

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

SPENCER COLLIER,)
)
 Plaintiff)
)
 v.)
) 03-CV-2016-900538
 ROBERT BENTLEY; *et. al.*)
)
)
 Defendants.)

MOTION TO COMPEL BENTLEY TO PROVIDE ACEGOV DONORS AND CONTRIBUTIONS

Spencer Collier moves the Court to compel Defendant Robert Bentley to answer deposition questions concerning his personal knowledge of contributions to ACEGOV, including the name of each contributor he is aware of; whether Bentley solicited the contribution; and the amount of each contribution. To be clear, Collier is not seeking any ACEGOV document or testimony of any of its officials; Collier seeks only information that Bentley possesses and which he briefly testified to in his deposition. In support, Collier shows to the Court the following:

BACKGROUND

1. Bentley’s anger towards Collier, his desire to hurt Collier and his concerted effort to destroy Collier’s reputation arose out of the criminal prosecution of Mike Hubbard which case was presided over by the Honorable Jacob Walker in Lee County.
2. On several occasions, Hubbard’s lawyers had filed Motions to have the case dismissed alleging prosecutorial misconduct by Assistant Attorney General Matt Hart.

3. On or about January 5, 2016, Lance Bell, one of Hubbard's lawyers, contacted Collier's Chief of Staff stating he was acting on behalf of Baron Coleman, a radio host, lawyer and political consultant who claimed to have information about wrongdoing by Hart in Hubbard's case and requested an interview between Coleman and Collier.

4. On or about January 11, 2018, Coleman came to ALEA. Collier briefly spoke with Coleman but explained he did not conduct investigations and assigned Special Agent Jack Wilson to conduct the interview.

5. On February 2, 2016, Hubbard's lawyers filed a Renewed Motion to Dismiss for Prosecutorial Misconduct. Attached to the Motion was an affidavit of Coleman (Exh. 1). As the Court will see, in paragraph 14, Coleman swore that he "was recently contacted by law enforcement and met with them in reference to how and why I received grand jury information from the Lee County Special Grand Jury and with regard to the conduct of Matt Hart in the Hubbard case."

6. The allegations by Coleman were misleading at best. Truthfully, it was Hubbard's lawyers who reached out to law enforcement about Coleman and not law enforcement contacting Coleman.

7. Around the same time, SA Wilson received information that Coleman claimed to have tape recordings of his conversations with Assistant AG Hart. SA Wilson requested Coleman to come back to ALEA and on February 4, 2018, Wilson conducted a second interview in which he asked Coleman whether there are or are not recordings of any of those conversations to which Coleman stated that he was not going to answer that.

8. Assistant AG Hart learned that ALEA was looking into Hubbard's and Coleman's allegations. Hart contacted Collier and offered to provide whatever ALEA needed from the AG's Office.
9. Hart also informed Collier that Coleman was a Confidential Informant of the AGO.
10. Based on the lack of sufficient evidence that Hart had committed any crimes, the ALEA investigation was closed.
11. A short time later, Hart contacted Collier again and confirmed that ALEA had no ongoing investigation of Hart. In order to rebut Hubbard's February 2nd Motion, Hart requested affidavits from Collier and SA Wilson to show Judge Walker that Hart was not under investigation by ALEA.
12. On or about February 8, 2016, Collier briefed Bentley on the investigation and Hart's request for an affidavit.
13. In the Impeachment Proceedings Bentley produced a heavily redacted and self-serving "TIMELINE Re: Spencer Collier" that was authored by Mason and edited by Bentley. During Bentley's deposition (Exh. 5 – hereafter referred to as "Bentley depo."), Collier learned that Bentley had an unredacted copy of the Timeline and requested the clean copy. Later, Bentley produced less redacted pages of the Timeline only preserving redactions that may be protected by the attorney-client privilege. (Exh. 2 -- the original Timeline with the unredacted pages inserted)
14. Although Collier disagrees with much of Bentley's and Mason's Timeline, the Unredacted Timeline confirms that on February 8, 2016, Bentley did in fact instruct Collier to "tell Hart they would continue to investigate the Coleman matter" and that he told Collier not to file an affidavit. (Exh. 2) Such a statement would not have been true.

15. *Ala. Code* § 36-15-62.1 makes it a Class C felony for any person to knowingly make a materially false, fictitious, or fraudulent statement or representation in any matter under investigation by the Attorney General, or a prosecutor or investigator of his or her office.

16. Thus, Collier was placed in the position of obeying Bentley's unlawful order and committing a felony, or disobeying Bentley's order. Collier chose to follow the law and comply with his professional obligation as the State's Top Cop to cooperate with the State's Top Lawyer.

