

IN THE CHANCERY COURT OF LAFAYETTE COUNTY, MISSISSIPPI

FILED  
STATE OF MISSISSIPPI  
LAFAYETTE COUNTY  
2023 JUN 13 AM 9:07  
CHANCERY CLERK  
JF

**ROBERT SULLIVANT, SR.,  
PLAINTIFF,**

v.

**ROBERT SULLIVANT, JR.,  
DEFENDANT.**

CASE NO. 2021-612(W)

**ROBERT SULLIVANT JR.,  
THIRD-PARTY PLAINTIFF,**

v.

**ROBERT SULLIVANT SR.,  
and EVELYN STEVENS,  
THIRD-PARTY DEFENDANTS.**

---

**DEFENDANT AND THIRD-PARTY PLAINTIFF ROBERT SULLIVANT JR'S  
OBJECTION TO THE MOTION TO QUASH FILED BY DR. FRANK PERKINS**

---

Comes now, defendant and third-party plaintiff Robert Sullivant Jr, and hereby submits the following objection to the Motion to Quash filed by the court appointed expert witness in this matter, Dr. Frank Perkins. It is highly irregular and quite suspicious that the court appointed expert witness in this matter, who's deposition JR is entitled by statute to take, is filing a motion to quash.

As an initial matter, the *Motion to Quash* filed by Attorney Freeland must be stricken. As Mr. Freeland is aware, his involvement in this action is highly improper as he participated in a consultation for this case with JR and is in possession of confidential and privileged information regarding such. (*Bates No. 003*). It is absolutely improper for Mr. Freeland to become an adversary to JR in this action and he should be barred from representing Dr. Perkins in any fashion as it relates to this matter due to this overt conflict of interest.

Dr. Perkins' Motion makes clear that he is under the mistaken impression that he is the expert witness for *Mr. Alford* and not a neutral, court appointed expert. Hence, the irrelevant reference to Miss. R. Civ. Proc. 26 in paragraph 6 on Perkins' Motion. Dr. Perkins has refused to return correspondence from JR for months, and he admitted on the record at the hearing on May 8th that this is because it is Mr. Alford who "retained him". If Dr. Perkins is being paid by a retainer from Mr. Alford, it is not for his neutral testimony in this matter and must be for some other reason.

Dr. Perkins does not cite a single actual authority to support his Motion to Quash. Instead, he attempts to intentionally mislead JR and the court by referencing authority that does not exist or is completely irrelevant. He then attempts to claim that he has a privileged relationship with Mr. Alford and his client. Again, Dr. Perkins is not the expert witness for Mr. Alford. No privileged relationship can exist between a neutral court appointed expert witness and one party to the case at the expense of the other. It is obvious that the duties of a court appointed expert witness would come in direct conflict with such a relationship, which apparently has still become the case here. It is clear that Dr. Perkins does not consider himself neutral and believes that he works only for Mr. Alford.

Finally, Attorney Freeland has unnecessarily, unprofessionally, and unethically interjected himself into these proceedings under false pretenses of law in an attempt to harass and intimidate JR. Mr. Freeland's Motion is an overt and illegal abuse of the legal process. Mr. Freeland has no right to enter this case, quash a lawfully issue subpoena from this court, quote non-existent and irrelevant law in support thereof, and drag one of the parties to a hearing over two hours away on the exact same day he refuses to provide his client for deposition.

### **RESPONSE TO MOTION TO QUASH**

Sullivant Jr. provides the following direct responses to the Motion to Quash.

1. JR is not required per any statute or controlling law to inquire as to Dr. Perkins availability for the deposition and Dr. Perkins has previously admitted that he will not respond to correspondence from JR and has been further elusive when JR attempts to reach him. Accordingly, this is a bad faith argument. M.R.C.P 30(b)(1) requires that Dr. Perkins be

given “reasonable notice” of his deposition. Since Dr. Perkins is certainly on notice with over two weeks prior to the deposition, this notice is more than reasonable and comports with all relevant Mississippi Law.

