

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION**

Mary E. Allen, et al.,)	Civil Action No. :
)	
Plaintiffs,)	3:10-CV-00142-MCR-MD
)	
v.)	Judge M. CASEY RODGERS
)	
School Board for Santa Rosa County, Florida, et al.,)	
)	
Defendants.)	

NOTICE OF POTENTIALLY IMPROPER OR UNETHICAL CONDUCT

Plaintiffs regrettably are compelled to bring to the Court's attention a troubling development in this litigation that has come to their attention. On August 20, 2010, the Court invited the Doe litigants and the Principal of Pace High School (the "Principal") to participate in this action if they wished to do so, set a deadline for them to announce their decision, and stayed the action in the meantime. (Dkt. 45). The Principal was served with a Summons on August 25, 2010. (Dkt. 54). On September 9, 2010 the Principal purportedly accepted the Court's invitation, purportedly joined this action as a defendant and purportedly filed a Motion to Dismiss. (Dkt. 56). The Principal purportedly has been vigorously litigating against Plaintiffs, most recently filing a Response in Opposition to Plaintiffs' Motion for Preliminary Injunction (dkt. 79) that asserts new and different defenses beyond those asserted by the School Board and Superintendent Defendants.

It appears, however, that the Principal has never authorized any of these actions to be taken on behalf of his office. (Declaration of Bridget H. Head¹, attached hereto as Exhibit A; Declaration of Martha Gough, attached hereto as Exhibit B). He was shocked to learn this week that his office is involved in this litigation. (Head Decl. at ¶ 5; Gough Decl. at ¶ 5(a)). He did not authorize the filing of a Motion to Dismiss. (Head Decl. at ¶ 6; Gough Decl. at ¶ 5(b)). He did not authorize the filing of a Response in Opposition to Plaintiffs' Motion for Preliminary Injunction. (Head Decl. at ¶ 7; Gough Decl. at ¶ 5(b)). He had not even seen any of those documents before they were filed. (Head Decl. at ¶¶ 6-7; Gough Decl. at ¶ 5(c)). The Principal is apparently upset and angry that others are litigating on his behalf and in the name of his office without informing him or seeking his authorization. (Gough Dec. at ¶ 5(d)).

These facts suggest that the two existing Defendants in this suit may have considered the Court's invitation to the Principal as merely an opportunity for them to have a third bite of the litigation apple, and are using the office of Principal to suit their purposes without the knowledge, much less authorization, of the duly appointed occupant of that office. This prejudices Plaintiffs, by requiring them to respond to a third set of arguments and motions in this litigation controlled and advanced entirely by two existing parties.²

¹ Mrs. Head is a secretary in the Office of Principal (Head Decl. at ¶ 3). The undersigned communicated with Mrs. Head only after ensuring that she is **not** "a constituent of [the Office of Principal] who supervises, directs, or regularly consults with the organization's lawyer concerning [this lawsuit] or has authority to obligate [the Office of Principal] with respect to [this lawsuit] or whose act or omission in connection with [this lawsuit] may be imputed to [the Office of Principal] for purposes of civil or criminal liability." *Comments*, Rule 4-4.2, Fla. R. of Prof. Conduct.

² There may also be significant ethical considerations at issue. Rule 4-1.4(a), Fla. R. of Prof. Conduct, provides that "A lawyer shall promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in terminology, is required." Moreover, Rule 4-1.4(b), Fla. R. of Prof. Conduct, provides that "A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." Whether or not a client wishes to participate in a lawsuit, and authorizes that participation, would certainly seem to be decisions or circumstances which require informed consent.

Plaintiffs request that the Court investigate the allegations that have come to Plaintiffs' attention, and, if it determines that the pleadings purportedly filed by the Principal were not authorized by him prior to filing, strike those pleadings, find that the Principal has not timely accepted the Court's invitation to participate in this lawsuit and bar further participation.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed electronically with the Court this 20th day of October, 2010. Service will be effectuated upon all parties of record by the Court's electronic notification system.