17. On February 17, 2016, after Collier's affidavit was made public, Bentley placed Collier on Medical Leave and publicly stated that he was doing so to punish Collier for providing the affidavit. Importantly, Bentley admitted in his deposition there was no untruthful testimony in Collier's affidavit. (Bentley depo. p. 63, 70, 71)

18. On March 22, 2016, Bentley fired Collier.

19. On March 29, 2016, Judge Walker denied Hubbard's Motions. In doing so, Judge Walker found that "Coleman's statements within the affidavit were in stark contrast to the previous representations he made to the Court regarding the Lee County Special Grand Jury. (Exh. 3, p. 9)

Judge Walker also found that in Coleman's secretly taped conversation with Hart, "Coleman acknowledged that Hart had not disclosed any grand jury matters to him." (Exh. 3, p. 13)

Coleman's tape-recording also showed that Coleman was an AGO Confidential Source (Exh. 3, p. 14)

20. It is clear that Collier's truthful affidavit assisted the AGO in preventing a fraud on Judge Walker's Court.

21. Unbeknownst to Collier at the time but confirmed by Bentley in his deposition, Bentley and his staff had been meeting with Hubbard's lawyers, legislators who were friends of Hubbard and individuals identified in Hubbard's indictment to discuss Bentley removing Assistant AG

Hart from the Hubbard case or appointing a special prosecutor to investigate the AGO. (Bentley depo pp. 63-68) Contrary to what we all learned in 6th grade Civics Class about Separation of Power, Bentley seriously considered trying to use his Office to remove Hart from the Hubbard case. It was only later that someone advised Bentley that he did not have that power.

22. The Bentley/Mason Timeline also shows that when Bentley ordered Collier to lie to the AGO, Bentley and Mason believed that Hart was investigating them. (Exh. 2)

23. The evidence in this case will prove that Bentley's improper cooperation with Hubbard and attempts to interfere with an ongoing criminal case was a part of his pattern and practice of doing favors for politically powerful people and major financial contributors as well as Bentley threatening and defaming people whom he feared would expose his improper relationship with Mason.

ACEGOV

24. On February 18, 2015, Cooper Shattuck, a former General Counsel to Bentley while Bentley was Governor, incorporated ACEGOV as a nonprofit corporation pursuant to the provisions of Chapter 3, Title 10A of the Code of Alabama.

25. ACEGOV claims it applied for and secured 501(c)(4) status with the IRS.

26. On April 1, 2015, ACEGOV entered into a contract with Defendant RCM Communications, Inc. which is a corporation owned by Defendant Rebekah Mason. (Exh. 4)

27. According to the contract, Mason was paid \$2,500 per month plus expenses.

28. Bentley testified that Mason also was being paid through his 2014 Campaign even 2 years after the election. (Bentley depo. p. 151)

DISCOVERY ISSUE

29. Bentley admitted that he solicited contributions to ACECOV from various people but other than disclosing the name of Franklin Haney, Bentley refused to identify any other donor or the amount of donations claiming the information was somehow privileged because ACEGOV is a 501(c)(4). (Bentley depo. pp. 167-169) In addition to ACEGOV, Haney reportedly contributed \$300,000 to Bentley after the 2014 election. Bentley later encouraged the TVA and others to sell the Bellefonte Nuclear Power Plant in northeast Alabama to Haney.

30. The issue of the confidentiality of donors such as Haney relates to the Tax Code and IRS Regulations. The questions of whether ACEGOV was required to file a Schedule B with its Form 990 disclosing the identity of contributors and whether the IRS can make such information available to the public is not at issue here. Bentley was not an incorporator of ACEGOV, was never on its Board and never represented it. (Bentley depo. p.168) The discovery sought by Collier relates only to Bentley's personal knowledge about the donations and especially the donations he solicited.

31. Bentley has no Constitutional, contractual or legal privilege that prevents him from disclosing his *personal* knowledge of the identities and amount of donations solicited by Bentley. The fact that a portion of these contributions were used by ACEGOV to pay Bentley's girlfriend, a co-defendant in this case, is clearly relevant to this case.

32. The requested information goes directly to the pattern and practice claims, the potential bias between Bentley and Mason and punitive damages.

33. Collier is certainly entitled to know if any money funneled to Mason through ACEGOV came from Hubbard supporters which clearly goes to Bentley's motive to destroy Collier.

34. At the very least, the requested information is discoverable and the Court can address the evidentiary issues prior to trial.

35. The undersigned represents that prior to filing this Motion, he conferred through emails with Bentley's counsel in an attempt to resolve this dispute without the Court's intervention, but they could not reach an agreement.

/s/Kenneth J. Mendelsohn
KENNETH J. MENDELSON (MEN001)

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CERTIFICATE OF SERVICE

I hereby certify that on the foregoing pleading has been served upon all parties of record via electronic filing on this the 13th day of August, 2018.

/s/Kenneth J. Mendelsohn
OF COUNSEL