

IN THE CHANCERY COURT OF LAFAYETTE COUNTY, MISSISSIPPI

ROBERT SULLIVANT, SR.

PLAINTIFF

VS.

CAUSE NO. 2021-612 (W)

ROBERT SULLIVANT, JR.

DEFENDANT

VS.

EVELYN STEVENS

THIRD PARTY DEFENDANT

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MOTION FOR PROTECTIVE ORDER

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COMES NOW Plaintiff, Robert Sullivan, Sr. (“Sullivan, Sr.”), by and through undersigned counsel of Swayze Alford Attorney At Law, and files his *Motion for Protective Order* pursuant to *Miss. R. Civ. Proc.* 26(d) against -Defendant, Robert Sullivan, Jr. (“Sullivan, Jr.”), and in support thereof shows as follows:

1. On or around December 15, 2023, Sullivan, Jr. propounded undersigned counsel his *Interrogatories to Dr. Frank Perkins*. A copy of the Interrogatories (without exhibits) are attached hereto as Exhibit “A” and incorporated by referenced herein.

2. That *Mississippi Rule of Civil Procedure* 26(d) provides that “[u]pon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court. . . may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) that certain discovery not be had;

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(9) the court may make any other order which justice requires to protect the party or witness from annoyance, embarrassment, oppression or undue burden or expense. . .

3. Undersigned counsel does not represent Dr. Frank Perkins and Dr. Frank Perkins is not a party to this litigation. Undersigned counsel only represents Sullivant, Sr. Further, justice requires that a Protective Order be entered to protect Sullivant, Sr. from annoyance, oppression, and expense.

4. Additionally, there is no good cause for the subject discovery. Sullivant, Jr. referenced Rule 26(a)(A)(ii) for the discovery. Undersigned counsel believes he intended to reference Rule 26(b)(4)(A)(ii) which would be sent to one party when the other party is seeking discovery about an expert that the party intends to use at trial. At this point in the litigation, Dr. Perkins has testified already and is not expected to testify at trial.

5. Additionally, undersigned counsel sent correspondence to Sullivant, Jr. on September 26, 2023 informing him that, based on the same foregoing reasons, the discovery at issue is improper.

6. That Sullivant, Sr. further requests that the Court order Sullivant, Jr. to pay her reasonable attorneys' fees and expenses associated with bringing this *Motion for Protective Order* before the Court.

WHEREFORE PREMISES CONSIDERED, Sullivant, Sr. respectfully requests that this Court enter a Protective Order stating that Sullivant, Sr. is not be required to respond to said Requests, and further that the Court assess Sullivant, Jr. with all attorney's fees and costs in bringing this Motion before the Court. Sullivant, Sr. requests any other relief, both general and specific, to which he may be entitled.

RESPECTFULLY SUBMITTED, this 29<sup>th</sup> day of September, 2023.

**ROBERT SULLIVANT, SR., Defendant**

BY: /s/ Kayla Ware  
SWAYZE ALFORD (MSB #8642)  
KAYLA WARE (MSB #104241)

OF COUNSEL:

**SWAYZE ALFORD**

Attorney at Law  
1221 Madison Avenue  
Post Office Box 1820  
Oxford, Mississippi 38655  
(662) 234-2025 phone  
(662) 234-2198 fax

*Counsel for Robert Sullivan, Sr.*

**CERTIFICATE OF SERVICE**

I, Kayla Ware, attorney for the Plaintiff, do hereby certify, that I have this day electronically filed the above and foregoing *Motion for Protective Order* with the Clerk of the Court using the MEC System which sent notification of such filing to the following:

**J. Hale Freeland, Esq.**  
Freeland Martz PLLC  
302 Enterprise Drive, Suite A  
Oxford, Mississippi 38655

I, Kayla Ware, do hereby certify that I have this day forwarded, via email, a true and correct copy of the above and foregoing *Motion for Protective Order* to:

**Robert Sullivan, Jr.**  
**robert@steelandbarn.com**

SO CERTIFIED, this the 29<sup>th</sup> day of September, 2023.

*/s/ Kayla Ware*  
\_\_\_\_\_  
KAYLA WARE (MSB #104241)

**IN THE CHANCERY COURT OF LAFAYETTE COUNTY MISSISSIPPI**

Robert Sullivant Sr.,  
Plaintiff

v.

Robert Sullivant Jr.,  
Defendant.