2. This assertion is moot, and Dr. Perkins fails to explain why his unannounced and surprise testimony at a hearing precludes JR from taking his deposition. It does not. M.R.E 706(b)(2) clearly states that a court appointed expert witness “**may be deposed by any party**”, and the courts have consistently held to this... “Under the rule, the court-appointed expert may be deposed” *In re Miss. Rules of Evidence*, No. 89-R-99002-SCT, at \*73 (Miss. June 16, 2016); See also *Stewart v. Stewart*, 309 So. 3d 44 (Miss. Ct. App. 2020); *Hudspeth v. State Highway Com'n*, 534 So. 2d 210 (Miss. 1988).
3. It is agreed that this is what is stated in the notice.
4. This point is again moot as no statute or law precludes JR from deposing Dr. Perkins and in fact, the relevant Mississippi statutes explicitly allow for it. Dr. Perkins being called to testify at a hearing unexpectedly and JR being allowed exercise his right to ask questions is not even close to the same thing under the law as conducting a deposition for which JR can prepare and ask questions relative to his claims. Dr. Perkins does not get to make final determinations on what is and is not relevant to JR’s claims.
5. First, Dr. Perkins willingness to testify is not a factor. He has been lawfully subpoenaed by JR and has not raised a credible legal reason why he, or any other court appointed expert witness should be allowed to quash a lawfully issued subpoena. He provides no caselaw or authority to support this position, which is completely misguided and supported by irrelevant law. Second, Dr. Perkins is again a **court appointed** expert witness. Therefore, he does not set his own fees in this case, and this is a matter of established law. Miss. R. Evid. 706(c) governs his *reasonable fees* in this matter and it explicitly states that “[t]he expert is entitled to a reasonable compensation, **as set by the court.**” Dr. Perkins’ frivolous and transparent attempt to try and price JR out of deposing him should be noted as well.

Rule 706 also provides that the expert "*may be deposed by any party.*" *Stewart v. Stewart*, 309 So. 3d 44, 72 (Miss. Ct. App. 2020).

6. Here, Dr. Perkins erroneously cites Miss. R. Civ. P 26(C)(E)(i), stating that "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."

As a neutral court-appointed expert, Dr. Perkins' testimony is governed by MRE 706 and NOT Miss. R. Civ. Proc. 26. Nowhere in Miss. R. Civ. Proc. 26 are court appointed expert witnesses discussed, and Rule 26 cites to MRE 702, 703, and 705, and specifically omits Rule 706 governing expert testimony. Mr. Freeland, being a seasoned attorney, should certainly know the difference in procedure as it relates to a party's expert, and a court appointed expert. They are indeed governed by completely different statutes and Rule 26 is not applicable here.

The advisory committee has also stated the following in regard to Rule 706 – "The essence of Rule 706 is contained in subdivision (a). Subdivision (a) provides specifically for the appointment of an expert either on the motion of a party or on the judge's own motion. It also provides for input by the parties into the selection process. *Under the rule, the court-appointed expert may be deposed.* Any party, including the party calling the expert, may cross-examine him. This rule was amended in 1988 in *Hudspeth v. State Highway Commission of Mississippi*, 534 So. 2d 210 (Miss. 1988)." See *In re Miss. Rules of Evidence*, No. 89-R-99002-SCT, at \*73 (Miss. June 16, 2016).

The subdivisions in Miss. R. Civ. Proc. 26 which cite to the rules of evidence, cite only to the rules related to a *party's* expert witness (MRE 702, 702, 705) and intentionally do not include Rule 706 governing court appointed experts.

Dr. Perkins argues his motion as though he is the expert witness for Mr. Alford. By citing Rule 26 above, which governs the taking of depositions from an *opposing party's expert*, not a *court appointed* expert, Dr. Perkins must be reminded that he is not Mr. Alford's expert witness.

Therefore, his testimony pertaining to this matter is governed by Mississippi Rule of Evidence 706, and his subpoena is governed by Rule 45. There is no consideration in Rule 26 related to a court appointed expert witness. Rule 26 guidelines on witnesses specifically refer to Mississippi Rules of Evidence 702, 703 and 705, but omits rule 706 pertaining to expert witnesses and it does so for a reason; because the testimony of experts who are **court appointed** is not governed whatsoever by Rule 26.

