

ORIGINAL

Case No. 2012-0131

---

Supreme Court  
of the State of Ohio

---

STATE OF OHIO *ex rel.*  
KENT LANHAM,

Relator,

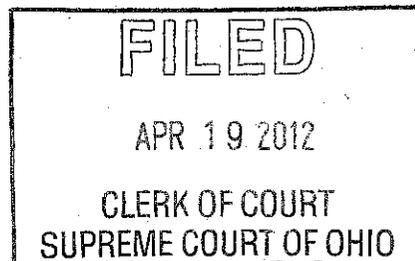
v.

DANNY R. BUBP, Putative State Representative,

Respondent.

---

*Original Action in Mandamus*



---

RELATOR'S MEMORANDUM IN OPPOSITION  
TO REPENDENT BUBP'S MOTION FOR PROTECTIVE ORDER

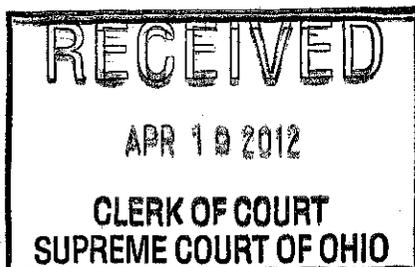
---

Curt C. Hartman (0064242)  
The Law Firm of Curt C. Hartman  
3749 Fox Point Court  
Amelia, OH 45102  
(513) 752-8800  
[hartmanlawfirm@fuse.net](mailto:hartmanlawfirm@fuse.net)

*Counsel for Relator Kent Lanham*

R. Michael DeWine (0009181)  
Ohio Attorney General  
Jeannine Lesperance (085765)  
Jeff Clark (0017319)  
Office of the Ohio Attorney General  
Constitutional Offices Section  
30 East Broad Street, Floor 16  
Columbus, Ohio 43215  
614-466-2872

*Counsel for Respondent Danny R. Bulp*



**SUPREME COURT  
OF THE STATE OF OHIO**

<b>STATE OF OHIO</b> <i>ex rel.</i> <b>KENT LANHAM,</b>	:	<b>Case No. 2012-0131</b>
	:	
<b>Relator,</b>	:	
	:	
<b>v.</b>	:	
	:	
<b>DANNY R. BUBP,</b>	:	<b>RELATOR’S MEMORANDUM IN</b>
<b>Putative State Representative,</b>	:	<b>OPPOSITION TO REPENDENT</b>
	:	<b>BUBP’S MOTION FOR</b>
	:	<b>PROTECTIVE ORDER</b>
<b>Respondent.</b>	:	

Comes now the State of Ohio, by and through Kent Lanham (“Relator”), and tenders the following memorandum in opposition to Respondent Bubp’s Motion for Protective Order.

**MEMORANDUM IN OPPOSITION**

Initially, it should be noted and appreciated that, as the party seeking a protective order, Mr. Bubp bears the heavy burden of demonstrating “good cause” required to support such an order. *Great West Life Assur. Co. v. Levithan*, 152 F.R.D. 494, 496 (E.D. La. 1994); *see* Ohio Civ. R. 26, staff notes (Ohio Civ. R. 26(C) is based on Fed. Civ. R. 26(c); *Roberts v. Columbus City Police Impound Div.*, 195 Ohio App.3d 51, 59, 2011-Ohio-2873 ¶25 (“[f]ederal law is not controlling with regard to interpretation of the Ohio Rules of Civil Procedure, but it can be instructive where the Ohio and federal rules are similar”); *First Bank of Marietta v. Mascrete, Inc.*, 79 Ohio St.3d 503, 508 (1997). “[C]ourts have insisted on a particular and specific demonstration of fact, as distinguished from stereotyped and conclusory statements, in order to establish good cause. This recognizes that the existence of good cause for a protective order is a factual matter to be determined from the nature and character of the information sought by deposition or interrogatory weighed in the balance of the factual issues involved in each action.”

*Minter v. Wells Fargo Bank, N.A.*, 258 F.R.D. 118, 124 (D. Md. 2009). “Thus, the standard for issuance of a protective order is high. A motion seeking to prevent the taking of a deposition is regarded unfavorably by the courts, and it is difficult to persuade a court to do so.” *Id.* at 125; accord *Salter v. Upjohn Co.*, 593 F.2d 649, 651 (5th Cir. 1979)(“[i]t is very unusual for a court to prohibit the taking of a deposition altogether and absent extraordinary circumstances, such an order would likely be in error”).

With respect to the present motion, Mr. Bulp has clearly failed to meet the high and significant burden of demonstrating entitlement to the issuance of a protective order precluding the taking of his deposition *qua* a named party. Mr. Bulp has offered no testimonial evidence himself, through an affidavit or otherwise; instead, through his counsel, he only offers conclusory assertions of generic harm which do not warrant and justify a blanket prohibition against him being deposed. As a party to this action, Mr. Bulp has not, and cannot, establish sufficient grounds to warrant a blanket protective order that prevents the taking of his deposition.

## **BACKGROUND**

Relator commenced this public records mandamus action due to the failure of Respondent Danny R. Bulp, a putative state representative,<sup>1</sup> to respond affirmatively or negatively to a public records request which had been hand delivered to his office over 2 months prior to the commencement of this action.

---

<sup>1</sup> As developed in the Verified Complaint, as well as below, Mr. Bulp has engaged in certain activities that, pursuant to self-executing provisions of the Ohio Constitution and the Revised Code, have resulted in Mr. Bulp forfeiting, as a matter of law, the public office of state representative. Thus, Mr. Bulp’s status as a state representative is simply putative, as opposed to *de jure*.

On November 17, 2011, counsel, on behalf of the Relator, hand delivered to Mr. Bulp's office in the Vern Rife State Office Tower a written public records request (the "Public Records Request") seeking, generally speaking, records relating to the authority or ability for Mr. Bulp to simultaneously hold the public offices of state representative and a magistrate in a mayor's court.<sup>2</sup> (Verified Complaint ¶29.) For Article II, Section 4 of the Ohio Constitution and R.C. § 101.26 expressly prohibit a member of the either house of the General Assembly from holding a second public office. Yet, Mr. Bulp has continued to flaunt the restrictions and prohibitions within the Ohio Constitution and the Revised Code.<sup>3</sup> (Verified Complaint ¶¶35 & 39.) Thus, the records sought by the Public Records Request could arguably reveal the means and rationalization by which Mr. Bulp is able set himself apart as being above and beyond the Ohio Constitution and state law.<sup>4</sup>

---

<sup>2</sup> In October 2009, a news report aired on a local television station in Cincinnati reporting that the chairmen of the Democrat Party in the three counties containing the state house district which Mr. Bulp claimed to represent had filed complaints with then-Ohio Attorney General Richard Cordray and the local prosecuting attorneys concerning the fact that Mr. Bulp was simultaneously holding the public offices of state representative and mayor's court magistrate in direct contravention of Article II, Section 4 of the Ohio Constitution and R.C. § 101.26. (Verified Complaint ¶29.)

<sup>3</sup> Mr. Bulp claims that the Joint Legislative Ethics Committee ("JLEC") "opined informally that no legal impediment prohibits [Mr.] Bulp from service as a Mayor's Court Magistrate." (Motion, at 6.) Such a representation is false. The opinion of JLEC upon which Mr. Bulp premises this assertion was limited to consideration of whether the state ethics law prohibited Mr. Bulp from simultaneously holding the two public offices. A simple review of the JLEC opinion (Lesperance Aff. Exh. G) would readily reveal that the opinion did not address or even consider the prohibitions in Article II, Section 4 of the Ohio Constitution and R.C. § 101.26. These latter two provisions are not only legal impediments to Mr. Bulp simultaneously holding two public offices, but actually result in the *de jure* forfeiture of the office of state representative by Mr. Bulp.

<sup>4</sup> Ironically, the present Attorney General of Ohio (while serving as a United States Senator), in discussing the fact that the rule of law applies to all – the powerful and the meek – aptly queried "*How can we call ourselves a nation of laws and leave a man in office who has flouted those laws? We define ourselves as a people not just by what we hold up, not just by what we revere, but we also define ourselves by what we tolerate. I submit that this is something we simply, as a people, cannot tolerate.*" (Congressional Record, February 12, 1999.)

Even though the public records policy of the Ohio House of Representatives dictates that “[a]ll requests for public records should either be satisfied or acknowledged in writing by a public office within three business days following the office’s receipt of the request,” the response from Mr. Bulp and his office to the Public Records Request was dead silence. When over 2 months passed without a single word from Mr. Bulp as to the Public Records Request, Relator commenced this original action on January 24, 2012.