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Case No. 2021-612(W)

Robert Sullivant Jr.,  
Third-Party Plaintiff,

**INTERROGATORIES TO DR. FRANK  
PERKINS PURSUANT TO  
M.R.C.P 26(a)(A)(ii)**

v.

Robert Sullivant Sr. and  
Evelyn Stevens,  
Third-Party Defendants

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Defendant and Third-Party Plaintiff Robert Sullivant Jr., ("JR") requests that Dr. Frank Perkins respond to the following set of interrogatories pursuant to Miss. R. Civ. Proc. 26(a)(A)(ii), within 30-days of the date of service.

Counsel for Robert Sullivant Sr., Mr. Alford, as well as Mr. Freeland, have both asserted that Dr. Perkins is an expert witness pursuant to Miss. R. Civ. Proc. 26(a)(A)(ii), and not a court-appointed expert witness pursuant to Miss. R. Civ. Proc. 35, and Miss. R. Evid. 706, JR disagrees. However, since this is the position of both attorneys, than they must also agree that Rule 26(a)(A)(ii) applies to Dr. Perkins. It is either one or the other, Mr. Alford and Mr. Freeland do not dictate new rules for Dr. Perkins.

Therefore, JR is requesting responses to the following interrogatories per the proceeding instructions.

### INSTRUCTIONS

1. If any of these interrogatories is not substantively answered due to a claim of privilege or exemption, you are to identify with particularity the privilege or other reason for refusing to answer and to produce all information necessary to evaluate the claim of privilege, including the date of the communication or document and the subject matter thereof and the identity of all persons to whom any portion of the communication or document has been disclosed. *See* Miss. R. Civ. Proc. 26(a)(6)(A)).
2. If you do not know the answer to the interrogatory or to any portion thereof, state the reason or reasons that you do not have the information requested, all efforts which you have made to obtain the information, and further state the identity of any person or entity in possession of, or any location where, the desired information may or might be obtained.
3. If any parts of the interrogatory cannot be answered in full, please answer to the extent possible and specify the reason for your inability to answer the remainder. If the interrogatory is only partly objectionable, answer the remainder of the questions as required by these instructions.
4. The singular of all definitions and terms also includes the plural of such definitions and terms whenever such a change would result in any additional information being responsive to a request.
5. “And” and “or” should be construed either disjunctively or conjunctively as necessary to bring within the scope of these discovery requests any response that otherwise might be construed to be outside their scope.

### DEFINITIONS

1. “**Testamentary Capacity**” refers to the ability of a person to make a valid Will.
2. “**Report**” refers to the medical examination report issued by you, Dr. Frank Perkins, on January 27, 2023, and attached hereto as Exhibit 1.
3. “**IME**” refers to the Independent Medical Exam of Robert Sullivant Sr.

4. “**Plaintiff**” refers to Plaintiff Robert Sullivant Sr.
5. “**Testing**” refers to any medical testing or procedure.

**INTERROGATORIES**

1. Please state how many times (other than this case), that you have testified as an expert witness.  
**RESPONSE:**
  
2. Please list any publications you have authored in the past ten years.  
**RESPONSE:**
  
3. Please state the hourly rate you charge as a medical doctor.  
**RESPONSE:**
  
4. Please state the number of patients currently under your care.  
**RESPONSE:**
  
5. Please identify anyone who assisted in responding to these interrogatories.  
**RESPONSE:**
  
6. Did you examine the Plaintiff in this matter for “testamentary capacity” at his examination on January 17, 2023?  
**RESPONSE:**
  
7. If the answer to Interrogatory No. 6 is “Yes”, please state why you did not include this information in your report. (Exhibit 3).  
**RESPONSE:**

8. If the answer to Interrogatory No. 3 is “Yes”, please state when you communicated your opinion to Sr’s testamentary capacity to Sr’s counsel.

**RESPONSE:**

9. If the answer to Interrogatory No. 6 is “No”, please state why you informed the court that you did examine him for such, as evidenced by the attached transcripts.

**RESPONSE:**

10. Please state the physical location where you allegedly examined the Plaintiff on the morning of and just prior to the May 9, 2023, hearing.

**RESPONSE:**

11. Are you aware that the court’s order of appointment does **not** instruct you to examine the plaintiff for testamentary capacity? (*Exhibit 2*).

**RESPONSE:**

12. Have you examined any patient for “testamentary capacity” and formally expressed an opinion of your examination at any point in the past five years?

**RESPONSE:**

13. Please provide your exact policy on being deposed as an expert witness that you stated you have in your testimony. (*Exhibit 1 Pg numbered 31-33*).