In their Notice of Motion to JR, sent via email on June 8<sup>th</sup>, 2023, Dr. Perkins also attempts to cite “Miss. R. Civ. Proc. 16(b)(1)”, which does not even exist. (*Bates No. 002*).

7. As has been pointed out above, Dr. Perkins, as a matter of law, does not set his own fees in this case and accordingly JR could not have possibly inquired to him as to what they may be. Dr. Perkins would not have the authority to set his own fees in this case. It is also clearly evident from Miss. R. Evid 706(c)(2), which is the correct statute to apply here, that JR does not have to tender payment prior to the deposition and Dr. Perkins cites no authority to the contrary...

“The compensation is payable as follows: in any other civil case, by the parties in the proportion and **at the time that the court directs** - and the compensation is then charged like other costs.” *Miss. R. Evid 706(c)(2)*.

8. Dr. Perkins cannot argue that he has a privileged relationship with Mr. Alford when he is a court appointed expert witness. Clearly, the neutrality of Dr. Perkins has been severely compromised. There is also no medical privilege, as Dr. Perkins was not appointed to keep his results and opinions confidential as a private physician, and he knows this. He is an expert witness and is required, pursuant to Miss. R. Evid. 706(b)(1), to “advise the parties of **any findings** the expert makes.” The term “any findings” is unambiguous, it means **any** findings. Dr. Perkins cannot claim that his conversations and notes are privileged and confidential under any scenario when he is a court appointed expert witness. Dr. Perkins was not retained by Mr. Alford, he was retained by the Court, and that is where his duty lies, to the court, and **both parties**, not just to Mr. Alford and his client.

The fact that Dr. Perkins also set this motion to be heard on the exact same date as his deposition and two hours from the venue of this case is the epitome of bad faith and is obvious harassment. It should of great concern that the expert witness appointed to testify neutrally and truthfully, is actually now engaging in gamesmanship with the court and on behalf of one party. Dr. Perkins should be held in contempt of court for failing to obey a lawfully issued subpoena if he fails to appear for this deposition. If Dr. Perkins does not wish to be deposed or have to take a day off from his practice to testify, then he should not offer himself to the court as a neutral expert. He does not get to negate his legal responsibilities in this matter because he has a job, no matter how important or time consuming that job is. This is not a valid reason to quash *any* subpoena, let alone one directed at a court appointed expert. These types of tactics are beneath a supposedly neutral expert witness utilized by the court and should not be taken lightly.

The emails attached hereto demonstrate nothing less than intimidation and harassment of JR with no legal basis or justification. Mr. Hale condescendingly asks JR to explain to the court why he “he feels entitled to have [Perkins] appear for free.” (*Bates No. 004*). This is in fact Mr. Freeland’s mistake in analyzing the incorrect statute and concluding that Perkins sets his own fees in this matter and that JR must pay them directly to Dr. Perkins in advance. (*Bates No. 002*). It is Mr. Freeland who in facts fails to explain his erroneous position... that his client is entitled to quash his lawfully subpoenaed deposition when he is a court appointed expert witness and is required, by law, to be deposed by any party who wishes to do so. In blatantly undermining Mississippi law, Mr. Freeland is trying to collect fees of at least \$4,000 directly from JR to be paid to his client, and this is an overt violation of Rule 706(c)(2), stating that *the court* sets the fees for the expert, and the expert is paid at the time that the *court determines*.

Mr. Freeland than proceeds to demand documentary evidence that JR is not available for the hearing date and time set by Mr. Freeland without an Order of Setting nor ever conferring with JR, . (*Bates No. 005*). JR was available to depose Dr. Perkins in the afternoon, Mr. Freeland set the hearing for the morning when JR is not available. JR is under absolutely no obligation to disclose the details of his personal life to a non-party attorney in this matter, whose appearance in this case is illicit to begin with.

The Motion presented by Dr. Perkins is brought by an attorney who is in possession of privileged information related to JR. It also deliberately miscites Mississippi Law pertaining to


expert testimony and provides exactly zero support in the law or case history for this court to grant his request. Mr. Freeland's motion is an illicit and transparent abuse of process.

Dr. Perkins has been properly noticed and lawfully served with a clerk issued subpoena from this court to testify at deposition. He has no excuse anywhere within the law to not attend this deposition and his motion is completely void of any citations other than false ones. Under these circumstances, the court must enforce its rules, the rules of procedure, and the rules of evidence against Dr. Perkins under penalty of contempt. Dr. Perkins clearly does not want to be deposed and his efforts to avoid deposition should be concerning.

Dr. Perkins has been testifying as an expert long enough to know the rules and the fact that he wants to quash a subpoena begs the question, why? He volunteered to be an expert witness in this matter, compensated by the court, and on the court's terms. He agreed to all of the rules governing his involvement in this matter, and now that he has done his work for Mr. Alford, he wants to be excused from answering any further questions. He also asking that this court ignore black letter law and the plain language in the applicable statutes, in favor of Mr. Freeland's malicious and improper motion, which applies an inapplicable statute and a completely incorrect legal analysis of the issue. This would be improper and highly prejudicial to JR, not to mention that it would directly conflict with the plain language of MRE 706 and the foregoing Mississippi caselaw.

WHEREFORE, in accordance with the foregoing, the *Motion to Quash* presented by Dr. Perkins should be stricken as it is authored by an attorney who entered this matter as an adversary to JR with an overt conflict of interest having previously consulted with him on this case. In the alternative, if the court does hear this Motion, it should be denied as meritless and without basis in any Mississippi law.

Dated: June 13, 2023.


/s/   
Robert Sullivan Jr.  
*Defendant/Third-Party Plaintiff*

## CERTIFICATION

I, Robert Sullivant Jr. hereby certify that on June 13, 2023, a copy of the foregoing RESPONSE TO DR. FRANK PERKINS MOTION TO QUASH, was served on the below attorneys of record for Dr. Frank Perkins and the plaintiff/third-party defendant in this matter via US Mail and Email.

FREELAND MARTZ PLLC.,  
J. Hale Freeland  
302 Enterprise Drive, Suite A I  
Oxford, MS 38655  
Phone 662.234.1711 I  
Fax 662.234.1739  
[hale@freelandmartz.com](mailto:hale@freelandmartz.com)  
*Attorney For Frank Perkins*

Swayze Alford  
1221 Madison Avenue  
Oxford, MS 38655  
*Attorney for Plaintiff Robert Sullivant, Sr.*

/s/   
Robert Sullivant Jr.



**Exhibit A**

Robert Sullivant &lt;robert@steelandbarn.com&gt;

**Deposition for Dr. Perkins**

**Swayze Alford** <salford@swayzealfordlaw.com>  
To: Robert Sullivant <robert@steelandbarn.com>  
Cc: Lacey Whitaker <lacey@swayzealfordlaw.com>

Thu, Jun 8, 2023 at 10:39 AM

Robert,

I had court today and was at the courthouse and happened to learn that you had filed a deposition subpoena for Dr. Perkins. I did not recall receiving a notice from you so I looked in my email and junk email to be sure that I had not overlooked the notice that is required by the Rules of Civil Procedure. I know that the U.S. Mail moves slowly but I have not received anything in the mail either. If you sent a notice to me, please let me know. It does not appear that a notice was filed with the court. I did review the deposition subpoena which states that the deposition will be taken in Oxford. Dr. Perkins may not object to coming to Oxford, but the Rules of Civil Procedure state that the deposition shall be taken in the county where the deponent is present.

Also, I would like to discuss with you the relevance of Dr. Perkins's testimony at this point. It seems that the issues to which he would testify have been addressed by the Court. Maybe this is something that we can discuss tomorrow. Thanks.

Swayze Alford, Esq.