Suddenly thereafter, but only after service of process was effectuated on Mr. Bulp, some (but not all) records responsive to the Public Records Request were finally provided to Relator. For it took another 4 weeks, *i.e.*, until February 21, 2012, before additional responsive records were produced to Relator; at the same time as the production of these additional records, Mr. Bulp indicated, for the first time, that a total of 31 pages of documents were being withheld based upon a claim of attorney-client privilege.

Pursuant to this Court’s encouragement for requestors of public records to work with public offices relative to such requests and vice versa, *see State ex rel. Morgan v. Strickland*, 121 Ohio St.3d 600, 2009-Ohio-1901 ¶18, counsel for the Relator sought to obtain clarification from the Office of the Ohio Attorney General (who, due to the filing of this action, was representing Mr. Bulp) concerning the records produced, as well as the 31 pages being withheld. Yet, Mr. Bulp’s counsel demonstrated a steadfast refusal to engage in any meaningful effort: refusing to provide any information regarding or supporting the claim of attorney-client privilege, refusing to release undisputedly non-privilege information within the withheld documents and going so

far as to refuse to even disclose the number of documents (as opposed to the total number of pages) being withheld. (Hartman Aff. Exh. A.<sup>5</sup>)

In light of the recalcitrance demonstrated by and on behalf of Mr. Bubp to any effort to provide further information, Relator proceeded with discovery efforts so as to be able to develop and present sufficient evidence in support of his claim, as well as to rebut or refute any defenses or arguments which Mr. Bubp may attempt to present.<sup>6</sup> Doing so was and is consistent with the purposes of discovery: “to put parties on notice of each side’s case and how it intends to present it,” *Hudson v. United Servs. Auto. Assn. Ins. Co.*, 150 Ohio Misc.2d 23, 30, 2008-Ohio-7084 ¶10, “to prevent surprise and the secreting of evidence favorable to one party,” *Lakewood v. Papadelis*, 32 Ohio.St.3d 1, 3 (198), “to encourage the exchange of information between the parties so that cases can be thoroughly prepared and investigated,” *Weimer v. Anzevino*, 122 Ohio App.3d 720, 724 (1997), and, ultimately, “to produce a fair trial.” *Lakewood*, 32 Ohio.St.3d at 3.<sup>7</sup>

In an effort to ensure the case and discovery progressed in a timely manner, Relator’s counsel sought, in late March 2012, potential dates for Mr. Bubp’s deposition. (Hartman Aff. ¶4.) In response to the request, Mr. Bubp’s counsel responded with the clear and unambiguous indication that Mr. Bubp was asserting a blanket and absolute refusal to submit to any

---

<sup>5</sup> In support of his motion, Mr. Bubp conveniently omitted these follow-up e-mail exchanges which demonstrate continued recalcitrance on Mr. Bubp’s part.

<sup>6</sup> This Court, upon issuance of an alternative writ in original actions, generally establishes a relatively quick schedule for the submission of evidence, usually within 20 days of the issuance of the alternative writ. Thus, prompt discovery and development of all evidence was necessary.

<sup>7</sup> And full and complete discovery, including the deposition of Mr. Bubp, is all the more critical when, due to this being an original action, this Court will sit as the trier of fact but will do so, not based upon live testimony as is normal trial procedure, but rather through the evidentiary record developed by the parties.

deposition. (Hartman Aff. ¶5 & Exh. B.) Yet, at the time that the blanket refusal was made, the Ohio House of Representatives was not scheduled to even be in session at any time during the ensuing 2½ weeks. (Hartman Aff. ¶7 & Exh. C.)

Thus, even though “the immediate goal of the discovery process is full disclosure and discovery of the relevant facts of a case” with the “ultimate goal [being] to allow the court to have all the relevant facts placed before it so it can render a well-informed decision,” *In re Jeter Children*, 118 Ohio Misc.2d 101, 105, 2001-Ohio-4362, Mr. Bulp clearly indicated he would not cooperate in such effort. With the failure of Mr. Bulp to provide convenient dates for when he might be deposed, the only option Relator had was to issue to Mr. Bulp a notice of deposition pursuant to Ohio R. Civ. P. 30.

On April 9, 2012, Relator issued and served the subject notice for the deposition of Mr. Bulp. (See Lesperance Aff. ¶3 & Exh. A.) The date for the deposition was April 17, 2012, which was a date when the Ohio House of Representatives was not scheduled to be in session. (Hartman Aff. ¶8 & Exh. C.) And as the e-mail transmitting the notice of deposition indicated, that date was selected in light of the failure of Mr. Bulp to provide any dates for his deposition, but that if a different date was necessary, Relator was open to changing the date of the deposition. (Hartman Aff. ¶9 & Exh. D.)

Instead of complying with his legal obligations under the Rules of Civil Procedure and submitting himself for deposition, Mr. Bulp asserted a blanket refusal to provide any testimony in this action, filing the subject motion for protective order.<sup>8</sup> Besides claiming that he is a public official who should be afforded special treatment so as to never be subject to a deposition even in

---

<sup>8</sup> Though disagreeing over the propriety of seeking a blanket protective order *prior to* any questions being posed at a deposition, counsel for the parties did cooperatively and professionally discuss, in advance, the fact that the subject motion would be forthcoming.

a case when he is a named party, Mr. Bulp also attempts to define and severely limit what the case is and is not about. It not only involves Mr. Bulp's claim that the withheld documents are subject to attorney-client privilege (which, as developed below, raises questions beyond the actual content of any such communication),<sup>9</sup> but also potential waiver issues and whether other records responsive to the Public Records Requests exist but for which Mr. Bulp has yet to produce.<sup>10</sup>

## ANALYSIS / ARGUMENT

### I. **The Ultimate Substantive Issue In This Case Concerns the Very Existence and the Application the Attorney-Client Privilege to the Subject Records; the Issue of Privilege Is Not Simply a Discovery Dispute**

At the outset, it is important for this Court to appreciate that this is not simply a discovery dispute over a claim of attorney-client privilege; for one of the ultimate substantive issues that

---

<sup>9</sup> As for the so-called privilege log provided, while it may have provided some pertinent information, e.g., date of the document, the sender and recipients, it is also woefully lacking in fully demonstrating and establishing the application of the attorney-client privilege to the documents. For example, the log does not identify who was functioning as Mr. Bulp's attorney with respect to each communication, when and how that attorney-client relationship was established, when and how the confidential communication from Mr. Bulp was made to the attorney for the purpose of obtaining legal advice, etc. Additionally, the descriptions of each document is insufficient as they are nothing more than conclusory declarations that fail to provide sufficient information as to the subject matter of the communication. *For a* privilege log must include "a detailed description of the documents to be protected 'with precise reasons given for the particular objection to discovery.'" *Nat'l Union Fire Ins. Co. of Pittsburgh, PA v. Midland Bancor, Inc.*, 159 F.R.D. 562, 567 (D. Kan. 1994)(citation omitted). The privilege log need not be "precise to the point of pedantry," *In re Grand Jury Subpoena*, 274 F.3d at 576, but "bald faced assertion[s]" are insufficient. *Peat, Marwick, Mitchell & Co. v. West*, 748 F.2d 540, 542 (10th Cir. 1984). Yet, the descriptions in the so-called privilege log offered by Mr. Bulp simply offered nothing more than self-serving, conclusory descriptions that the withheld records describe "attorney-client communications."

<sup>10</sup> Interestingly, Mr. Bulp claims that "Relator bears the burden to submit clear and convincing evidence" that "all of the non-privileged records responsive to the request" have not been produced, (Motion, at 4), yet Mr. Bulp wants to deny the Relator the means to effectively meet that burden.

must be resolved in this original action concerns the very existence *vel non* and the application *vel non* of the attorney-client privilege to certain records which Mr. Bulp has, thus far, refused to produce in response to a public records request. Accordingly, the resolution of such ultimate substantive issues must be based upon facts proven by evidence and in appreciation of the burden of proof, and not through the *ipse dixit* of Mr. Bulp or his legal counsel.

Because this case involves a claimed exemption to disclosure to the Public Records Act, Mr. Bulp will have the burden of proof to establish that such withheld records are, in fact, excepted from disclosure by R.C. 149.43. *State ex rel. Nat. Broadcasting Co., Inc. v. City of Cleveland*, 38 Ohio St.3d 79 (1988)(syllabus ¶2). And in connection therewith, Mr. Bulp will also have the burden of proving the existence *vel non* and the application *vel non* of attorney-client privilege so as to justify the withholding of such records pursuant to the Public Records Act. *State ex rel. Fostoria Daily Review Co. v. Fostoria Hosp. Ass'n*, 40 Ohio St.3d 10, 13 (1988). And, in the public records context, any claimed exemption from disclosure, including based upon attorney-client privilege, must be strictly construed such that any doubt as to the application *vel non* of the exemption is resolved in favor of disclosure of the withheld documents. *State ex rel. Rucker v. Guernsey Cty. Sheriff's Office*, 126 Ohio St.3d 224, 228, 2010-Ohio-3288 ¶6.