/s/ Horatio G. Mihet
Horatio G. Mihet, Esq.
One of the attorneys for Plaintiffs

DECLARATION OF BRIDGET H. HEAD

- 1) I am over the age of 18 and competent to testify to the following facts based upon my personal knowledge.
- 2) I am an employee of the Santa Rosa County School District, and have been so employed for approximately fourteen (14) years.
- 3) I am currently a secretary to Bryan Stephen Shell, Principal of Pace High School.
- 4) Within the last week prior to my signing of this Declaration, many teachers at Pace High School expressed concern to me regarding Principal Shell's apparent decision to participate as a defendant in the court case styled *Allen v. Santa Rosa County School Board*, Case No. 3:10-cv-142-MCR, currently pending in the United States District Court for the Northern District of Florida. These teachers wanted to know why Principal Shell has chosen to align himself with the ACLU and School Board, and to defend a Consent Decree that so many teachers find abusive, intrusive and unconstitutional.
- 5) On Monday, October 18, 2010, I asked Principal Shell why he had chosen to participate in the lawsuit. Principal Shell told me, in the presence of at least two other witnesses, that he was very surprised and shocked to hear of his participation, because no one had asked him whether he wanted to participate, and he had never authorized participation of his office in any lawsuit.

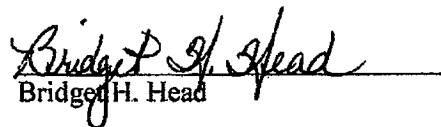
6) I specifically asked Principal Shell whether he had authorized the filing of a Motion to Dismiss in the lawsuit. He indicated that he never authorized such a filing, and had never even seen such a filing before October 18, 2010.

7) I specifically asked Principal Shell whether he had authorized the filing of a Response in Opposition to Plaintiffs' Motion for Preliminary Injunction. He indicated that he never authorized such a filing, and had never even seen such a filing.

8) I undertook the foregoing conversations with Principal Shell solely of my own initiative and volition, after discussion with concerned teachers at Pace High School. No attorney asked me to discuss anything with Principal Shell, nor did I tell any attorney that I would have these conversations.

I declare under penalty of perjury under the laws of the United States of America that foregoing is true and correct.

Executed this 19th day of October, 2010, in Santa Rosa County, Florida.


Bridget H. Head

DECLARATION OF MARTHA GOUGH

1) I am over the age of 18 and competent to testify to the following facts based upon my personal knowledge.

2) I live in Pace, Santa Rosa County, Florida.

3) I am an employee of the Santa Rosa County School District, and have been so employed for eighteen (18) years. I am a reading coach at Pace High School, and have also taught reading, career, personal and school development. I also assist in staff development and coaching the volleyball team.

4) I am a plaintiff in the court case styled *Allen v. Santa Rosa County School Board*, Case No. 3:10-cv-142-MCR, currently pending in the United States District Court for the Northern District of Florida.

5) On Tuesday, October 19, 2010, the Principal of Pace High School, Mr. Bryan Stephen Shell, approached me and engaged me in conversation about this lawsuit. I initially told Mr. Shell that I was not very comfortable discussing the lawsuit with him without my attorney present. He nevertheless volunteered the following information to me:

a) Mr. Shell told me that he was very shocked to find out recently that the office of Principal of Pace High School (which he currently occupies) was involved in this lawsuit.

b) Mr. Shell also told me that he never authorized anyone to file any documents on his behalf in this lawsuit, and never authorized his office to participate in this lawsuit.

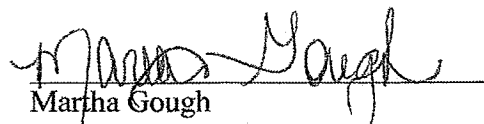
c) Mr. Shell also told me that he had not even seen any of the documents that were purportedly filed on behalf of his office in this lawsuit before they were filed.

d) Mr. Shell indicated that he was very angry and upset that anyone would purport to take legal action on behalf of him and his office without obtaining his authorization.

6) I did not solicit any of the foregoing information from Mr. Shell. No attorney asked me to discuss any aspect of this lawsuit with Mr. Shell, and I did not tell any attorney that I would have any conversation about the lawsuit with him.

I declare under penalty of perjury under the laws of the United States of America that foregoing is true and correct.

Executed this 19th day of October, 2010, in Santa Rosa County, Florida.


Martha Gough