**Swayze Alford Attorney At Law**

Post Office Box 1820

1221 Madison Avenue

Oxford, Mississippi 38655

(662) 234-2025 phone

(662) 234-2198 fax

swayzealford.com

**Confidentiality Note:**

This message and any files transmitted with it are confidential and also contain legally privileged or proprietary information and protected by the attorney-client privilege, work product immunity or other legal rules. If you are not the named addressee, intended recipient and/or received this message by mistake you are not permitted to use, copy, forward or disclose it, in whole or in part, without the express consent of the sender. If you have received this email in error please notify the sender or system manager, and delete the foregoing message. E-mail transmissions cannot be guaranteed to be secure as information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete, or contain viruses. The sender does not accept liability for any errors or omissions in the contents of this message which arise as a result of e-mail transmission.

**001**



Robert Sullivant <robert@steelandbarn.com>

**Fwd: Conservatorship of Sullivan (Laf Chicanery No 21-512) (our file 02587)**

Errol Castens <errol@freelandmartz.com>  
To: rsullivantjr@gmail.com, "robert@steelandbarn.com" <robert@steelandbarn.com>

Thu, Jun 8, 2023 at 5:06 PM

*what court is this?*  
*wrong case #*

Errol Castens  
Paralegal for J. Hale Freeland  
Freeland Martz, PLLC  
302 Enterprise Dr., Ste. A  
Oxford, MS 38655  
(662) 234-1711, ext. 4  
www.freelandmartz.com



----- Forwarded message -----

From: **Hale Freeland** <hale@freelandmartz.com>  
Date: Thu, Jun 8, 2023 at 4:34 PM  
Subject: Re: Conservatorship of Sullivan (Laf Chicanery No 21-512) (our file 02587)  
To: Swayze Alford <salford@swayzealfordlaw.com>, <roabter@steelandbarn.com>, Errol Castens <errol@freelandmartz.com>

Conservatorship of Sullivant (Laf 2021-612 (W)) Our file 02587

Gentlemen,

Since Mr Alford was not provided notice of the deposition as required by Miss R Civ P 16(b)(1); neither I nor Mr Alford available could appear for a hearing prior to June 22nd due to conflicts in our schedules when on the attached motion to quash may be heard; Dr Perkins fees have not been paid for taking the deposition; and no determination was made regarding Dr. Perkins schedule before the subpoena was issued to provide reasonable notice to Dr. Perkins regarding his his schedule was and patient care; we will set the hearing on our motion to quash (attached) on June 22, 2023 when Judge Whitwell can hear the motion, Mr Alford will be already be before the Court on other matters.. Mr Sullivant noticed the deposition on that date, he does not have a conflict either.

*does not exist*

Hale

On Thu, Jun 8, 2023 at 4:02 PM Swayze Alford <salford@swayzealfordlaw.com> wrote:  
Got it. Thanks

Sent from my iPhone

- > On Jun 8, 2023, at 2:22 PM, Hale Freeland <hale@freelandmartz.com> wrote:
- >
- > Swazey,
- >
- > Please find the subpoena to depose Dr Perkins on June 22, 2023. We

002



Robert Sullivant <robert@steelandbarn.com>

**Sullivant v Sullivant**

**Reed Martz** <reed@freelandmartz.com>  
To: Robert Sullivant <robert@steelandbarn.com>

Fri, Apr 28, 2023 at 10:41 AM

Sir, I have not read your email. Immediately following our conversation I put your name into our conflicts database and found that we have a conflict. We cannot be involved in this case. I wish you success in finding someone else and appreciate Whit referring you to our firm.