But “[a] court judgment cannot be predicated on speculation and conjecture.” *Smith v. Hopton*, 169 N.E.2d 646, 648, 83 Ohio Law Abs. 176 (Cinti. Muni. 1960); accord *In re Brown*, 2011-Ohio-5294 ¶9 (“[s]upposition and speculation do not satisfy the applicant's burden of proof”). Instead, resolution of cases must be based upon facts as established by the evidence. See *Black's Law Dictionary* (6th ed. 1990)(“burden of proof” defined as “the necessity or duty of affirmatively proving a fact or facts in dispute on an issue raised between the parties in a

cause. The obligation of a party to establish by evidence a requisite degree of belief concerning a fact in the mind of the trier of fact or the court”). As noted above, Mr. Bubp has the burden of proof of establishing the application of the statutory exemption to the records withheld, as well as the existence and application of the attorney-client privilege. “This burden can be met only by an evidentiary showing based on competent evidence, and cannot be discharged by mere conclusory or *ipse dixit* assertions.” *CSX Transportation, Inc., v. Admiral Insurance Co.*, 1995 WL 855421, at \*1 (M.D. Fla. July 20, 1995).<sup>11</sup>

“If discovery is to serve its purpose, the parties must be entitled, upon the unveiling of a contention, to a reasonable opportunity to prepare to defend against it.” *Waste Mgt. of Ohio, Inc. v. Mid-America Tire, Inc.*, 113 Ohio App.3d 529, 533 (1996). In the present case, Mr. Bubp has asserted, *i.e.*, unveiled, the contention that he is not obligated to produce the withheld records

---

<sup>11</sup> In his motion, Mr. Bubp makes reference to the potential, at some stage of these proceedings, of submitting the withheld documents to the Court for *in camera* review. (Motion, at 5.) While such has been done in some public records cases, those cases failed to address or consider that, in original actions, this Court sits as the ultimate trier of fact. *State ex rel. Lindenschmidt v. Butler Cty. Bd. of Comm’rs*, 72 Ohio St.3d 464, 466, 1995-Ohio-49. This Court would never condone allowing one party at a trial to submit evidence to a jury, *i.e.*, the trier of fact in *nisi prius*, without allowing the opposing party an opportunity to see or review such evidence so as to meaningfully refute or challenge such evidence. Yet, that is exactly what would occur should resolution of this case be limited to an *in camera* review, without any background or context to the creation of the withheld documents, let alone without any opportunity for Relator to meaningfully challenge the evidence that Mr. Bubp would tender to this Court.

An *in camera* review of putatively privileged documents may be appropriate when the issue is exclusively whether such documents are subject to release via discovery. *See State ex rel. Abner v. Elliott*, 85 Ohio St.3d 11, 16, 1999-Ohio-199 (“[t]rial courts also have extensive jurisdiction over discovery, including inherent authority to direct an *in camera* inspection of alleged privileged materials”). But it is quite a different situation for a court, sitting as the *ultimate* trier of fact, to undertake an *in camera* review of evidence when such evidence is not available to the other parties in order to challenge and rebut. Thus, when this court sits as the ultimate trier of fact in original actions, the party with the burden of proof must meet establish that burden with appropriate and competent evidence, all of which must be subject to being challenged and rebutted. *See Couch v. Couch*, 146 S.W.2d 923, 925 (Ky. 2004)(“parties are entitled to know what evidence is used or relied upon by the trial court, and have the right generally to present rebutting evidence or to cross-examine”).

due to attorney-client privilege. While Mr. Bulp has the burden of proof of establishing the existence and application of such privilege, Relator must be afforded a full and reasonable opportunity to defend against such a contention. As developed below, there is sufficient and relevant information which can be garnered at a deposition from someone asserting attorney-client privilege without revealing that which is truly privilege, *i.e.*, the content of the client's confidential communications to an attorney for the purpose of obtaining legal advice.

Because one of the ultimate substantive issues in this case concerns the existence *vel non* and the application *vel non* of attorney-client privilege, Relator has the right to challenge Mr. Bulp's assertion of attorney-client privilege, by pointing to his failure or inability to establish, with competent evidence, the elements of the privilege or by establishing a waiver of the privilege or some other reason for disclosure of otherwise putatively protected records.<sup>12</sup> The deposition of a party withholding record responsive to a public records request based upon a claim of attorney-client privilege is an effective means of disputing the claim or establishing an exception thereto. Therefore, there is no basis or justification for the issuance of the requested protective order; Mr. Bulp has failed to meet the high burden necessary to justify a blanket prohibition on him being deposed.

---

<sup>12</sup> Interestingly, in the present motion, Mr. Bulp claims that he "possesses no information that would be . . . admissible with respect to . . . [the] invocation of [attorney-client] privilege." (Motion, at 6.) But as is well-established, the attorney-client privilege belongs to the client. *E.g., Frank W. Schaefer, Inc. v. C. Garfield Mitchell Agency, Inc.*, 82 Ohio App.3d 322, 329 (1992). Thus, it does beg the question that, if Mr. Bulp cannot offer any evidence with respect to the privilege that belongs to him, how is Mr. Bulp going to establish and meet his burden of proof of establishing the existence and application of the privilege to the documents that he himself is refusing to produce pursuant to Relator's public records request.

Additionally, though a few interrogatories have been served upon Mr. Bulp, the responses thereto were not verified by Mr. Bulp, but by a person who is not even a party to this action. At present, the authority for this person to respond to such discovery requests on behalf of Mr. Bulp is unknown and serves as a further potential area of inquiry at a deposition.

## ***II. Mr. Bubp's Effort to Seek a Blanket Protective Order Concerning a Deposition That Has Yet to Take Place is Premature***

Mr. Bubp is withholding and refusing to produce pursuant to the Public Records Request records for which he claims are protected by his attorney-client privilege. As noted above, *supra*, note 12, such a privilege belongs to the client. And it is Mr. Bubp who claims to be the client with respect to all of the withheld documents. Assuming *arguendo* that the withheld documents contain confidential communications by Mr. Bubp to his attorney, inquiries can still be made that would not necessitate disclosure thereof. The necessity for such an inquiry as it relates to a claim of privilege was thoroughly explained by the federal court in *In re Application of Chevron Corp.*, 749 F.Supp.2d 141 (S.D.N.Y. 2010),

*Application of Chevron* involved an effort to depose counsel for an adverse party which, naturally, implicated issues or concerns regarding potential disclosure of attorney-client privileged communications. In the addressing the counsel's motions to quash a subpoena, the federal court discussed what it characterized as "the normal means of claiming privilege." The court's analysis is just as applicable, if not more applicable, in this case where the deposition of the party claiming the privilege is sought:

Not only is it important to have a proper regard for the scope and limits of the attorney-client privilege . . . , but it is vital also to bear in mind the extent to which the motions to quash sought a wholesale departure from the normal manner in which such claims of immunity from disclosure are adjudicated.

. . . In most circumstances, a party cannot rely on "mere conclusory or *ipse dixit* assertions, for any such rule would foreclose meaningful inquiry into the existence of the relationship, and any spurious claims could never be exposed."

Where a party seeks disclosure from a witness who may have relevant information concerning allegedly privileged attorney-client communications, the fact that the witness may be asked questions that call for information as to privileged communications does not protect a witness from being deposed or called to testify at a trial or before a grand jury. Rather, the witness must appear and give testimony. When a question seeking disclosure of allegedly privileged material is posed, however, the holder of the alleged privilege may object and

delay disclosure until a court rules on the objection. When an objection is made the party seeking disclosure nevertheless is entitled to discover the dates and places of and the identities of the participants in the communications, the identities of others who were present and to whom the communications were disclosed, and the general subject matter (but not the content) of the communications. This permits the party seeking disclosure and, if need be, the court to know which communications are at issue, something about their general nature, whether they in fact were confidential, and whether any privilege has been waived by disclosure of the contents of the communications to persons other than the attorney and client. Once such a record is developed, the court rules on the objection.

These procedures serve vitally important purposes. The attorney-client privilege . . . can serve to conceal highly relevant evidence that may be important to the just resolution of a controversy. The burden of establishing their applicability therefore rests with the party asserting them. Moreover, the adverse party has the right to challenge such assertions by pointing to a failure to satisfy their prerequisites or establishing waiver or some other reason for disclosure of otherwise protected evidence. Dispensing with the usual procedures effectively absolves the claimant of the need to prove the applicability of the privilege . . . and may deprive the adverse party of an effective means of disputing the claim or establishing an exception.

