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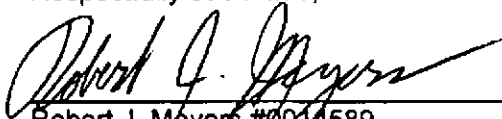
COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO

<p>Ellen L. Turner</p> <p style="text-align: right;">Plaintiff,</p> <p>vs.</p> <p>Jon H. Entine</p> <p style="text-align: right;">Defendant.</p>	<p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p>	<p>CASE NO. DR0560131</p> <p>FILE NO: E233969</p> <p>JUDGE SIEVE</p> <p>MAGISTRATE THEILE</p> <p><u>MOTION TO COMPEL RITA</u> <u>ROBERTSON, M.S.W. TO COMPLY</u> <u>WITH DEFENDANT'S SUBPOENA</u> <u>DUCES TECUM</u></p>
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Jon H. Entine ("Father"), by and through counsel, moves the Court to compel Rita Robertson, M.S.W. ("Ms. Robertson") to comply with Father's Subpoena *Duces Tecum* seeking documents and testimony pertaining to Robertson's treatment of Ellen L. Turner and/or Madeleine Entine served April 18, 2013. This Motion is supported by the following Memorandum.

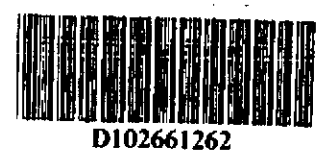
FILED
 2013 JUN -2 P 3:09
 TRACY WINKLER
 CLERK OF COURTS
 HAMILTON COUNTY, OH

Respectfully submitted,



Robert J. Meyers #0014589
 Attorney for Defendant
 BUECHNER HAFFER MEYERS
 & KOENIG CO., L.P.A.
 105 East Fourth Street
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MEMORANDUM IN SUPPORT

INTRODUCTION

Father respectfully requests that this Court grant this Motion for three reasons. First, Ms. Robertson's unsworn assertion of privilege does not preclude discovery. Whether Ms. Robertson's interactions with Madeleine Entine violated provisions of this Court's Modified Shared Parenting Plan¹ and whether relationships giving rise to a privilege exist, are questions of law. Second, to the extent that Madeleine Entine was provided care, attention or treatment by Ms. Robertson, Father is entitled under both the Modified Shared Parenting Plan and Ohio law to any records or information, such as those sought by the Subpoena *Duces Tecum* at bar, regarding his daughter's relationship with Ms. Robertson. Third, to the extent this Court finds that Madeleine Entine is not a patient of Ms. