

IN THE JUDICIAL COURT, SECOND JUDICIAL CIRCUIT,
IN AND FOR LEON COUNTY, FLORIDA

AHF MCO OF FLORIDA, INC.
d/b/a PHC FLORIDA HIV/AIDS
SPECIALTY PLAN

Petitioner,

vs.

CASE NO: 2018-CA-001648

EXECUTIVE OFFICE OF THE GOVERNOR

Respondent.

**PETITIONER'S EMERGENCY MOTION FOR CONTEMPT AND SANCTIONS
AGAINST RESPONDENT EXECUTIVE OFFICE OF THE GOVERNOR FOR
FAILING TO COMPLY WITH THE COURT'S ORDER TO PRODUCE
PUBLIC RECORDS RESPONSIVE TO PETITIONER'S REQUESTS**

Petitioner, AHF MCO of Florida, Inc. d/b/a PHC Florida HIV/AIDS Specialty Plan, by and through undersigned counsel, files this Petitioner's Emergency Motion for Contempt and Sanctions Against Respondent for Failing to Comply with the Court's Order to Produce Public Records Responsive to Petitioner's Requests and states as follows:

Emergency Nature of Petitioner's Motion

No public official is above or more powerful than Florida's Public Records Laws or valid and lawful orders of the Court. In other words, every public official **must** comply with Florida's Public Records Laws or lawful and valid Court orders—even Governor Rick Scott. However, in an effort to continue to flout Florida's Public Records Laws and delay providing his calendar, the Executive Office of the Governor has gone beyond **only** violating Florida's Public Records Laws in this case. Indeed, the Executive Office of the Governor has now added to its list of nose-thumbing conduct willful violation of lawful and valid court orders, specifically this Court's

September 5, 2018, Order. **This Court cannot and must not cotton to such conduct by the Executive Office of the Governor.**

Petitioner asserts that this matter should be considered by the Court as an emergency motion due to the inherent, time-sensitive nature of the public records responsive to Petitioner's requests. Indeed, the records this Court has ordered the Executive Office of the Governor ("EOG") to produce are records that not only reach back in time but also forward into the very-near future. In other words, as each day passes, AHF is denied access to the records they have sought since July 19, 2018. This end date is rapidly approaching and EOG's contemptuous conduct in withholding such records is nothing more than an attempt to skirt its duty under Florida's Public Records Law as well as this Court's authority. Further, this contemptuous conduct prevents AHF, its agents, and patients from exercising their rights under the First Amendment of the United States Constitution to peaceably assemble. With each day's delay, Petitioner's requests will inevitably become moot and, in effect, worthless to the underlying purpose for which Petitioner sought the records in the first place, thereby defeating the purpose and intent of Florida's Public Records Laws and this Court's September 5, 2018, Order. *See Duval Cty. Sch. Bd. v. Fla. Pub. Emp. Relations Comm'n*, 346 So. 2d 1087 (Fla. 1st DCA 1977).

Petitioner seeks the following relief on an emergency basis:

1. An order holding EOG in contempt of this Court's September 5, 2018, Order, attached hereto as **Exhibit A**.
2. An order sanctioning EOG for violation of this Court's September 5, 2018, Order, assessing a meaningful daily sanction against EOG until it fully complies with this Court's Order, pursuant to the Court's inherent authority and pursuant to *Moakley v. Smallwood*.

Facts and Background

On July 19, 2018, Petitioner submitted its request for public records to the director of the Office of Open Government (i.e., Respondent's custodian of records) via email using the contact information provided on Respondent's website. The documents requested by Petitioner concerned the Governor's calendar and travel schedule during a specified timeframe—that is, records that are clearly within the scope of disclosure under Chapter 119, Florida Statutes. Nevertheless, the next day, on July 20, 2018, the director replied denying Petitioner's request, claiming an exemption pursuant to section 119.071(2)(d), Florida Statutes, which concerns surveillance techniques, procedures, and personnel.