*Id.* at 166-67 (internal footnote citations omitted). In summary, the rule of law is that “[o]ne cannot assert the privilege by a blanket refusal to testify; there must be specific objection to particular questions calling for privileged information.” 24 Wright & Graham, *Federal Prac. & Proc: Evidence* § 5507, at 567 (2007); *see also United States v. Finley*, 434 F.2d 596, 597 (5th Cir. 1970) (“appellant has sought to invoke the attorney-client privilege by means of a blanket refusal to testify. That utilization of such a vehicle for assertion of privileged matter is unacceptable and improper is clear beyond question and a claim to the contrary borders on the cavalier”).

Thus, Mr. Bulp’s effort to avoid a deposition based upon a claim that information protected by the attorney-client privilege will be sought is definitely premature. Of course, a deponent can refuse to answer specific questions based upon a claim of privilege, presuming, of course, that the answer would disclose *actual* privileged communications. But as the Court in

*Application of Chevron* recognized, “the party seeking disclosure nevertheless is entitled to discover the dates and places of and the identities of the participants in the communications, the identities of others who were present and to whom the communications were disclosed, and the general subject matter (but not the content) of the communications.” For it is only the content of the client’s confidential communications to his or her legal counsel that is protected by attorney-client privilege.

**III. *Mr. Bulp Is Not a High Ranking Governmental Official Entitled to a Blanket Protective Order Entitling Him To Not Be Deposed in a Case Where He is a Named Party***

**A. *A Rank-and-File Member of the General Assembly Does Not Constitute a “High-Ranking Government Official” Who Is Entitled to a Blanket Protection From Discovery***

“In general, high ranking government officials enjoy limited immunity from being deposed in matters about which they have no personal knowledge” *Warzon v. Drew*, 155 F.R.D. 183, 185 (E.D. Wisc. 1994), *aff’d*, 60 F.3d 1234 (7th Cir. 1995). And this Court has recognized that general principle. *See State ex rel. Summit Cty. Republican Party Exec. Cmte. v. Brunner*, 117 Ohio St.3d 1210, 2008-Ohio-1035. The rationale for providing such protection is based, in part, “on the notion that ‘[h]igh ranking government officials have greater duties and time constraints than other witnesses’ and that, without appropriate limitations, such officials will spend an inordinate amount of time tending to pending litigation.” *Bogan v. City of Boston*, 489 F.3d 417, 423 (1st Cir. 2007). But the cases applying this principle, “tend to be fact-intensive, with the facts of each case varying substantially; therefore, no single case dictates whether” one

particular government official should or should not be subject to deposition. *Hernandez v. Texas Dept't of Aging & Disability Servs.*, 2011 WL 6300852 (W.D.Tex. Dec. 16, 2011).<sup>13</sup>

But the protection from deposition afforded to high-ranking government officials has been applied to those officials whose duties and responsibilities are critical to the day-to-day functioning and operation of the government. Stated otherwise, the protection has been afforded to officials in the executive branch, not the legislative branch, of government. *See, e.g., In re Office of Inspector General*, 933 F.2d 276, 278 (5th Cir.1991) (“top executive department officials should not, absent extraordinary circumstances, be called to testify regarding their reasons for taking official actions” (quoting *Simplex Time Recorder Co. v. Secretary of Labor*, 766 F.2d 575, 586 (D.C. Cir. 1985))).

“As a threshold matter, an official objecting to a deposition must first establish that [he or] she is sufficiently ‘high-ranking’ to invoke the deposition privilege.” *Thomas v. Cate*, 715 F.Supp.2d 1012, 1049 (E.D. Cal. 2010). Yet, notwithstanding his own *ipse dixit* that he is a “high ranking governmental official,” Mr. Bulp has failed to put forth any evidentiary basis that actually establishes that he in a critical and significant position concerned with the day-to-day operation of the state government so as to be able to avoid a deposition in a case where he is a named party.<sup>14</sup>

---

<sup>13</sup> With respect to the present motion, there is no evidence that Mr. Bulp does not have personal knowledge regarding matters in this case. No affidavit to that effect is even offered; instead, Mr. Bulp offers only the *ipse dixit* of his counsel. Furthermore, as noted above, the Public Records Request was directed to Mr. Bulp; Mr. Bulp and Mr. Bulp alone is in the position to be able to provide testimony concerning whether other responsive records exists and, most significantly, his claim and assertion of attorney-client privilege (including any potential waiver of such privilege).

<sup>14</sup> While Mr. Bulp cites to the establishment of the office of state representative by the Ohio Constitution as *ipso facto* making him a “high ranking government official,” (Motion, at 7), to follow the logic of this contention would ignore that resolution of the issue is fact-intensive that must be decided on a case-by-case basis. Additionally, the Ohio Constitution also provides

It is undisputed that Mr. Bulp is not, and does not claim, to be a government official in the executive branch of government. Instead, he claims to be a member of the legislative branch. In Ohio, the General Assembly is a part-time legislature; it is not involved in the year-round, day-to-day functioning and operation of the mechanism of government. In fact, as published on the website of the General Assembly, (Hartman Aff. Exh. C), the first day in April this year when the Ohio House of Representatives was scheduled to be in session was not until April 18, 2012. Thus, in late March, when Relator's counsel requested a date from Mr. Bulp's counsel for Mr. Bulp's deposition, the Ohio House of Representatives was not even scheduled to be in session for several weeks, during which time Mr. Bulp's deposition could have been conducted. Additionally, when Mr. Bulp refused to provide available dates for his deposition and a notice of deposition had to be issued, Relator's counsel consulted the published schedule of the Ohio House of Representatives and selected a day when the House was not in session. (Hartman Aff. ¶8 & Exh. C)

Additionally, even if a member of a part-time legislative branch of government might be considered a "high ranking government official," such protection should, at best, apply only to those in leadership position. But as demonstrated by the website of the Ohio House of Representatives, Mr. Bulp is, at best, a putative rank-and-file member of the General Assembly. On its website, the House of Representatives identifies 10 of its 99 members who are part of the "House Leadership," yet Mr. Bulp is not included therein. (Hartman Aff. ¶10 & Exh. E.) Thus,

---

for the formation and establishment of county and township government, *see* Ohio Const. art. X, as well as city and villages, *see* Ohio Const. art. XVIII. Essentially, the premise of Mr. Bulp would allow all government officials, at any level of government, to automatically avoid a deposition.

But application of the principle that affords high ranking governmental officials from being deposed in matters about which they have no personal knowledge must be decided in appreciation of the facts of each case, as well as the rationale being the principle itself.

the accurate appellation to ascribe to Mr. Bulp is that he is simply a rank-and-file member of the General Assembly. *See Webster's Dictionary* (defining "rank and file" as "the individuals who constitute the body of an organization, society, or nation as distinguished from the leaders").

Additionally, even though a putative member of the legislative branch, Mr. Bulp is not such a critical and indispensable cog in the day-to-day operation of the government or even that branch of government. Again, according to the website of the House of Representatives, "[i]n addition to his work for the House, [Mr.] Bulp also owns and operates his own law practice . . . [as well as] currently liv[ing] in West Union, Ohio where he maintains his law practice." (Hartman Aff. ¶11 & Exh. F.<sup>15</sup>) If Mr. Bulp can own, operate and maintain a private law practice, his role and functioning in a part-time legislature is not of the nature to warrant protection as a "high ranking governmental official", nor it is consistent with the rationale for affording such officials protection from depositions.

Mr. Bulp has not demonstrated that he is a high ranking government official who should be afforded limited immunity from being deposed in matters about which he has no personal knowledge. Not only does Mr. Bulp have pertinent information and testimony to offer (less how else will he meet his burden of proof in this case), *see Bogan*, 489 F.3d at 423 ("[d]epositions of high ranking officials may be permitted where the official has first-hand knowledge related to the claim being litigated"), but he does not qualify or fall within the ambit of those "high ranking government officials" who can and should be afforded blanket protection from being deposed in this case.

---

<sup>15</sup> As indicated on the website of Mr. Bulp's private law firm, not only is Mr. Bulp operating a private law practice, but "Attorney Danny R. Bulp . . . [is] accepting new clients." Hartman Aff. ¶12 & Exh. G.

***B. Even if a Rank-and-File Member of the General Assembly Constitutes a “High-Ranking Government Official” Who Is Entitled to Protection From Discovery Pursuant to the Apex Rule, Respondent Bulp Does Not Enjoy Such Protection As He Has Forfeited His Seat in the General Assembly As a Matter of Law***

For purposes of the present motion, this Court need not resolve whether a rank-and-file member of the General Assembly is entitled to avoid a deposition in a case in which he or she is a named party. For by his assumption and exercising of the public office a mayor’s court magistrate, Mr. Bulp has undertaken an act which has resulted, as a matter self-executing law, the forfeiture of his seat in the General Assembly such that the entire premise of his argument, *i.e.*, that he is a high-ranking government official, is illusory even if such a premise *arguendo* had any basis. For, as a matter of law, Mr. Bulp is not a member of the General Assembly and, thus, cannot even claim to be a high-ranking government official.

