

IN THE CIRCUIT COURT OF COLE COUNTY
NINETEENTH JUDICIAL CIRCUIT
STATE OF MISSOURI

AARON M. MALIN,

Plaintiff,

v.

Case No. 15AC-CC00573-2

COLE COUNTY PROSECUTING ATTORNEY,

Defendant.

PLAINTIFF'S MOTION FOR CIVIL CONTEMPT

COMES NOW the Plaintiff, Aaron Malin, and for the following reasons moves this Court to enter an order holding the Defendant, Cole County Prosecuting Attorney ("the Office"), in civil contempt for failing to fully comply with the Court's Order and Judgment of July 8, 2024 ("Order Enforcing Judgment"):

1. It has been nearly ten years since the Plaintiff asked the Prosecutor to provide him with "[a]ny correspondence or communication between the Office of the Prosecuting Attorney of Cole County (or its associates/employees) and the MUSTANG drug task force (or its associates/employees)."
2. It has been more than seven years since Circuit Judge Patricia Joyce first entered the Original Judgment in the Plaintiff's favor, which ordered the Office to search for and produce all open records responsive to the Plaintiff's request.
3. This matter has been to the Court of Appeals three times, with the most recent

trip once again confirming the Office's legal obligation to search for and produce these records. *Malin v. Cole Cnty. Pros. Atty.*, 678 S.W.3d 661 (Mo. App. W.D. 2023).

4. This Court reopened the case from the Court of Appeals mandate on December 20, 2023.

5. Then on July 8, 2024, the Court entered the Order Enforcing Judgment that specifically required the Office to do the following:

a. As the Office conducted the required search for responsive records it was to "keep a log designed to inform the Court and the Plaintiff of (1) which sets of records have been searched, (2) the approximate number of records that have been searched, and (3) which responsive records (if any) the Office has located that have not already been produced to the Plaintiff;"

b. "Not later than or less frequently than the end of each month between the time the Court enters this Order and the date a satisfaction of judgment is entered in this case the Office shall provide Plaintiff's counsel a copy of this log as well as any newly-identified responsive documents that the Office concedes to be 'open.'"

6. Since the Court entered its Order Enforcing Judgment, nearly eight months have passed; the Defendant still has not satisfied the Original Judgment, nor has it been complying with the Court's Order Enforcing Judgment.

7. The Office did not provide the Plaintiff any update on its search by the end of

July 2024.

8. On August 22, 2024, the Office's counsel sent twelve pages that included names and what appeared to be case numbers; the Plaintiff assumes the names were defendants in criminal cases, but the Office provided no explanation as to the significance of these names or numbers nor, assuming these were files that had been searched, whether they were part of a larger set of records retained by the Office.

9. Nothing in these twelve pages identified "which sets of records have been searched," "the approximate number of records that have been searched," or "which responsive records (if any) the Office has located that have not already been produced to the Plaintiff."

10. On September 30, 2024, the Office's counsel did not send a copy of the log required by the Order Enforcing Judgment, but did send an email stating that he expected to be able to provide some responsive records and an update on progress "shortly."

11. The next communication from the Office's counsel came on October 7, 2024. The Office's counsel said they had identified fifteen files that contained "documents at least potentially subject to production" and said they would "get a list today of the files which were searched."

12. Plaintiff's counsel responded an hour later. His message acknowledged that the required search was a "big, challenging project" and that this was the reason there was no specific timeframe for completing it. But Plaintiff's

counsel also noted that the Court's Order required the Office to "provide specific information by the end of each month so that the Court (and the Plaintiff) would be clearly apprised of what progress has been/is being made in the search."

13. Plaintiff's counsel noted that the Plaintiff had thus far been flexible with that requirement, but he communicated the Plaintiff's wish "to hold the Defendant to the terms of the court's order."