On July 23, 2018, Petitioner renewed its request in the form of a letter, reasoning that the claimed exception, on which Respondent's refusal to produce public records was based, does not apply to the requested documents and therefore the records must be produced without delay. Nonetheless, Respondent did not produce the requested records. Thus, on July 26, 2018, Petitioner was forced to file its Petition for Writ of Mandamus and Declaratory Judgment to compel production of the requested documents and for attorneys' fees. Finding that the Petition presents a prima facie case for relief, this Court issued an Order to Show Cause on August 2, 2018.

A hearing on the matter was held on August 20, 2018, and argument presented. On September 5, 2018, the Court entered its written Order granting mandamus relief to Petitioner on the ground that the requested documents were not exempt under the exemption cited by Respondent. Accordingly, the Court ordered Respondent to produce the public records responsive to Petitioner's requests within 10 days of the date of its Order, which would have been September 15, 2018.

At the 11th hour, EOG filed a Notice of Appeal of a final order, but as will be addressed separately, the Court's September 5, 2018, Order did not include the necessary language of finality and the declaratory judgment action is still pending before this Court.

As of the date of this Motion, Respondent still has not produced the records responsive to Petitioner's requests, contrary to this Court's Order of September 5, 2018.

EOG's Failure to Comply With This Court's Order Was Willful

Respondent's violation of this Court's September 5, 2018, Order warrants an order holding EOG in contempt for failing to comply with this Court's Order compelling production of such documents. Petitioner's requests were specific, as was this Court's September 5, 2018, Order. Respondent's contemptuous conduct in the face of this Court's Order is intentional, willful, and patently sanctionable.

Consequently, Petitioner seeks an order imposing sanctions on EOG pursuant to this Court's civil contempt authority and inherent power to enforce its own orders. Specifically, Petitioner seeks an Order: (1) to hold EOG in contempt of court until Respondent complies with this Court's September 5, 2018, Order and produces the records responsive to Petitioner's request; and (2) Sanctioning EOG pursuant to this Court's inherent authority and pursuant to *Moakley v. Smallwood* for any further continued refusal to comply with the September 5, 2018, Order.

EOG's failure to produce the responsive records flouts this Court's September 5, 2018, Order, Chapter 119, Florida Statutes, and violates Petitioner's First Amendment Rights under the United States Constitution. Further, holding EOG in civil contempt provides the necessary and appropriate relief for EOG's contemptuous conduct, which is contrary to the mandate and purpose of the Florida Constitution. The imposition of sanctions is well within this Court

inherent authority and should be awarded in this case to ensure compliance with the September 5, 2018, Order.

A. EOG Must be Held in Contempt and Sanctioned for Violating this Court's Order

In determining whether to hold a party in civil contempt, “courts have broad discretion in formulating a valid contempt sanction and the ability . . . to impose creative contempt sanctions.” *Huber v. Disaster Sols., LLC*, 180 So. 3d 1145, 1148 (Fla. 4th DCA 2015) (quoting *Parisi v. Broward Cty.*, 769 So. 2d 359, 367 (Fla. 2000)). an obvious prerequisite to the authority and ability to impose civil contempt sanctions is a party's prior violation of a court order. *Fore v. State*, 201 So. 3d 839, 841 (Fla. 4th DCA 2016) (citing *South Dade Farms, Inc. v. Peters*, 88 So. 2d 891, 899 (Fla. 1956)). Further, a “necessary element of civil contempt is the contemnor's intent to violate a court order.” *Roberts v. Bonati*, 133 So. 3d 1212, 1216 (Fla. 2d DCA 2014).

In *Parisi*, the Florida Supreme Court explained that civil contempt sanctions are further classified as either compensatory or coercive sanctions. *Parisi*, 769 So. 2d at 363. The Court also recognized that the key safeguard in civil contempt proceedings is a finding by the trial court that the contemnor has the ability to purge the contempt.” *Id.* at 365; *see also Creative Choice Homes, II, Ltd. V. Keystone Guard Services, Inc.*, 137 So. 3d 1144, 1146-46 (Fla. 3d DCA 2014) (“In addition to requiring the mandatory purge provision that is the hallmark of all civil sanctions, coercive civil sanctions in the form of a civil fine also require a consideration of the contemnor's financial resources and ability to pay the fine assessed.”).