Article II, Section 4 of the Ohio Constitution provides, in part:

No member of the general assembly shall, during the term for which he was elected, unless during such term he resigns therefrom, hold any public office under the United States, or this state, or a political subdivision thereof . . . .

In 1913, the Ohio Attorney General, in addressing the comparable predecessor provision of Article II, Section 4 of the Ohio Constitution expressly declared that “[t]he holding of any and all other offices renders one both ineligible to, as well as causing the forfeiture of their seat in the general assembly.” 1913 Ohio Att’y Gen’l Opin. No. 236 (emphasis added).

Additionally, Section 101.26 of the Ohio Revised Code provides, in pertinent part, that:

No member of either house of the general assembly, except in compliance with this section, shall knowingly do any of the following:

...

(C) . . . accept any appointment, office, or employment from any executive or administrative branch or department of the state that provides other compensation than actual and necessary expenses. Any appointee, officer, or employee described in division . . . (C) of this section who accepts a certificate of election to either house immediately shall resign from the appointment, office, or

employment, and, *if he fails or refuses to do so, his seat in the general assembly shall be deemed vacant.* Any member of the general assembly who accepts any appointment, office, or employment described in division . . . (C) of this section immediately shall resign from the general assembly, and, *if he fails or refuses to do so, his seat in the general assembly shall be deemed vacant.* . . .

In 1955, the Ohio Attorney General recognized that the concept of the “state”, as used R.C. § 101.26, was not limited to only the central agencies of the state government, but was intended to be given a broad application to mean “the whole governmental organization of the state, including the numerous local subdivisions therein.” 1955 Ohio Att’y Gen’l Opin. No. 6102 (“the acceptance by a member of the General Assembly of employment by a local school district as a school bus driver *operates to vacate such individual’s legislative office* as provided in Section 101.26, Revised Code” (emphasis added).)

As developed more fully in the Verified Complaint (which is incorporated herein by reference), during the present General Assembly, Mr. Bulp accepted and exercised the second public office of a mayor’s court magistrate. Because “[t]he exercise of judicial powers is clearly a sovereign function of government,” 1992 Ohio Att’y Gen. Opin. No. 92-041, at 2-163 n.3, a person serving as a mayor’s court magistrate is exercising a “public office” as used in Article II, Section 4 of the Ohio Constitution, as well as being subject to the requirements of Ohio Revised Code § 101.26. *See State ex rel. Brockman v. Proctor*, 35 Ohio St.2d 79, 88, 298 N.E.2d 532, 538 (1973)(Corrigan, J., dissenting)(“a person, by virtue of his election to the office of mayor . . . becomes a judicial officer. As such, he must decide litigated criminal questions according to law”); *Village of Covington v. Lyle*, 69 Ohio St.2d 659, 662, 433 N.E.2d 597, 599 (1982)(discussing the “mayor’s judicial decisions”).

The provisions of both Article II, Section 4 of the Ohio Constitution and R.C. § 101.26 are self-executing such that, upon assuming a second public office while a member of the

General Assembly, Mr Bulp's seat in the General Assembly is deemed vacant. *See* 1935 Ohio Att'y Gen'l Opin. No. 4366 (in construing both the constitutional and statutory prohibitions, declared that "while a member of the General Assembly may accept any of the employments you mention when the General Assembly is not in session, he must resign his seat in the General Assembly immediately or his seat will be considered vacant").

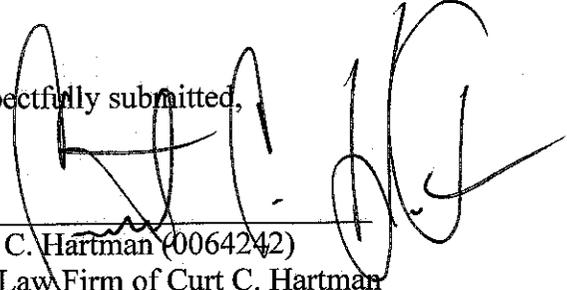
Thus, because Mr. Bulp simultaneously held the public offices of state representative and a mayor's court magistrate during the present General Assembly, Mr. Bulp's seat in the House of Representative is vacant; Mr. Bulp does not legally hold the seat and, thus, as a matter of law, his effort to avoid a deposition based upon supposedly being a "high ranking governmental official" is meritless. Accordingly, Mr. Bulp's claim that he is a "high-ranking government official" is founded on a false premise.

## CONCLUSION

The present motion for protective order is nothing more than an effort by Mr. Bulp to avoid providing pertinent and relevant discovery in this action. Mr. Bulp has not met or establish the heavy burden of justifying the entry of a blanket protective order that would excuse him from being subject to a deposition in advance of any such deposition. The testimony that he may offers serves not only the purposes of ascertaining the existence *vel non* of responsive public records which have not been produced or identified as being withheld, but also goes directly his ability *vel non* to meet his ultimate burden of proving the existence and the application of the attorney-client privilege to certain records which Mr. Bulp has, thus far, refused to produce in response to a public records request, or, if such a privilege actually exists, whether it has been waived.

Accordingly, with Mr. Bulp failing to adequately and sufficiently justify the entry of a blanket protective order, the present motion must be denied.

Respectfully submitted,



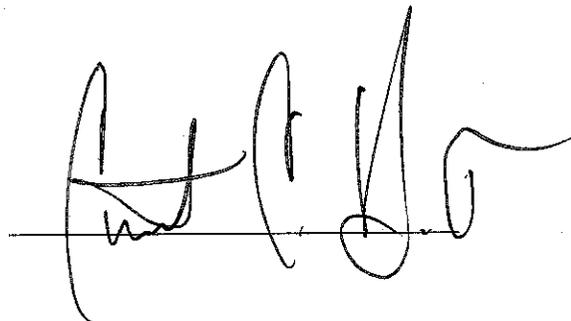
---

Curt C. Hartman (0064242)  
The Law Firm of Curt C. Hartman  
3749 Fox Point Court  
Amelia, Ohio 45102  
(513) 752-8800  
*hartmanlawfirm@fuse.net*  
*Attorney for Relator Kent Lanham*

#### CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served via e-mail and via regular mail, on the 18th day of April 2012, upon the following:

Jeff Clark  
Jeannine Lesperance  
Office of the Ohio Attorney General Mike DeWine  
Constitutional Offices Section  
30 East Broad Street, Floor 16  
Columbus, Ohio 43215



---

**SUPREME COURT  
OF THE STATE OF OHIO**

<b>STATE OF OHIO <i>ex rel.</i> KENT LANHAM,</b>	:	<b>Case No. 2012-0131</b>
	:	
<b>Relator,</b>	:	
	:	
<b>v.</b>	:	
	:	
<b>DANNY R. BUBP,</b>	:	<b>AFFIDAVIT OF CURT C. HARTMAN</b>
<b>Putative State Representative,</b>	:	
	:	
<b>Respondent.</b>	:	

STATE OF OHIO, COUNTY OF CLERMONT ) ss:

Comes now the Affiant, Curt C. Hartman, having been duly cautioned and sworn, stated and declares as follows:

1. I am over the age of 18 years of age and have personal knowledge of the facts stated herein.
2. I am legal counsel for the Relator herein, Kent Lanham.
3. Attached hereto as **Exhibit A** is a true and accurate copy of a series of e-mail exchanges between myself and counsel for Mr. Bubp. The initial e-mail exchanges therein are Exhibit B to the Affidavit of Jeannine Lesperance, submitted with the Respondents' Motion for Protective Order; the attached Exhibit A contains additional follow-up communications and exchanges.
4. When it became evidence that this case would not be resolved via mediation or otherwise, I sought from Respondent's counsel dates for when the Respondent, Mr. Bubp, would be available for a deposition. This request was made in late March 2011. I anticipated that the Respondents' deposition would last no more than 2 to 3 hours (if that long), though with the

caveat that the actual length of a deposition can also be dictated by the responsiveness to question (or avoidance of being responsive to question) of the person being deposed.

5. In response to my request in late March 2011 for dates when the Respondent, Mr. Bubb, would be available for deposition, I received from his counsel the letter dated March 30, 2012, and attached hereto as **Exhibit B**.

6. When it became readily apparent that no dates would be provided for the Respondent's deposition, I prepared and served the Notice of Deposition (a copy of which is attached to the Affidavit of Jeannine Lesperance as Exhibit A).

7. Attached hereto as **Exhibit C** is a true and accurate copy of the Legislative Schedule for both houses of the Ohio General Assembly for the months of April, May and June 2012. The address for the webpage is located in the bottom left of the exhibit.

8. In selecting the date of the Respondent's deposition as contained in the Notice of Deposition, I consulted the foregoing Legislative Schedule so as to be sure to choose a date when the Ohio House of Representatives was not scheduled to be in session.

