

IN THE UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF MISSISSIPPI

UNITED STATES OF AMERICA	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL ACTION NO. 4:05-cv-33 (TSL/AGN)
	)	
	)	
IKE BROWN, individually, and in his	)	
official capacities as Chairman of Noxubee	)	
County Democratic Executive Committee	)	
and Superintendent of Democratic Primary	)	
Elections; NOXUBEE COUNTY	)	
DEMOCRATIC EXECUTIVE	)	
COMMITTEE; CARL MICKENS,	)	
individually, and in his official capacities	)	
as the Circuit Clerk of Noxubee County,	)	
Superintendent of Elections, Administrator	)	
of absentee ballots and Registrar of voters;	)	
the NOXUBEE COUNTY ELECTION	)	
COMMISSION; NOXUBEE COUNTY,	)	
MISSISSIPPI; and those acting in concert,	)	
	)	
Defendants.	)	
_____	)	

**MOTION FOR SANCTIONS FOR DEFENDANTS' IKE BROWN AND THE  
NOXUBEE COUNTY DEMOCRATIC EXECUTIVE COMMITTEE FAILURE  
TO COMPLY WITH RULE 26 AND MAKE INITIAL DISCLOSURES**

COMES NOW the plaintiff, the United States, pursuant to Rule 37, and asks this Honorable Court for an order imposing sanctions on the defendants Ike Brown and the Noxubee County Democratic Executive Committee for failing to make initial disclosures, as required by Rule 26(a)(1), and compelling production of the same. In support of this motion the plaintiff states as follows:

1. On June 24 and concluding June 28, 2005 the attorneys for the United States and the Defendants Ike Brown and the Noxubee County Democratic Executive Committee participated in the telephone conference required by Rule 26(f) regarding the case management order and discovery deadlines. Rule 26(a)(1) and the Rule 16.1(A) Initial Order of this Court therefore required the exchange of initial disclosures by July 12, 2005.

2. On July 11, 2005 the United States forwarded to attorneys for defendants Brown and the Noxubee County Democratic Executive Committee its initial disclosures by Federal Express overnight delivery. These initial disclosures contained the legible typewritten names of 110 individuals that the United States believes may have information that it might rely upon to prove its case. The addresses of 83 witnesses and the telephone numbers of 65 witnesses were provided. The subject matter of the testimony of each witness was identified. In addition, numerous indexed documents numbering several hundreds of pages were provided to attorneys for defendants Brown and the Noxubee County Democratic Executive Committee.

3. Documents purporting to be initial disclosures were received from the defendants on August 1, 2005. (Page titled "witnesses" attached as Exhibit A to this Motion). Exhibit A is handwritten and has inconsistent legibility, contains no addresses, contains no telephone numbers and does not identify a single subject of the information about which the witness may testify. Also, a series of uncategorized and unlabelled documents were received without an index, none of which purport to comply with obligations of Rule 26 regarding witnesses. The defendants have not served upon the

United States initial disclosures as required by Rule 26(a) and therefore have not complied with Rule 26(a)(1).

4. The documents purporting to be initial disclosures were provided to the United States without the requisite compliance with Local Rule 5.3(A). The Rule states that a party serving disclosures must also file with this Court a “notice of service of pre-discovery disclosures of core information. [Official Form No. 2(c)].” Local Rule 5.3(A) (brackets in original). The defendants did not file a notice of service of pre-discovery disclosures with this Court.

5. During a telephonic conference on July 19, 2005, immediately prior to the Case Management Conference, counsel for defendants stated that he did not intend to file initial disclosures at that time. Yet affirmative defenses had been raised in the defendants’ answer. The United States discussed the failure to make initial disclosures multiple times with counsel for the defendants, including before the Case Management Conference on July 19, and through communications on July 22, July 26 and July 28, well after the passage of the July 13, 2005 deadline for making initial disclosures.

6. The United States has repeatedly sought initial disclosures which comply with Rule 26 from the defendants Ike Brown and the Noxubee County Democratic Executive Committee and a Declaration as required by Local Rule 37.1(a) is attached to this motion.

WHEREFORE, the United States seeks an Order from this Honorable Court which:

A. Compels the defendants Ike Brown and the Noxubee County Democratic Executive Committee to comply with Rule 26(a)(1) and provide the United States typed, complete and detailed initial disclosures;

B. Prohibits the defendants Ike Brown and the Noxubee County Democratic Executive Committee, pursuant to Rule 37(b)(2)(B), from introducing as evidence the testimony of any witness or any document not disclosed or identified in the initial disclosures required by Rule 26(a)(1) until such time as complete and detailed initial disclosures are made and any additional motions relating to defendants' failure to comply with Rule 26(a)(1) are ruled upon;

C. Prohibits the defendants Ike Brown and the Noxubee County Democratic Executive Committee, pursuant to Rule 37(b)(2)(B), from deposing or calling any fact witness at a hearing or trial not named in the initial disclosures or as required by Rule 26(a)(1) that will be used to support the defendants' affirmative defenses or denials, and any additional motions relating to defendant's failure to comply with Rule 26(a)(1) are ruled upon;

D. Requires the defendants Ike Brown and the Noxubee County Democratic Executive Committee to reimburse the United States for all reasonable expenses incurred in making this motion as permitted by Rule 37(a)(4)(A) including, but not limited to, travel, lodging and costs;

E. Strikes defendant Ike Brown's affirmative defenses styled in the Answer of Defendant Ike Brown as First Defense, Second Defense, and Third Defense as permitted by Rule 37(b)(2)(C); and,

F. Strikes defendant Noxubee County Democratic Executive Committee's affirmative defenses styled in the Answer of Defendant the Noxubee County Democratic Executive Committee as First Defense, Second Defense, and Third Defense as permitted by Rule 37(b)(2)(C).

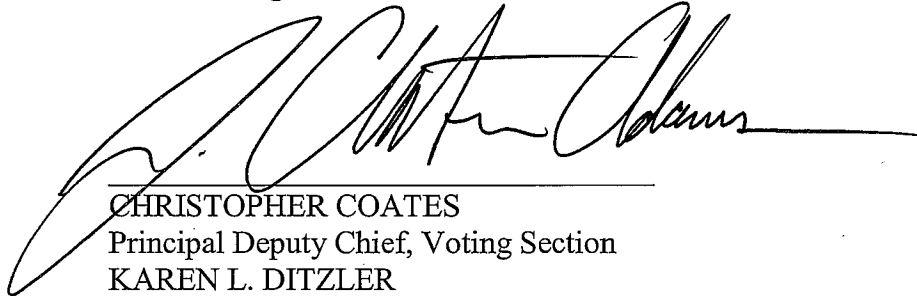
Respectfully Submitted,

ALBERTO R. GONZALES  
Attorney General

BRADLEY J. SCHLOZMAN  
Acting Assistant Attorney General  
Civil Rights Division

DUNN O. LAMPTON  
United States Attorney,  
Southern District of  
Mississippi

JOHN K. TANNER  
Chief, Voting Section

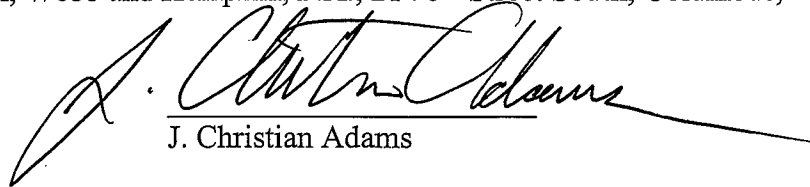


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(202) 307-2932

**CERTIFICATE OF SERVICE**

I hereby certify that on August 16, 2005, I electronically filed the foregoing Motion To Compel the Defendant to Comply With Rule 26 and Make Initial Disclosures

with the Clerk of Court using the ECF system which sent notification of such filing to Wilbur O. Colom, Esq. and Kerri Woodrick, Esq. of the Colom Law Firm, LLC, 200 6<sup>th</sup> Street, North, Suite 102, Columbus, Mississippi, 39701, Ellis Turnage, Esq., Post Office Box 216, 108 North Pearman Avenue, Cleveland, Mississippi, 38732, and, Christopher D. Hemphill, Esq., Dunn, Webb and Hemphill, P.A., 214 5<sup>th</sup> Street South, Columbus, Mississippi, 39701.