--

M. Reed Martz  
Providing legal services in AL, GA, MS, and TN  
Offices in Oxford, Miss. and Chattanooga, Tenn.  
Freeland Martz, PLLC  
Mailing and physical address:  
302 Enterprise Drive, Suite A, Oxford, MS 38655  
Office (662) 234-1711 | Direct (662) 715-3057  
reed@freelandmartz.com | freelandmartz.com



02587

003



Robert Sullivant <robert@steelandbarn.com>

## Rules of Evidence

Hale Freeland <hale@freelandmartz.com>  
To: Robert Sullivant <robert@steelandbarn.com>  
Cc: Errol Castens <errol@freelandmartz.com>

Mon, Jun 12, 2023 at 8:00 AM

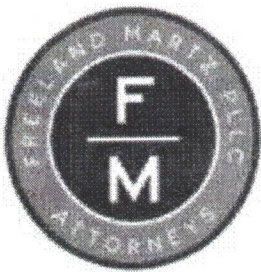
Mr Sullivant,

This rule applies to experts appointed by the court, not by a party. In any event the rule states 'The expert is entitled to a reasonable compensation.' If you disagree, tell court why you are entitled to have him appear for you for free,

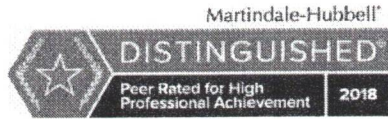
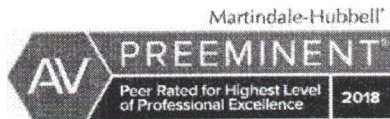
Hale

[Quoted text hidden]

--



**J. Hale Freeland**  
Admitted in MS, TN, and MO  
Freeland Martz, PLLC  
302 Enterprise Drive, Ste. A  
Oxford, MS 38655-2762  
T 662.234.1711 | Toll Free 844.671.1711  
hale@freelandmartz.com | www.freelandmartz.com





Robert Sullivant <robert@steelandbarn.com>

**Fwd: 02587-Conservatorship of Robert Sullivant, Sr.**

Hale Freeland <hale@freelandmartz.com>

Mon, Jun 12, 2023 at 8:00 AM

To: Robert Sullivant <robert@steelandbarn.com>

Cc: Errol Castens <errol@freelandmartz.com>, Swayze <salford@swayzealfordlaw.com>

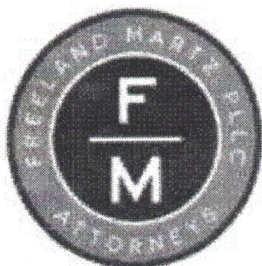
Mr. Sullivant,

You noticed the deposition for that date. How do you have a conflict? Please provide some document that establishes a conflict.

Hale

[Quoted text hidden]

--



**J. Hale Freeland**

Admitted in MS, TN, and MO

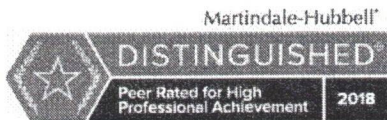
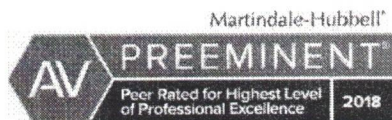
Freeland Martz, PLLC

302 Enterprise Drive, Ste. A

Oxford, MS 38655-2762

T 662.234.1711 | Toll Free 844.671.1711

hale@freelandmartz.com | www.freelandmartz.com





Robert Sullivant <robert@steelandbarn.com>

## Rules of Evidence

Hale Freeland <hale@freelandmartz.com>

Mon, Jun 12, 2023 at 2:47 PM

To: Robert Sullivant <robert@steelandbarn.com>

Cc: Swayze <salford@swayzealfordlaw.com>, Errol Castens <errol@freelandmartz.com>

Mr Sullivant,

We will present the motion to quash at 9:30 am in Pittsboro unless you provide me something more than "I have an appointment" that might be more important than a hearing regarding the deposition of Dr. Perkins and our motion to quash. Dr. Perkins will not appear at your deposition as you have not complied with the preperisist for deposing him as set forth in the motion to quash and will not appear until that motion is heard and considered by the court. .

Hale

Hale

[Quoted text hidden]

--



### J. Hale Freeland

Admitted in MS, TN, and MO

Freeland Martz, PLLC

302 Enterprise Drive, Ste. A

Oxford, MS 38655-2762

T 662.234.1711 | Toll Free 844.671.1711

hale@freelandmartz.com | www.freelandmartz.com

Martindale-Hubbell®



Martindale-Hubbell®