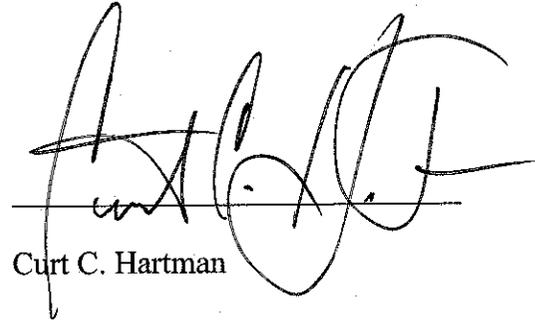
9. Attached hereto as **Exhibit D** is a true and accurate copy of the e-mail by which I transmitted the Notice of Deposition to Respondent's counsel, indicating my willingness to conduct the deposition on a different, mutually-convenient date.

10. Attached hereto as **Exhibit E** is a true and accurate copy of the "House Leadership" as published on the website of the Ohio House of Representatives. The address for the webpage is located in the bottom left of the exhibit.

11. Attached hereto as **Exhibit F** is a true and accurate copy of the webpage for Respondent Danny Bubb as published on the website of the Ohio House of Representatives. The address (in part) for the webpage is located in the bottom left of the exhibit.

12. Attached hereto as **Exhibit G** is a true and accurate copy of the webpage for Respondent Danny Bulp as published on the website of the Ohio House of Representatives. The address (in part) for the webpage is located in the bottom left of the exhibit.

Further the Affiant sayeth naught.



Curt C. Hartman

Sworn to and subscribed before me in my presence on this the 18th day of April 2012.



**TAWNYA CARTER**  
Notary Public, State of Ohio  
My Commission Expires  
July 22, 2015



**Curt Hartman**

---

**From:** Jeff Clark [Jeffery.Clark@ohioattorneygeneral.gov]  
**Sent:** Wednesday, February 22, 2012 4:39 PM  
**To:** 'chartman@fuse.net'  
**Cc:** Jeannine Lesperance; Lenzo, Mike (Mike.Lenzo@ohr.state.oh.us)  
**Subject:** FW: State ex rel Lanham v. Bubp, Ohio Supreme Court, Case No. 2012-0131

Dear Mr. Hartman,

We respectfully decline to undertake a discovery-style privilege log of the records withheld from your public records request. If you are aware of any statutory authority requiring us to do otherwise, please let us know.

With regard to your second question, we believe that the attorney-client privilege justifies withholding these records in their entirety.

Since you have now been provided with all of the responsive records to which you are entitled under the Public Records Act, we look forward either to your dismissal of the complaint, or the prompt resolution of this matter in mediation.

Thanking you in advance,

Jeff Clark  
Principal Attorney, Constitutional Offices Section  
Ohio Attorney General Mike DeWine  
**PHONE** 614.466.2872  
**FAX** 614.728.7592  
**EMAIL** [jeff.clark@ohioattorneygeneral.gov](mailto:jeff.clark@ohioattorneygeneral.gov)

30 East Broad Street, Floor 16  
Columbus, Ohio 43215  
[www.ohioattorneygeneral.gov](http://www.ohioattorneygeneral.gov)

---

**From:** Curt Hartman [mailto:chartman@fuse.net]  
**Sent:** Tuesday, February 21, 2012 3:57 PM  
**To:** Jeff Clark  
**Subject:** RE: State ex rel Lanham v. Bubp, Ohio Supreme Court, Case No. 2012-0131

Mr. Clark -

Thank you for the follow-up information and additional responsive documents. With respect to the 31 pages being withheld in their entirety, can you apprise me as to the number of documents (as opposed to pages) that are involved. And with respect to each document being withheld, can you apprise me as to the following which would be akin to a privilege log: (i) the format of each document (e.g., e-mail, letter, memoranda, etc.); (ii) the date of each document; (iii) the sender/transmitter of each document; (iv) all recipients of the document; (v) identification of the attorney upon which the claim of attorney-client privilege is being asserted; and (vi) a general description so as to demonstrate the application of the attorney-client privilege.

Additionally, with respect to any document for which a claim of attorney-client privilege is being asserted, I do not believe the entire document necessarily needs to be withheld. At a minimum, the date, addressees and signatory line of each document would not be subject to attorney-client privilege. Thus, at a minimum, I believe the withheld documents should be produced with at least that information provided; whether the other information redacted is appropriately subject to attorney-client privilege, we can address after the foregoing is provided.

I appreciate your prompt attention to this matter.

Sincerely,

Curt Hartman

---

**From:** Jeff Clark [mailto:Jeffery.Clark@ohioattorneygeneral.gov]

4/17/2012

*Exhibit A*

**Sent:** Tuesday, February 21, 2012 3:41 PM  
**To:** 'Curt Hartman'; Jeannine Lesperance  
**Cc:** Lenzo, Mike (Mike.Lenzo@ohr.state.oh.us)  
**Subject:** FW: State ex rel Lanham v. Bupp, Ohio Supreme Court, Case No. 2012-0131

Dear Mr. Hartman,

Our client has found 33 pages of additional documents responsive to your request. All but two of those pages consist of attorney-client privileged material, and the other 31 pages will be withheld on that basis in their entirety. See *State ex rel. Leslie v. Ohio Hous. Fin. Agency*, 105 Ohio St.3d 261, 2005-Ohio-1508; *State ex rel. Thomas v. Ohio State Univ.*, 71 Ohio St.3d 245, 1994-Ohio-261; and *Reed v. Baxter* (6th Cir. 1998), 134 F.3d 351.

The two pages not subject to the privilege are attached as a .pdf file to this e-mail. We believe that this completes the provision of records responsive to your public records request. Please let us know if you have any additional questions.

Jeff Clark

Principal Attorney, Constitutional Offices Section

Ohio Attorney General Mike DeWine

PHONE 614.466.2872

FAX 614.728.7592

EMAIL [jeff.clark@ohioattorneygeneral.gov](mailto:jeff.clark@ohioattorneygeneral.gov)

30 East Broad Street, Floor 16

Columbus, Ohio 43215

[www.ohioattorneygeneral.gov](http://www.ohioattorneygeneral.gov)

---

**From:** Jeannine Lesperance  
**Sent:** Thursday, February 16, 2012 11:30 AM  
**To:** 'Curt Hartman'; Jeff Clark  
**Cc:** Lenzo, Mike  
**Subject:** RE: State ex rel Lanham v. Bupp, Ohio Supreme Court, Case No. 2012-0131

Mr. Hartman,

In further response to your inquiry below, I am informed as follows:

1, 2, and 3: None of the referenced records still exists. They were properly destroyed per the House's public records policy and schedule, which allows destruction of that record series (LEG 21) when they are no longer of administrative value. The computer backups for that time period have long been overwritten as well.

4: The reference in the email on page 67 is to Advisory Opinion 2009-7 from the Supreme Court of Ohio Board of Commissioners on Grievance and Discipline dealing with domestic relations court magistrates serving on city council at the same time. The advisory opinion was included in the records release on pages 63-66 of the .pdf.

Thank you.

Jeannine Lesperance

Jeannine R. Lesperance  
 Principal Assistant Attorney General - Constitutional Offices  
 Office of Ohio Attorney General Mike DeWine  
 Office number: 614-466-2872  
 Fax number: 614-728-7592  
 Direct number: 614-466-1853  
[Jeannine.Lesperance@OhioAttorneyGeneral.gov](mailto:Jeannine.Lesperance@OhioAttorneyGeneral.gov)

use only by the individual or entity to whom or which it is addressed and may contain information that is privileged, confidential and/or otherwise exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this

4/17/2012

communication is strictly prohibited. If you have received this communication in error, please notify me immediately by telephone.

---

**From:** Curt Hartman [mailto:chartman@fuse.net]  
**Sent:** Saturday, February 11, 2012 9:49 PM  
**To:** Damian Sikora; Jeannine Lesperance  
**Subject:** State ex rel Lanham v. Bulp, Ohio Supreme Court, Case No. 2012-0131

Counsel –

I wanted to touch base with you in an effort to expedite the potential for mediation to resolve this public records case. Prior to your entry of appearance, I talked to Mike Lenzo concerning the sufficiency of the production, indicating that the production appeared to be incomplete. In the event that Mike failed to relay to you the issues I raised with him, I wanted to pass them along to you, as well.