J. Christian Adams

witnesses

Sam Pini Heard

Carl Mikes

Dr. Kevin Jones

Larry Tate

George Robinson

James Eddie Coleman

others

Peggy Brewer



D000001

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MISSISSIPPI; and those acting in concert,	)	
	)	
Defendants.	)	
	)	

DECLARATION OF J. CHRISTIAN ADAMS IN LIEU OF GOOD FAITH  
CERTIFICATE UNDER LOCAL RULE 37.1(A)

Comes now the declarant, J. Christian Adams, pursuant to 28 U.S.C. § 1746, and declares:

1. That I am counsel for the United States in the above styled matter.
2. That attorneys for the United States have communicated with the defendants counsel for Ike Brown and the Noxubee County Democratic Executive Committee on multiple occasions regarding their need to file complete and detailed initial disclosures

as required by Rule 26(a)(1) of the Federal Rules of Civil Procedure. Despite these communications, initial disclosures have not been provided to the United States which comply with Rule 26. These efforts to seek the defendants' compliance with Rule 26 include:

- a. During the Rule 26(f) conference beginning June 24 and concluding June 28, 2005 attorneys for the United States inquired as to when initial disclosures would be forthcoming. Counsel for defendants Brown and the Noxubee County Democratic Executive Committee replied that he was not yet aware of who he would be able to list on his disclosures. Counsel for the United States then asked that defendants' disclosures be filed anyway according to the Rules, and that they be supplemented later when and if Defendant became aware of additional witnesses. A date consistent with the rule was set for the exchange of initial disclosures on July 12, 2005.
- b. On July 19, 2005, prior to the case management conference, counsel for the United States asked counsel for the defendants when the United States could expect the defendants' initial disclosures. The response was that no disclosures would be forthcoming until the causes of action were more clearly understood or developed.
- c. On July 22, 2005, counsel for the United States e-mailed two attorneys for the defendant and provided a copy of a July 22, 2005 draft motion that the United States intended to file for failing to provide initial disclosures. Counsel for the United States was explicit in that the failure to file initial disclosures was not acceptable to the United States and a remedy would be

sought. The United States offered over three days for compliance, granting the defendants until July 25, 2005 at 5 p.m. to comply. Counsel for the United States invited a conversation from the defendants' counsel regarding compliance with Rule 26(a)(1). No response was heard. No initial disclosures were provided.

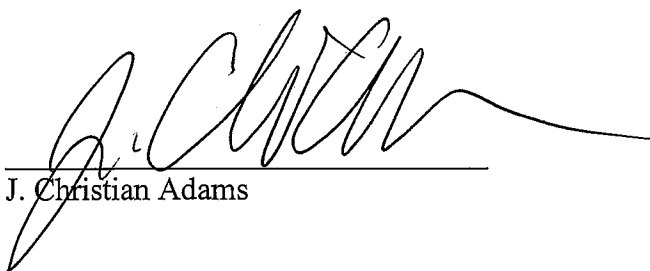
- d. On July 26, 2005, counsel for the United States e-mailed counsel for the defendants. Again, a copy of the July 22, 2005 draft motion that the United States intended to file for failing to file initial disclosures was included with the communication. Again, counsel for the United States reiterated that the failure to file initial disclosures was not acceptable to the United States and a remedy would be sought. The United States granted the defendants additional time to comply, until July 26, 2005 at 5 p.m. No initial disclosures were provided.
- e. Next, on July 26, 2005, counsel for the United States telephoned counsel for the defendant and conveyed a message that it was important that counsel for the defendants to review the communications containing the proposed motion and seeking compliance with the obligation to file initial disclosures. No initial disclosures were provided.
- f. At approximately 2 p.m. on July 26, 2005, counsel for the United States transmitted to counsel for the defendants by facsimile a communication regarding the initial disclosures and labeled as "URGENT." The communication contained the proposed July 26, 2005 draft motion and

sought compliance with the obligation to file initial disclosures. No initial disclosures were provided.

- g. On July 26, 2005, the United States received a facsimile transmission from counsel to the defendants informing the United States that the communication the United States sent on July 26, 2005 had been received. Further, the United States was informed that counsel would be in touch with the United States upon the conclusion of a conference on July 29, 2005.
- h. On July 28, 2005 the United States sent an e-mail transmission to counsel for the defendants acknowledging receipt of the facsimile transmission. Furthermore, the United States informed counsel for defendants that they would delay filing a motion relating to the failure to file initial disclosures until August 3, 2005. The United States informed counsel for the defendants that if compliant disclosures were not received by the close of business on August 3, 2005, that a motion seeking relief would be filed.
- i. The defendants Ike Brown and the Noxubee County Democratic Executive Committee provided the United States on August 1, 2005 a document attached to the Motion for Sanctions as Exhibit A. No other document purporting to be an initial disclosure of witnesses pursuant to Rule 26 was received by the United States. A series of uncategorized and unlabelled documents were received without an index, none of which purport to comply with obligations of Rule 26 regarding witnesses.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING  
IS TRUE AND CORRECT.

Executed on August 16, 2005



J. Christian Adams