in response to these Request for Production of Documents, unless specifically stated otherwise.

6. The following responses and objections are based upon information now known by Defendant/Counterclaimant John Freshwater, in his personal capacity, who has not yet completed discovery or preparation for trial in this action and therefore will supplement these responses and objections to the extent required by these Rules of Civil Procedure.

RESPONSES AND OBJECTIONS

1. All statements, whether in writing or tape-recorded, taken of any employee or agent of Plaintiffs.

RESPONSE: Objection. The requested materials are protected by the attorney-work-product privilege.

Without waiving this objection, Defendant/Counterclaimant responds that he does have knowledge of his legal counsel having obtained information that is recorded in various forms. Also, I did record the interview with the investigator and gave a copy to Bill White. I cannot find my copy.

R. Kelly Hamilton

2. All statements, whether in writing or tape-recorded, taken of any witness.

RESPONSE: Objection. The requested materials are protected by the attorney-work-product privilege.

Without waiving this objection, Defendant/Counterclaimant responds that he does have knowledge of his legal counsel having obtained information that is recorded in various forms. Also, I did record the interview with the investigator and gave a copy to Bill White. I cannot find my copy.

R. Kelly Hamilton

3. Copies of your federal and state income tax returns filed for years 2001-2005, inclusive, plus any wage information detailing any income received for 2006.

RESPONSE: Objection. The request is so overly broad as to imply Defendant/Counterclaimant Freshwater did or should have maintained documentation to support any answer he may provide.

Without waiving this objection, Defendant/Counterclaimant responds he will locate or order from the governing authority his last three (3) years of tax information and provide.

R. Kelly Hamilton

4. All documents and any other item that you expect or intend to produce or offer as either an exhibit or as evidence at trial.

RESPONSE: Objection. The requested materials are protected by the attorney-work-product privilege.

Without waiving this objection, Defendant/Counterclaimant responds that he and his counsel are developing/discovering information which will lead to the determination of any proposed, intended exhibit or evidence. Further, all items introduced at the state administrative hearing are subject to consideration for introduction in this matter.

R. Kelly Hamilton

5. The recording you made of your statement provided to HR On Call pursuant to the investigation conducted by the Mount Vernon City School District.

RESPONSE: See response to request #1.

6. All recordings, statements, e-mail, publications, or any other document or recording which you claim is evidence of the defamation claims you have brought against Plaintiffs.

RESPONSE: See answer to Interrogatory #4

7. Every document, thing, or e-mail you removed from your eighth grade science classroom from April 1, 2008 to the present.

RESPONSE: See answer to Interrogatory #6

8. All notes kept by you regarding the teachings you provided to your eighth grade science classes for the past ten years, whether those notes were kept on paper, e-mail, or other source.

RESPONSE: Objection. The request is both unduly burdensome and is so overly broad as to imply Defendant/Counterclaimant Freshwater did or should have maintained documentation to support any answer he may provide.

Without waiving this objection, Defendant/Counterclaimant responds he provided copies of lesson plans as required and the same are public records available as maintained by the public entity. I was not able to go back to my classroom to retrieve documents so I do not have access to these materials.

R. Kelly Hamilton

9. If you have destroyed any notes with regard to the above interrogatory, a description of what was destroyed.

RESPONSE: Defendant/Counterclaimant Freshwater states he does not know nor kept a record of anything that was destroyed or that he may have destroyed.

10. Every handout that you provided to students in your eighth grade science class for the past ten years which was not created by the authors of the approved textbook.

RESPONSE: Objection. The request is so overly broad as to imply Defendant/Counterclaimant Freshwater did or should have maintained documentation to support any answer he may provide.

Without waiving this objection, Defendant/Counterclaimant responds he will continue to attempt to locate any form of the described documents.

R. Kelly Hamilton

11. Copies of all religious materials you had posted in your eighth grade science classroom at Mount Vernon Middle School at any time over the past ten years.

RESPONSE: Objection. The request is so overly broad as to imply Defendant/Counterclaimant Freshwater did or should have maintained documentation to support any answer he may provide. Further, the characterization of “religious” is not specifically defined.

Without waiving this objection, Defendant/Counterclaimant responds the only item described to him as “religious” which was removed were the bookcovers used to cover the glass window in the classroom door. The bookcovers were removed and discarded with no copy being kept.

R. Kelly Hamilton

12. All instructions, directions, or warnings regarding the use of the Tesla coil type device which you used in your eighth grade science classroom.

RESPONSE: Defendant/Counterclaimant Freshwater asserts he never has received any such document.

13. All instructions, directions or warnings regarding the curriculum you used to teach your eighth grade science classes using the Tesla coil.

RESPONSE: Defendant/Counterclaimant Freshwater asserts he never has received any such document.

14. One of the Bibles which you kept in a box in your classroom.

RESPONSE: Objection. The form of the requests implies Defendant/Counterclaimant Freshwater maintained the Bibles in his classroom.

Without waiving this objection, Defendant/Counterclaimant responds he does not have such a document.

R. Kelly Hamilton

Respectfully submitted,

s/ R. Kelly Hamilton

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CERTIFICATE OF SERVICE

I hereby certify that on December 29, 2008 a copy of the foregoing was served to the following counsel via electronic mail and ordinary U.S. mail.

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