

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

**JOHN DOE, et al.,
Plaintiffs,**

v.

**Case No. 2:08-cv-575
JUDGE GREGORY L. FROST
Magistrate Judge Norah McCann King**

**MOUNT VERNON CITY SCHOOL
DISTRICT BOARD OF EDUCATION, et al.,
Defendants.**

GAG ORDER

On May 26, 2010, this Court held a hearing on Plaintiff's Motion for Sanctions for Defendant's Failure to Comply with this Court's Discovery Orders. (Doc. # 96.) During that hearing, Plaintiffs' counsel informed the Court that Defendant John Freshwater had taken an email that was clearly marked in several places "Confidential" and read it word for word in a public forum. The confidential communication contained in the email was a settlement offer made to Mr. Freshwater by Plaintiffs. The offer was made in conjunction with the ongoing settlement negotiations directed by this Court. Freshwater's conduct violates several principles applicable to settlement negotiations, including this Court's Local Rule 16.3. *See* S. D. Ohio 16.3 ("In order to promote candor and protect the integrity of this Court's [Alternative Dispute Resolution ("ADR")] processes, in addition to other protections afforded by law all communications made by any person (including, but not limited to parties, counsel, and judicial officers or other neutral participants) during ADR proceedings conducted under the authority of this Court are confidential, and are subject to disclosure only as provided in subsection (c)(3) of this Rule."); *see also* *Goodyear Tire & Rubber Co. v. Chiles Power Supply, Inc.*, 332 F.3d 976 (6th Cir. 2003) (settlement negotiations are confidential and inadmissible).

Because of Mr. Freshwater's conduct, Plaintiffs asked this Court to issue a gag order preventing Freshwater from disclosing any further confidential settlement communications. The Court gave Mr. Freshwater's counsel the opportunity to speak to this issue. Counsel indicated that Freshwater did not object to the issuance of a gag order as long as it applied to both parties.

Cognizant of the fact that Plaintiffs have not behaved in any way that would warrant this Court's application of a gag order against them, the Court indicated that it would grant Plaintiffs' request for a gag order and that the order would be applicable to all parties and attorneys involved in any way in this action. The Court then explained to Mr. Freshwater that, aside from the privilege issue, his behavior jeopardizes the Court's ability to seat an impartial jury in this matter, which it has a duty to do. *See Gannett Co. v. DePasquale*, 443 U.S. 368, 378 (gag orders appropriate because trial courts have the duty to minimize the potential for prejudicial pretrial publicity).

Accordingly, the parties are hereby **ORDERED** to not disclose or to permit others to disclose any of the confidential settlement negotiations that have been or will be exchanged in this action.

The Court, reiterating its stern warning given to Mr. Freshwater in court, will not tolerate violations of this Gag Order. Any violation will meet serious consequences, including monetary sanctions and other sanctions up to and including the most severe this Court can impose.

IT IS SO ORDERED.

/s/ Gregory L. Frost
GREGORY L. FROST
UNITED STATES DISTRICT JUDGE