In reviewing the records that were produced – but only after commencement of the public records mandamus action – it appears that additional records should have been produced. As the records were produced to me in a pdf-format, I will presume that they were provided to you in the same format and, thus, for ease of reference, will include a reference to a page number that corresponds to the page in the pdf-file. As for the issue of potentially additional outstanding records, I would note the following:

1. Page 1, an e-mail from Erica Wilson (legislative aide to Mr. Bulp) dated October 30, 2009, and directed to Nathan Slonaker (legislative aid to Rep. Batchelder). The subject line indicates that this e-mail was forwarded from a previously received e-mail. Yet, this earlier e-mail has not yet been produced.
2. Page 4, an e-mail from Erica Wilson (legislative aide to Mr. Bulp) dated November 10, 2009, and directed to Mary Jane Campbell (who works in Mr. Bulp's private law practice). As with #1 above, the subject line indicates that this e-mail was forwarded from a previously received e-mail. Yet, this earlier e-mail has not yet been produced.
3. Page 7, in a letter from Rep. Batchler to Chris Redfern, Rep. Batchler makes the claim that Mr. Bulp "sought counsel on this matter over give years ago, receiving the go-ahead to serve as magistrate . . . from Tony Bledsoe." Absent from any production of records in this case are any records documenting a request being tendered to Mr. Bledsoe or a corresponding response to Mr. Bulp. In fact, the only document from the time frame of 2004 is what appears to be a generic letter dated "December XX, 2004" and which simply addresses whether the ethics laws and the Legislative Code of Ethic prohibit a member of the General Assembly from also serving as a mayor's court magistrate. (It is noteworthy, that this generic letter does not even begin to address the constitution provision which Mr. Bulp continues to violate or the effect of R.C. 102.26 (both of which are outside the jurisdiction of JLEC).) But missing from the request are any records documenting correspondence, communications, etc., that document Mr. Bulp seeking the counsel to which Rep. Batchelder references.
4. Page 67, an e-mail from Erica Wilson (legislative aide to Mr. Bulp) dated January 12, 2010, and directed to Mike Lenzo, wherein Ms. Wilson references the "magistrate ruling". Yet, there are no other records concerning the refenced "magistrate ruling".

As indicated above, I am undertaking this effort at this time to expedite the mediation process, if that is possible. I'd appreciate you looking into the issues raised above. Hopefully we can have them resolved prior to the mediation.

Sincerely,  
Curt Hartman

4/17/2012



**MIKE DEWINE**

OHIO ATTORNEY GENERAL

Constitutional Offices Section  
Office (614) 466-2872  
Fax (614) 728-7592

30 East Broad Street, 16th Floor  
Columbus, Ohio 43215  
[www.OhioAttorneyGeneral.gov](http://www.OhioAttorneyGeneral.gov)

March 30, 2012

Curt C. Hartman  
The Law Firm of Curt C. Hartman  
3749 Fox Point Court  
Amelia, Ohio 45102

Re: *State of Ohio ex rel. Kent Lanham v. Danny R. Bulp*  
Supreme Court of Ohio Case No. 12-0131

Dear Mr. Hartman:

I write to respond to your request for dates for Representative Bulp's deposition in relation to your mandamus action, *Lanham v. Bulp*. We will not produce Representative Bulp for deposition in this matter because the only matters at issue in this case are whether the production in response to your public records request was complete and timely, Representative Bulp is a high-ranking official and you cannot show a need for his testimony, the deposition is not likely to lead to any relevant evidence because Representative Bulp's records are maintained by his staff (Representative Bulp has limited or no personal knowledge), and the content of your complaint suggests that you may seek to inquire into matters that are protected by the legislative privilege and special privilege for communication with the Joint Legislative Ethics Committee.

Should you decide to serve counsel with a notice of deposition, we will move to quash the notice.

While this response is specific to your request to depose Representative Bulp, the same objections would apply to many of the other depositions of high-ranking government officials that I understand you to have informally requested.

We will be happy to talk to you about scheduling a staff deposition at some time after our answers to your discovery requests have been delivered. At that point in time, however, I believe it will be evident that depositions are unnecessary.

Very truly yours,

MIKE DEWINE  
Ohio Attorney General



Jeannine R. Lesperance  
Assistant Attorney General

JRL/bmr

Exhibit B



<a href="#">Search for Legislative Information</a>	<a href="#">Laws, Acts, and Legislation</a>	<a href="#">The Ohio House of Representatives</a>	<a href="#">The Ohio Senate</a>	<a href="#">Ohio's Legislative Agencies</a>
<a href="#">Legislative Schedules</a>	<a href="#">Session Video</a>	<a href="#">Executive &amp; Judicial Branches</a>	<a href="#">About Ohio's State Government</a>	<a href="#">Education Topics and Legislative Reports</a>

**House & Senate Sessions**

- [Senate Calendar](#)
- [House Calendar](#)
- [Senate Committee Schedule](#)
- [House Committee Schedule](#)
- [Status Report of Legislation](#)
- [Current Legislation](#)
- [Find Bills by Bill Number](#)
- [List Bills Sponsored By Member](#)
- [Find Bills and Bill Analyses by Keyword](#)

**Legislative Schedules**

**Senate and House Sessions**

Tentative legislative calendar:

[April](#) | [May](#) | [June](#) |

**April 2012**

[\[Back to Top\]](#)

	<b>Senate</b>	<b>House</b>
Wed. Apr 18	Session at 1:30 p.m.	Session at 1:30 p.m.
Thu. Apr 19	Committee Hearings	Committee Hearings
Tue. Apr 24	Session at 1:30 p.m.	Session at 11:00 a.m.
Wed. Apr 25	Session at 1:30 p.m.	Session at 1:30 p.m.
Thu. Apr 26	Session at 11:00 a.m.	Committee Hearings

**May 2012**

[\[Back to Top\]](#)

	<b>Senate</b>	<b>House</b>
Tue. May 01	Session at 1:30 p.m.	Committee Hearings
Wed. May 02	Session at 1:30 p.m.	Committee Hearings
Thu. May 03	Session at 11:00 a.m.	Committee Hearings
Tue. May 08	Session at 1:30 p.m.	Session at 11:00 a.m.
Wed. May 09	Session at 1:30 p.m.	Session at 1:30 p.m.
Thu. May 10	Session at 11:00 a.m.	Committee Hearings
Tue. May 15	Session at 1:30 p.m.	Session at 11:00 a.m.
Wed. May 16	Session at 1:30 p.m.	Session at 1:30 p.m.
Thu. May 17	Session (if needed)	Committee Hearings
Tue. May 22	Session at 1:30 p.m.	Session at 11:00 a.m.
Wed. May 23	Session at 1:30 p.m.	Session at 1:30 p.m.
Thu. May 24	Session (if needed)	Session (if needed)
Tue. May 29	Session (if needed)	Session (if needed)
Wed. May 30	Session (if needed)	Session (if needed)

**June 2012**

[\[Back to Top\]](#)

	<b>Senate</b>	<b>House</b>
Tue. Jun 05	Session (if needed)	Session (if needed)
Wed. Jun 06	Session (if needed)	Session (if needed)
Tue. Jun 12	Session (if needed)	Session (if needed)
Wed. Jun 13	Session (if needed)	Session (if needed)

Please send questions and comments to the [Webmaster](#).  
 © 2012 Legislative Information Systems | [Disclaimer](#)  
[Index of Legislative Web Sites](#)

*Exhibit C*

**Curt Hartman**

---

**From:** Curt Hartman [chartman@fuse.net]  
**Sent:** Monday, April 09, 2012 3:26 PM  
**To:** 'Jeannine Lesperance'; 'Jeff Clark'  
**Subject:** State ex rel Lanham v. Bupp  
**Attachments:** Bupp Public Records Case\_Notice of Deposition.pdf

Counsel -

Please find attached a copy of a notice of deposition; an original is being transmitted via regular mail. As I would note, I had previously requested from you potential dates for Mr. Bupp's deposition. With you not providing any dates in response thereto, I have selected the date, time and location. Naturally, if a different date in the immediate future works for you or your client, we are open to attempting to re-set the date and time.

Sincerely,  
Curt Hartman

4/17/2012

*Exhibit D*

House Leadership



Speaker of the House

William G. Batchelder

Majority Leadership



Speaker Pro Tempore

Louis W. Blessing, Jr.



Majority Floor Leader

Matt Huffman



Assistant Majority Floor Leader

Barbara R. Sears



Majority Whip

John Adams



Assistant Majority Whip

Cheryl L. Grossman

Minority Leadership



Minority Leader

Armond Budish



Assistant Minority Leader

Matt Szollosi

Minority Whip

Assistant Minority Whip

*Exhibit E*



**Tracy Maxwell Heard**



**Debbie Phillips**

---

[HOME](#) [DISCLAIMER](#) [REPRESENTATIVE DIRECTORY](#) [COMMITTEE DIRECTORY](#) [KIDS PAGE](#) [FIND LEGISLATION](#)

Copyright © 2005 - 2012 Ohio House of Representatives.

