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SC Court of Appeals

November 26, 2016

Mr. David T. Duff, Esquire
Duff, White & Turner
3700 Forest Dr # 404, Columbia, SC 29204
(803) 790-0603

Re: Appellant Case No.: 2016-000955; CA 2015-CP-07-1343; CA 2016-CP-07-1233; Case No.: 2016-CP-7-01579

Mr. Duff,

Since all of my requests for preserved exculpatory evidence have been ignored, I am preparing motions for the cases cited above based partly on the contents below. I invite your appropriate comments and remedial actions.

As you know, on Wednesday, May 21, 2014, George McMaster, of the Tomkins and McMaster law firm, sent a Litigation Hold Letter to Alice Walton, (Chief Administrative and Human Resources Officer), Dr. Jeffrey C. Moss (Superintendent of the Beaufort County School District) and Principal Jill Matthews McAden of Hilton Head Island Elementary.

Mr. McMaster's letter emphasized his insistence on the assurance of: *"the preservation of all data, electronic data...All documentation or recordings of any nature...Personal computers. ...social media, ...servers, ...storage media, ...laptops or personal data assistants, such as PalmPilot, BlackBerry, for other windows CE based or Pocket PC Devices for mobile phones, in whatever form (Word processing documents, email, text messages, and voice mail)... cease the regular use and rotation for reuse of those devices as described above until all relevant data can be copied..and verified..."*

In addition Ms. McAden testified that she had been ordered to preserve all data on the same day that I was placed on leave (February 5, 2014) (Page 208, line 2 to page 210, line 16 of Board Hearing)

In a letter dated Thursday, June 26, 2014, the law firm of Childs and Halligan confirmed that all data had been preserved by the administration at both the district level and at the school level.

Fourteen (14) days later in a letter dated July 10, 2014, the law firm of Childs and Halligan announced that:

“... the district... was unable to capture the requested data.”

The attorneys for the school district asserted that they had preserved all data and then two weeks later they discovered that they had violated the law. No apologies, no regrets, no remedial actions?

Do lawyers and administrators not understand *“... cease the regular use and rotation for reuse of those devices as described above until all relevant data can be copied..and verified...”*? Or as Ms. McAden testified, *“Everything was to be preserved.”*? (Page 210, line 1, Board Hearing)

With such thoroughly incompetent official behavior should not remedial action have been taken in light of:

(SCRCP Rules 3.3(3), 1.2(d), 1.0(f), 1.6); SCRPC 8.4(a)

South Carolina Code of Laws Section 30 Chapter 1, FRCP 34(A) *“...any designated documents or electronically stored information.”*

Again from **Section 30-1-30** *“Unlawful removing, defacing, or destroying public records.”*

South Carolina Department of Archives and History-(General Records Retention Schedules for School District Records) (Administers according to Section 30-1-30, above)

The **2006 amendment** to the FRCP requires that public schools be able to reproduce emails.

Section VI Video Monitoring System Procedures of the Beaufort County School District Policy Manual

"Video recordings and data files may be viewed and used by appropriate BCSD administrators as part of student and/or employee disciplinary hearings.....

"or are being used for an investigation of a particular incident or as part of a potential claim against the district."

I asked for all of my emails. The response from Vernie Williams of Childs and Halligan was, *"We are continuing to review approximately several thousand emails to determine the ones that are responsive to your request."* August 11, 2014. Since when does the prosecution determine the evidence for the defense?

No phone records, 11,000 emails withheld, no video footage, etc. With those *"Preserved Records"* I should have been exonerated and continued my career.

I have frequently requested answers to these questions. Here is a partial list of the dates of my requests.

Thurs, June 26, 2014 to Childs and Halligan

Sat, July 5, 2014 to Childs and Halligan

Mon July 7, 2014 4:32PM to Chairman Bill Evans

Tues July 8, 2014 11:12 AM to Childs and Halligan

Sat July 12, 2014 via letter Childs and Halligan

Thurs July 17, 2014 9:01 AM to Childs and Halligan

Fri Aug 8, 2014, 3:20 PM to Childs and Halligan

Tues Aug 12, 2014, 4:05 PM to Childs and Halligan

Sun, Sept 21, 2014 3:48 PM to Childs and Halligan

Wed. Oct 29, 2014 to David Duff

Fri, Dec 5, 2014 to Childs and Halligan

Fri Dec 26 2014 at 11:58 AM to Childs and Halligan

Wed, Jan 28, 2015 to Childs and Halligan

Mon. Feb 2, 2014 to David Duff, Childs and Halligan

Thurs Feb 4, 2015 to David Duff, Drew Davis, Childs and Halligan

Mon, Feb 16, 2015 at depositions to Childs and Halligan

Tues Feb. 23, 2014 to David Duff, Childs and Halligan

Wed. Feb 24, 2015 to David Duff, Childs and Halligan

Sat. Feb 28, 2015 at 9:22 AM via email and attachments to David Duff who forwarded to Fawley and Williams

Fri. March 6, 2015 to Childs and Halligan

Thurs March 17, 2015 to David Duff, Childs and Halligan, Drew Davis

Mon April 6, 2015 to Childs and Halligan and David Duff

No attorneys responded. (Similarly, attorneys for the district, nor the district, ever responded to a FOIA request [a misdemeanor] petitions, and motions, inter alia.) Are your clients, and/or their attorneys not guilty of criminal behavior?

For at least the 27th time, *where is my preserved evidence?*

Will you address my requests that were made PRIOR to the school board hearing and suggest appropriate and required remedial actions?

Very truly yours,



John Alden Bauer III

cc: V. Claire Allen, Deputy Clerk of Court of South Carolina
Joel M. Griggs, SC Dept. of Education Investigator
Cathy L. Hazelwood, Legal Division Deputy Superintendent, SCDE
Drew Davis, General Counsel, Beaufort County School District
David Lyon, Duff, White and Turner
Vernie Williams, Childs and Halligan
Shirley Fawley, Childs and Halligan
George McMaster, Tompkins and McMaster
Henry McMaster, Lt. Governor, State of South Carolina
Alan Wilson, Attorney General, State of South Carolina
Jill Rothstein, SC Bar
Andrew Lindemann, Davidson and Lindemann
W. Eric Emerson, Agency Director, SC Dept. of Archives and History

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