Here, a monetary fine as a contempt sanction is proper because it is clear EOG intentionally violated this Court's Order of September 5, 2018. *See Huber v. Disaster Sols., LLC*, 180 So. 3d 1145, 1149 (Fla. 4th DCA 2015) (“civil contempt fines can be imposed to both compensate and coerce”); *see also Johnson v. Bednar*, 573 So. 2d 822, 824 (Fla. 1991)

(“Sanctions in civil contempt proceedings may be employed for either *or both* of two purposes: to compensate the injured party for losses sustained, and to coerce the offending party into compliance with a previously issued court order.”) (emphasis added) (citation omitted).

Indeed, the September 5, 2018, Order specifically described the documents that EOG must produce and expressly provided a deadline for compliance. EOG’s actions following the Order are indicative of an intent to violate the Order and the Court’s authority—for example, no documents were produced within the deadline provide and, to the extent the EOG needed an extension in order to comply with the Order, it never sought an extension from Petitioner or the Court.

EOG’s intent to violate the September 5, 2018, Order is plainly evident by its failure to seek and obtain a stay from the First District Court of Appeal prior to the deadline to produce all of the records responsive the Petitioner’s public records request and subject to the September 5, 2018, Order. EOG’s failure to obtain an order staying the September 5, 2018, Order supports Petitioner’s argument that EOG is simply trying to delay producing documents until it is convenient for Governor Rick Scott; until he is no longer Governor. This Court cannot tolerate such conduct when it also violates a lawful and valid court order.

Additionally, holding the Executive Office of the Governor in contempt and imposing monetary sanctions is proper because it is the least intrusive and most effective means to ensure compliance with the September 5, 2018, Court Order. To be clear, there is really no amount of money that could adequately compensate Petitioner for EOG’s failure to comply with its obligations as a governmental agency and produce the records sought by Petitioner pursuant to the Court’s September 5, 2018, Order, because no amount of money could remedy EOG’s failure to comply with this Court’s Order. For example, a \$10,000.00 per day sanction would not result

in Petitioner being able to protest Governor Rick Scott's public events because \$10,000.00 per day would not result in the Petitioner knowing where Governor Scott will be so that it can protest. However, Petitioner asserts that imposing a monetary fine of \$1000.00 for each day EOG intentionally refuses to comply with this Court's Order and produce responsive records is a necessary and legal means of coercing EOG to comply with its duties. Further, such a sanction is meaningful enough to ensure that it will be taken seriously and that EOG will comply with this Court's order and sanction. Imposing contempt sanctions are not only appropriate to accord Petitioner relief but also proper as this Court has the inherent authority to impose such sanctions when a party—i.e., EOG—intentionally or willfully refuses to obey a court order. *Moakley v. Smallwood*, 826 So. 2d 221, 226-27 (Fla. 2002); *Parisi v. Broward Cty.*, 769 So. 2d 359 (Fla. 2000); *Kane v. Sanders*, 232 So. 3d 1107, 1110 (Fla. 3d DCA 2017); *Rojo v. Rojo*, 84 So. 3d 1259, 1261-62 (Fla. 3d DCA 2012).

If the sanction is too little, EOG could simply pay it and still refuse to produce the public records subject to the Court's Order. EOG has already flouted Florida's Public Records Laws in this case. Indeed, this Court has already determined that the Executive Office of the Governor violated Florida's Public Records Laws. EOG could have filed its Notice of Appeal well before the eve of the first day it is in violation of the September 5, 2018, Order, but instead it elected to wait until the eve of the day before it is in violation. No stay has been entered as of the filing of this Motion. Thus, EOG was in violation of the September 5, 2018, Order as of 12:01 A.M. EST, September 18, 2018. This was a risk the Executive Office of the Governor was willing to take and did take—that is, willfully refusing to comply with this Court's Order while no stay was pending. This contemptuous conduct by the Governor's Office is precisely the type of conduct that warrants EOG being held in contempt.