14. Specifically, Plaintiff's counsel reminded the Office that the Order Enforcing Judgment required it to "[n]ot later than or less frequently than *the end of each month* between the time the Court enters this Order and the date a satisfaction of judgment is entered in this case the Office shall provide Plaintiff's counsel a copy of this log [described in part E of the Court's order] as well as copies of any newly-identified responsive documents that the Office concedes to be 'open.'"

15. Two days later, on October 9, 2024, the Office's counsel produced fifteen records responsive to the Plaintiff's request as well as nine pages that included names and what appeared to be case numbers.

16. Nothing in the nine pages identified "which sets of records have been searched" or "the approximate number of records that have been searched."

17. The Plaintiff received no further communication from the Office in the month of October.

18. On November 22, 2024, the Office's counsel sent an email explaining

circumstances that had kept him focused on other matters, adding “Please understand I’m not trying to delay this, and am working to get finished with it and get you the documents you [sic] have requested and the Court has ordered.”

19. The Plaintiff patiently waited for further communication, but toward the end of December still had heard nothing more from the Office or its counsel.

20. On December 20, 2024, Plaintiff’s counsel sent a message noting the lack of follow-up from the November 22 email. He once again expressed the Plaintiff’s frustration with the Office’s failure to comply with the Order Enforcing Judgment, but also said Plaintiff’s counsel had advised him to be patient.

21. Plaintiff’s counsel closed his email by stating “If by next month the Prosecuting Attorney does not either confirm that the required search has been completed and that all responsive records have been provided or diligently resume providing the monthly updates the court has ordered, we will have no choice but to ask the court to take further action to further incentivize compliance.”

22. The Office’s attorney quickly responded, stating that additional searching had been done and that he would “forward what has been searched and found by separate message.”

23. The Office’s attorney did not send a separate message and did not otherwise provide any additional information about “what has been searched and found.”

24. The Plaintiff did not hear anything else from the Office until January 10, 2025, at which time the Office's counsel sent a message asking the Plaintiff to agree that the Office did not need to search "the bad check, child support, and other files."

25. The Plaintiff's counsel communicated the Plaintiff's agreement that there was no need to search those sets of files.

26. On January 27, 2025, the Office's counsel sent an email asserting belief that the Office had reviewed "all of the other paper files, but not the paper files stored on microfilm yet." He stated that they intended to "prepare a better list and documentation of what has been searched."

27. As of the date of this filing, March 3, 2025, the Office has not provided any such "list or other documentation of what has been searched," nor did the Office provide the Plaintiff any sort of update on its search by the end of February 2024.

28. As of the date of this filing, March 3, 2025, the Office also has not provided the monthly update for February required by the Order Enforcing Judgment.

29. The Office's ongoing, gross disobedience of this Court's Order Enforcing Judgment warrants a finding of civil contempt against the Prosecutor and an assignment of penalties sufficient to compel the Office's expedient compliance with the Court's orders.

WHEREFORE, the Plaintiff asks the Court to enter an Order:

A. Finding the Office in civil contempt for its ongoing disobedience of this Court's

Order Enforcing Judgment; to the Plaintiff;

B. Ordering the Office to produce to the Plaintiff no later than 5:00 p.m. on the final business day of each calendar month an up-to-date copy of “a log designed to inform the Court and the Plaintiff of (1) which sets of records have been searched, (2) the approximate number of records that have been searched, and (3) which responsive records (if any) the Office has located that have not already been produced to the Plaintiff;” the required log shall only be considered to comply with this order if it includes *all* of the required information;

C. Assessing against the Office a per diem fine of \$50, retroactive to July 31, 2024 – the date on which the Office was required to have provided specified information to the Plaintiff in compliance with the Order Enforcing Judgment – and continuing until the Office satisfies the Original Judgment; and

D. Ordering the Office to pay Malin’s reasonable attorney fees accrued in preparing and pursuing this motion.

Respectfully submitted,



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Attorney for Plaintiff Aaron Malin

CERTIFICATE OF SERVICE

I hereby certify that on March 3, 2025, a true and accurate copy of the foregoing was filed with the Clerk of Court for electronic service upon:

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Attorney for Plaintiff