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Our File No. 02587

June 8, 2023

Via Hand Delivery

Hon. Sherry J. Wall, Clerk
Lafayette County Chancery Court
300 N. Lamar Blvd.
Oxford, MS 38655

RE: Robert Sullivant Sr. v. Robert Sullivant Jr.
Cause No. 2021-612 (W)

Dear Sherry:

Enclosed please find a *Motion to Quash* related to the above-referenced cause. Please file it in the Court's records and provide to us a filed-stamped copy.

Thank you for your assistance with this matter.

Sincerely,

FREELAND MARTZ, PLLC



J. Hale Freeland

Enclosure

cc: Dr. Frank Perkins *via email*
Swayze Alford Esq. *via email*
Robert Sullivant Jr. *via email*

IN THE CHANCERY COURT OF LAFAYETTE COUNTY, MISSISSIPPI

ROBERT SULLIVANT SR.

PLAINTIFF

v.

ROBERT SULLIVANT JR.

DEFENDANT

CAUSE NO. 2021-CV-612 (W)

ROBERT SULLIVANT JR.

THIRD PARTY PLAINTIFF

v.

**ROBERT SULLIVANT SR. and
EVELYN STEVENS**

THIRD PARTY CO-DEFENDANTS

MOTION TO QUASH

COMES NOW Dr. Frank Perkins, Forensic Psychiatrist, by and through his attorney, and moves to quash the subpoena duces tecum served upon him to appear on June 22 and produce documents relating to his examination, notes, and procedures utilized in examining Robert Sullivant Sr. In support thereof, Dr Perkins would show:

1. Dr. Perkins maintains an active practice in which he has staff privileges in facilities in and around the Jackson, Mississippi, metro area; Vicksburg, Mississippi; and the Mississippi Gulf Coast. The movant did not inquire regarding Dr. Perkins' availability for this time and date insofar as staff and treatment schedule.
2. Dr. Perkins has already testified in open court regarding this matter.
3. The Notice states that Dr. Perkins is going to be deposed related to the following matters: "your (Dr. Perkins) medical examination of Plaintiff Robert Sullivant, Sr., and your conclusions, your court testimony on these matters and any other matters relevant to the claims of any of the parties in this action."

4. The court has already entered two orders; one entered on May 17, 2023, in which the court found Robert Sullivant incapable of managing his affairs and appointing Sherry Wall as his conservator, and an order of May 18, 2023, holding that Mr. Sullivant had the testamentary capacity to execute a will for his estate. Robert Sullivant Jr. was present when the motion related to those orders was heard and took the opportunity to question Dr. Perkins at that time. Those issues having been decided by the court, there is no reason to conduct discovery related to the issues the court has already decided.

5. Dr. Perkins is willing to testify so long as this deposition does not interfere with patient care, that he be compensated for his time invested in preparation for, travel to, and attendance at the deposition. His hourly rate is \$600.00 with the time to prepare being two hours and the time for the deposition two hours. His hourly rate for travel time is \$200 per hour. Accordingly, Dr. Perkins' fee to take his deposition is \$4,000.00 for preparation, attendance, and travel.

6. According to Miss R. Civ. P 26 (C)(E) (i), before Dr. Perkins is required to appear, "the court shall require that the party seeking discovery taking the deposition of an opposing party's expert who has been specially retained or employed to present expert testimony at trial to pay the expert a reasonable fee for time spent in responding to discovery under subsections (b)(4)(A)(ii) and (b)(4)(B) giving deposition testimony and a reasonable fee for up to two hours actually spent preparing for such deposition. In re Rules of Civil Procedure (Miss. 2019).

7. Robert Sullivant Jr. has not tendered Dr. Perkins' fee to take his deposition, a prerequisite for taking Dr. Perkins' deposition, nor has he inquired what those fees would be.

8. Robert Sullivant Jr. is also requesting that Dr. Perkins produce notes and documentation that could be considered work product between attorney and client and as

such protected from disclosure. In addition, some of the information could be subject to a medical privilege, as the issue has been waived due to the nature of this proceeding. As a result, Dr. Perkins asked for instructions from Robert Sullivant Jr. with regards to inquiry and production of work product and the medical privilege as well as instructions from the court concerning the scope of relevant information that he can disclose by production of documents and through his testimony.

WHEREFORE, premises considered, the plaintiff asks the court to quash the subpoena, which failed to comply with the Mississippi Rules of Civil Procedure, and requests further instruction from Robert Sullivan Sr. and his counsel and this court regarding disclosure of documents and information subject to work production protection and Robert Sullivant Sr.'s medical privilege.



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CERTIFICATE OF SERVICE

I, J. Hale Freeland, attorney for Dr. Frank Perkins, hereby certify that I have on this date sent a true and complete copy of the above and foregoing *Motion to Quash* by electronic mail to the following:

Swayze Alford Esq.
Attorney at Law
salford@swayzealfordlaw.com

Robert Sullivant Jr.
robert@steelandbarn.com

This, the 8th day of June, 2023.



J. HALE FREELAND