Please address questions or comments regarding the site to [webmaster@ls.state.oh.us](mailto:webmaster@ls.state.oh.us)

Member Details

[Printer Friendly Version](#)



Danny R. Bulp, Representative

State Representative (R)

[Biography](#)

[Education](#)

[Committees](#)

[Bills](#)

[Resolutions](#)

[Honors/Awards](#)

[Memberships/Affiliations](#)

[Responsibilities](#)

[Contact Me](#)

**District:** 88

**Term:** 4th

**Term Limit:** Not eligible to run for another two-year term

**Address:**

77 S. High St  
13th Floor  
Columbus, OH 43215-6111

**Phone:** (614) 644-6034

**Fax:** (614) 719-6988

[Contact Me](#)

**Biography**

State Representative Danny Bulp is currently serving his fourth term in the Ohio House of Representatives. He represents the 88<sup>th</sup> House District, which includes Brown County and parts of Adams and Clermont counties.

Representative Bulp has received the 2005 Ohio AMVETS Legislator of the Year Award, the 2006, 2009, 2010 United Conservatives of Ohio Watchdog of the Treasury Awards, a Certificate of Appreciation from the Ohio Recorder's Association and a Certificate of Appreciation from American Legion Post 450, ABATE of Ohio's Freedom Fighter Award and has been recognized by the Ohio Farm Bureau as a Friend of Agriculture.

In addition to his work for the House, Representative Bulp also owns and operates his own law practice. He was previously elected as the Adams County Court Judge and was appointed by Governor Voinovich as the Adams County Common Pleas, Probate, and Juvenile Judge.

Prior to opening his law practice, Representative Bulp served in the United States Marine Corps. He was commissioned as a Second Lieutenant after graduating from the University of Cincinnati and served three years on active duty at Parris Island, SC and Camp Pendleton, CA as a Legal Officer and Battalion Adjutant. Upon his release from active duty, Representative Bulp joined the Marine Corps Reserve and served in excess of thirty years.

Representative Bulp retired from the United States Marine Corps at the rank of full Colonel. His personal decorations include the Legion of Merit, Defense Meritorious Service Medal, Joint Service Commendation Medal, Navy and Marine Corps Commendation Medal and the Army Commendation Medal. The Colonel was mobilized in November, 2007 in support of Operation Iraqi Freedom. He served in Fallujah and Ramadi, Iraq as the 1<sup>st</sup> Marine Expeditionary Force Liaison Officer to the Governor of Anbar Province from January 2008 through November 2008. He returned to Ohio and resumed his legislative responsibilities in December 2008.

Representative Bulp received his bachelor's degree from the University of Cincinnati in 1978. He was released from active duty in 1981 to attend law school at Ohio Northern University. He graduated from Ohio Northern University College of Law in 1984. The Colonel currently lives in West Union, Ohio where he maintains his law practice.

**Education**

B.S. in Criminal Justice, University of Cincinnati; J.D., Ohio Northern College of Law

**Committees**

Committee Name	Position
<a href="#">Criminal Justice</a>	Member
<a href="#">Judiciary and Ethics</a>	Chair
<a href="#">Veterans Affairs</a>	Member

*Exhib. F*

**Bills**

**Primary Sponsor**

HB 22 HB 45 HB 79 HB 162 HB 286  
HB 320 HB 331 HB 334 HB 398 HB 477

**Cosponsor**

HB 1 HB 2 HB 5 HB 9 HB 14  
HB 18 HB 20 HB 21 HB 23 HB 24  
HB 25 HB 29 HB 30 HB 36 HB 41  
HB 42 HB 48 HB 53 HB 54 HB 58  
HB 63 HB 64 HB 65 HB 66 HB 75  
HB 78 HB 83 HB 84 HB 86 HB 89  
HB 92 HB 93 HB 94 HB 97 HB 99  
HB 102 HB 114 HB 117 HB 118 HB 119  
HB 120 HB 121 HB 122 HB 123 HB 124  
HB 125 HB 128 HB 136 HB 148 HB 152  
HB 157 HB 159 HB 163 HB 167 HB 170  
HB 174 HB 185 HB 188 HB 193 HB 194  
HB 207 HB 209 HB 211 HB 212 HB 215  
HB 221 HB 224 HB 225 HB 229 HB 232  
HB 243 HB 244 HB 247 HB 252 HB 268  
HB 275 HB 276 HB 278 HB 280 HB 282  
HB 285 HB 298 HB 309 HB 316 HB 318  
HB 323 HB 326 HB 337 HB 355 HB 364  
HB 365 HB 367 HB 368 HB 373 HB 383  
HB 389 HB 390 HB 401 HB 415 HB 431  
HB 454 HB 455 HB 459 HB 495 HB 497  
HB 507 SB 2 SB 4 SB 17 SB 38  
SB 73 SB 80 SB 84 SB 101 SB 117  
SB 120 SB 122 SB 124 SB 132 SB 134  
SB 155 SB 165 SB 171 SB 187 SB 202  
SB 208 SB 223 SB 243 SB 247 SB 258  
SB 264 SB 268 SB 289

**Resolutions**

**Primary Sponsor**

HCR 10 HCR 26 HR 26 HR 30 HR 32  
HR 35 HR 43 HR 79 HR 83 HR 90  
HR 115 HR 116 HR 143 HR 160 HR 171  
HR 178 HR 179 HR 186 HR 187 HR 192  
HR 202 HR 204

**Cosponsor**

- [HCR 4](#)   [HCR 8](#)   [HCR 11](#)   [HCR 12](#)   [HCR 13](#)
- [HCR 14](#)   [HCR 15](#)   [HCR 16](#)   [HCR 23](#)   [HCR 28](#)
- [HCR 32](#)   [HCR 35](#)   [HJR 2](#)   [HR 27](#)   [HR 97](#)
- [HR 198](#)   [HR 230](#)   [HR 261](#)   [HR 280](#)   [HR 294](#)
- [HR 310](#)   [HR 311](#)   [HR 312](#)   [HR 313](#)   [HR 314](#)
- [HR 315](#)   [HR 316](#)   [HR 317](#)   [HR 318](#)   [HR 319](#)
- [HR 320](#)   [HR 321](#)   [HR 322](#)   [HR 323](#)   [HR 324](#)
- [SCR 2](#)   [SCR 7](#)   [SCR 19](#)

**Honors/Awards**

Joint Service Commendation Medal; Navy and Marine Corps Commendation Medal; Army Commendation Medal; Freedom Fighter Award, American Bikers Aimed Toward Education (ABATE) of Ohio, Inc. - Region 5 ; Legislative Award, Ohio American Veterans (AMVETS) (2005) ; Watch Dog of the Treasury Award, United Conservatives of Ohio (2005-2006)

**Memberships/Affiliations**

Ohio Farm Bureau; Staff Judge Advocate, Marine Corps League; Life Member, National Rifle Association; Life Member, American Legion; Life Member, AMVETS; Colonel, US Marine Corps Reserve

**Responsibilities**

A **State Representative** is an elected official whose job is to serve as a direct link between those Ohioans he or she was elected to represent and state government. In order to best fulfill this role, a representative responds to constituent concerns and works to provide solutions through legislative action. In order to best serve their constituents, a state representative attends meetings of their local civic, social and business groups in addition to responding to mail, email and telephone correspondence from constituents in their district.

**Contact Me**

\* designates required field

Name\*

Address\*

City\*

State\*

Zip\*

Phone Number

Email Address\*

Subject\*

Comments\*

Opt out of further correspondence

**55.0**



Type the two words:



Submit

[HOME](#) [DISCLAIMER](#) [REPRESENTATIVE DIRECTORY](#) [COMMITTEE DIRECTORY](#) [KIDS PAGE](#) [FIND LEGISLATION](#)

Copyright © 2005 - 2012 Ohio House of Representatives.

Please address questions or comments regarding the site to [webmaster@hls.state.oh.us](mailto:webmaster@hls.state.oh.us)



Bubp Law Office

[Home](#)

[Our team](#)

[Robert Hoskins](#)

[Danny R. Bubp](#)

[Tanya M. Drinnon](#)

[About us](#)

✻ *Welcome!*

**Welcome to Bubp Law Office Home Page....**

Attorney Danny R. Bubp, Tanya M. Drinnon and Robert H. Hoskins are accepting new clients.

We specialize in bankruptcy (Chapter 7, 12, 13), tax law, personal injury, social security, criminal, civil and domestic law. We also offer financial services such as tax return preparation, and general payroll and accounting services.

Our offices are located at:

307 North Market Street  
West Union, OH 45693

We want to welcome Robert Hoskins, Attorney at Law. Rob is accepting new clients. Please contact Rob at the numbers below.

Thank you for visiting our new Internet site. As a busy law office, we want to give you the opportunity to stay in touch with our company and our services.

In the meantime you can reach us at 937-544-2581 and by fax at 937-544-1802. We are looking forward to hearing from you. You can also contact us at our e-mail address: [mjcampbell@bubplawoffice.com](mailto:mjcampbell@bubplawoffice.com)

If you are not familiar with our firm and your first contact with us is online: We would be pleased to hear from you! Please let us know what your needs and questions are, we will be more than happy to help.

00325

Exhibit G