Relief Requested

WHEREFORE, Petitioner seeks the following relief on an emergency basis:

1. An order holding EOG in contempt of this Court's September 5, 2018, Order, attached hereto as **Exhibit A**.
2. A Contempt Order sanctioning EOG for violation of this Court's September 5, 2018, Order, assessing a meaningful daily sanction of \$1,000.00 per day against EOG until it fully complies with this Court's Order, pursuant to the Court's Contempt Order and/or alternatively pursuant to Court's inherent authority as stated in *Moakley v. Smallwood*.

Respectfully submitted,

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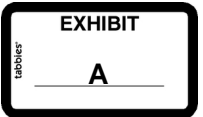
CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing was served, via electronic transmission, this 18th day of September, 2018, upon the following:

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IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT, IN
AND FOR LEON COUNTY,
FLORIDA.

AHF MCO OF FLORIDA, INC.,
d/b/a PHC FLORIDA HIV/AIDS
SPECIALTY PLAN,

CASE NO. 2018 CA 1648
CIVIL DIVISION

Plaintiff,

vs.

EXECUTIVE OFFICE OF THE
GOVERNOR,

Defendant.

_____ /

ORDER ON PUBLIC RECORDS REQUEST

A hearing was held on August 20, 2018 on this public records request by Petitioner. Both parties were represented by counsel at the hearing. The subject of the hearing was a public records request dated July 19, 2018 from Petitioner to the Office of Governor Rick Scott.

Five categories of documents were requested.

1. A copy of Governor Scott's electronic calendar showing all meetings, events, and appearances involving the Governor for the period July 20, 2018 through October 31, 2018.
2. A copy of any hardcopy calendars or other documents showing all meetings, events, and appearances involving the Governor for the period July 20, 2018 through October 31, 2018.

3. All documents and records that indicate where Governor Scott will travel during the period July 20, 2018 through October 31, 2018.

4. All documents and records that indicate where Governor Scott will reside during the period July 20, 2018 through October 31, 2018.

5. A list of all campaign and fundraising events Governor Scott will attend as part of his campaign for U.S. Senate during the period July 20, 2018 through October 31, 2018.

Respondent, Executive Office of the Governor, replied the next day, July 20, 2018 claiming the requested documents are exempt pursuant to Section 119.071 (2) (d), Florida Statutes, which states in pertinent part as follows:

Any information revealing surveillance techniques or procedures or personnel is exempt from s. 119.07 (1) and s. 24 (a), Art. I of the State Constitution.

Pursuant to that exemption, information revealing surveillance techniques, surveillance procedures, or surveillance personnel is exempt from disclosure to the public. However, the information requested by Petitioner does not reveal surveillance techniques, surveillance procedures, or surveillance personnel. It simply is information regarding the Governor's travel schedule.


Section 119.071, Florida Statutes, provides the exemptions from public records disclosure. The above stated surveillance information exemption is under subcategory (2) entitled AGENCY INVESTIGATIONS. Petitioner's request does not concern an agency investigation. Of course, if Petitioner was requesting

information regarding FDLE surveillance techniques, procedures or personnel while the Governor is traveling, that would be exempt. But requesting his travel information is not exempt under the cited exemption.

As stated in Section 119.01 (1), Florida Statutes, "it is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency." All such materials are open for public inspection unless the legislature has exempted them from disclosure.

Mandamus relief is granted. Respondent has 10 days from the date of this order to produce the public records responsive to Petitioner's requests.

DONE AND ORDERED in Chambers, Tallahassee, Leon County, Florida, this 5th day of Sept., 2018.



CHARLES DODSON
CIRCUIT JUDGE

Copies furnished to all counsel via E-Portal:

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