**RESPONSE:**

14. Please state when you created these policies on being deposed.

**RESPONSE:**

15. Please state whether or not you have retained J. Hale Freeland to represent your interests in this matter.

**RESPONSE:**

16. If the answer to question 15 is yes, please state what day, time of day and by what communication medium did you engage Mr. Freeland's legal representation.

**RESPONSE:**

17. When (date & time of day) did you contact Swayze Alford concerning the Deposition Subpoena you received on 06/05/2023?

**RESPONSE:**

18. In your report dated 01/27/2023, in the "Comments on Mental Health" you state in reference to SR that "He has an awareness and ability to voice his wishes but due to his impaired cognitive function does not have the capacity to consistently execute those wishes and needs. There are lucid intervals of his illness that enable him to inform those assisting with his affairs of his wishes, but due to the nature of his illness ne cannot consistently provide that direction nor appropriately engage or execute contracts." Did you mean for any part of this statement to interpreted as SR having testamentary capacity? (Exhibit 3)

**RESPONSE:**

19. In your report, in the Evaluation section titled "other family", you checked the box noting that the relationships were "close". Please state how you concluded that the plaintiff was "close" with "other family". (Exhibit 3)

**RESPONSE:**

20. Your report concludes that the plaintiff is "functionally limited" in the following areas: managing money, taking medications, managing his property, making daily living decisions; and that he struggles with both short- and long-term memory impairments, as well as being "unable to consistently provide direction off his wishes." (Exhibit 3)

Please state which, if any of these factors were considered by you, when you concluded that the plaintiff had the capacity to change his Will.

**RESPONSE:**



21. Pursuant to Miss. R. Civ. Proc. 26(a)(4)(i), please provide a detailed by transaction statement for all compensation you will receive and have received in this case. This disclosure is mandatory.

**RESPONSE:**

22. Do you consider yourself an independent witness in this case? (*Exhibit 2*)

**RESPONSE:**

23. What was the purpose of your appointment to this case according to the Court's Order? (*Exhibit 2*)

**RESPONSE:**

### **DOCUMENT REQUESTS/REQUESTS FOR EVIDENCE**

Miss. R. Civ. Proc. 26(a)(4)(A)(i), states that a requesting party may, *through interrogatories*, require any other party to identify any witness whom the responding party expects to call as a witness at trial *to present evidence* under Mississippi Rule of Evidence 702, 703, or 705.

Please note that pursuant to Miss. R. Civ. Proc. 26(a)(4)(A)(ii), the following information is discoverable from Dr. Frank Perkins; a summary of the grounds for each opinion; the facts or data considered by Dr. Perkins in forming the opinions, regardless of when and how the facts or data were made known to the him; any exhibits that will be used to summarize or support the opinions; Dr. Perkins' qualifications, including a list of all publications authored by the him in the previous ten years; a list of cases in which, during the previous ten years, the Dr. Perkins testified as an expert at trial or by deposition; and, for retained experts, a statement of the compensation to be paid for the study and testimony in the case.

Please also note that pursuant to Miss. R. Civ. Proc. 26(a)(4)(B), a party may discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial only upon a showing of exceptional circumstances *under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by*

*other means.* Dr. Perkins refusal to be deposed or communicate with JR has led these interrogatories to be the only option he has to obtain the relevant documents.

All instructions and definitions assigned to the Interrogatories remain in full force for these requests for evidence.

**REQUESTS FOR THE PRODUCTION OF EVIDENCE**

1. Provide any and all billing records submitted to SR or his counsel regarding the IME, the alleged examination of SR on May 9, 2023, your expert testimony, and any other efforts you have put forth in this matter.

**RESPONSE:**

2. Provide receipts for the payment of said billing described in Request No. 1.

**RESPONSE:**

3. Provide all of your notes in reference to the IME of SR on January 17, 2023.

**RESPONSE:**

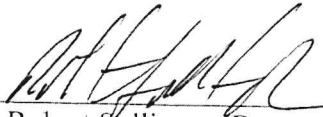
4. Provide all of your notes in reference to the alleged examination of SR on May 9, 2023.

**RESPONSE:**

5. Provide any written or email communications between yourself and Mr. Alford and/or his law firm.

**RESPONSE:**

Dated: September 15, 2023

/s/   
Robert Sullivan JR.  
1002 Crawford Cir.  
Oxford, MS 38655.  
robert@steelandbarn.com.  
(512) 739-9915