

**DEFENDANT'S MOTION FOR PROTECTIVE ORDER  
AND BRIEF IN SUPPORT**

COMES NOW Dr. Psychologist, Defendant in the above-styled civil action, and moves this Court for a protective order from Plaintiff's Subpoena of April 19, 2001, and files his Brief in Support as follows:

Plaintiff's subpoena is essentially a Motion to Compel Dr. Psychologist to answer Interrogatories which Dr. Psychologist has already answered and produce records which Dr. Psychologist has either already produced or to which Dr. Psychologist has already objected to producing. Plaintiff has previously filed more than one motion to this Court seeking to compel Defendant to respond to these very same inquiries, which motions were DENIED by this Court by Order dated February 22, 2001. Plaintiff's current subpoena seeks to compel production of the very same information which was the subject of his previous motions. We have been over this area before and nothing has changed to justify now granting the action Plaintiff seeks.

In addition, Plaintiff has scheduled the appearance of Dr. Psychologist for Plaintiff's personal residence without checking with either Dr. Psychologist or his attorney to see if the date was available and chose a date for which counsel for Dr. Psychologist has already submitted a request for a leave of absence.

Dr. Psychologist and his counsel object to appearing at Plaintiff's personal residence in Woodstock, Georgia, as said residence is in Cherokee County and Dr. Psychologist's residence and business addresses are located outside of Cherokee County. In addition, since Dr. Psychologist has diagnosed Plaintiff with some mental disorders and has some professional concerns regarding Plaintiff's mental stability and potential for violence, he and his counsel further object to being required to appear at Plaintiff's personal residence.

Defendant moves this Court for a protective order as the subpoena served upon him by the Plaintiff is an untimely effort to conduct pretrial discovery when the time for pretrial discovery has long since expired and Plaintiff's motion for an extension of the discovery period was denied by this Court. See Order dated March 16, 2001. Thus, Plaintiff had ample opportunity by discovery in the action to obtain the information sought. @ See Rule 26 (b) and (c) of the Federal Rules of Civil Procedure.

In addition, all of Plaintiff's questions and requests contained in his subpoena have previously been responded to by this Defendant and are therefore Unreasonably cumulative or duplicative. Rule 26(b)(2). Therefore, this Defendant is entitled to a protective order that the discovery not be had and that this Defendant need not respond to Plaintiff's subpoena.

Plaintiff apparently seeks in his subpoena to compel Dr. Psychologist to produce documents concerning Plaintiff which Dr. Psychologist does not have in his possession, custody, or control, such as information presented to Dr. Psychologist via Warden and Internal Affairs Commander. All documents concerning Plaintiff in Dr. Psychologist's possession, custody, or control have already been produced. Thus, there is nothing left for this Defendant to produce pursuant to Plaintiff's subpoena. Thus, those records sought in Subpoena Nos. 4, 5, 6, and 10 have already been produced to the extent they are within the possession, custody, or control of Dr. Psychologist.

Plaintiff apparently also seeks to have this Court order Dr. Psychologist to produce records concerning psychological evaluations Dr. Psychologist performed on other clients in violation of the psychologist/client privilege, without justification. See Rule 501 of the Federal Rules of Evidence and O.C.G.A. 24-9-21 (6); 24-9-40. Such production violates the psychologist/client privilege. See, e.g., Jaffee v. Redmond, 518 U.S. 1 (1996); Oleszko v. State Compensation Ins. Fund, 243 F.3d 1154 (9<sup>th</sup> Cir. 2001). In addition, this information is irrelevant to any issue in the present case so there is no justification whatsoever for violating the privilege and the interests of those clients (who are not parties to this case) in maintaining the confidentiality of those records. Thus, those records sought in Subpoena Nos. 1, 2, 3, 8, and 9 are records to which Plaintiff is not entitled as such are privileged, confidential and irrelevant to any issue in the present case.

Plaintiff seeks in Subpoena Nos. 5 and 6 information concerning all communications with Dr. Psychologist regarding psychological evaluations of others than the Plaintiff and with other employees of the Department of Public Safety and/or Department of Corrections, without restricting the request to communications regarding Dr. Psychologist's psychological evaluation of Plaintiff. Thus, to that extent, these requests call for irrelevant, confidential and privileged information. To the extent these requests call for information concerning Plaintiff, that information is no longer in Dr. Psychologist's

possession, custody, or control.

Plaintiff seeks in Subpoena Nos. 7 and 11 to obtain a copy of the County's employment contract and/or agreement with Dr. Psychologist. These requests call for irrelevant and confidential information. Regardless, Dr. Psychologist has no written contract or agreement with the County so this demand is moot.

Plaintiff seeks in Subpoena Nos. 13 and 14 to obtain Dr. Psychologist's Social Security number and his home residence address. Dr. Psychologist is unwilling to provide this information to Plaintiff as Plaintiff has no legitimate need for such information. In addition, most authorities these days admonish individuals to refuse to provide their Social Security number to anyone unless absolutely necessary due to the misuse to which this information may be put by unscrupulous individuals. In light of strong and legitimate concerns Dr. Psychologist has concerning Plaintiff's psychological profile and possible violent tendencies, he is unwilling to provide his home address. There is no legitimate need for this information by Plaintiff as Dr. Psychologist may only be contacted by Plaintiff in this matter through his counsel. These requests call for irrelevant and confidential information.

Plaintiff seeks in Subpoena No. 15 to obtain information concerning Dr. Psychologist's educational background, including all schools attended. This request was previously objected to as calling for irrelevant information beyond the scope provided by Rule 26. Dr. Psychologist has affirmed that he is professionally licensed in the state of Georgia. Nevertheless, Defendant previously provided this information in response to Plaintiff's previous motion so this issue is moot.

Plaintiff seeks in Subpoena No. 16 to obtain information concerning whether Dr. Psychologist has ever been involved in any other suits. This request was previously objected to as calling for irrelevant information beyond the scope provided by Rule 26.

Plaintiff seeks in Subpoena Nos. 17 and 18 to obtain information concerning Dr. Psychologist's homeowner's and other insurance. This request was previously objected to as calling for irrelevant information beyond the scope provided by Rule 26. Dr. Psychologist has affirmed that he is covered for this claim under his professional liability policy only, a complete copy of which has been provided in Dr. Psychologist's

responses to mandatory disclosures. Thus, this issue is also moot.

Plaintiff seeks in Subpoena No. 19 to obtain information concerning statements Dr. Psychologist or his attorneys or agents have made, given or secured from anyone relating to the subject matter of this action. This request was previously objected to as calling for information which invades the attorney client and work product privileges.

Plaintiff seeks in Subpoena Nos. 20 and 21 to obtain information concerning experts Dr. Psychologist anticipates calling to testify at the trial and any written reports made by any such expert. In response to these requests, Dr. Psychologist previously advised that he had not yet determined whom, if anyone, he will call as an expert witness at trial other than himself. Dr. Psychologist is expected to testify that he met the professional standard of care at all times in his examination and evaluation of Plaintiff. The only experts reports Dr. Psychologist has are the evaluation he did of Plaintiff, which has previously been produced. Thus, there is nothing to compel.

Finally, the information Plaintiff now seeks to compel this Defendant to produce is the very same information sought in his initial discovery and fully responded to by this Defendant in Defendant's Response and Objections to Plaintiff's First Set of Interrogatories and Request for Production of Documents and Supplemental Response to same, which were served on December 11, 2000 and December 20, 2000.

Based upon the forgoing facts and legal authority, Plaintiff's subpoena should be quashed as without merit and this Defendant's Motion for Protective Order should be granted.

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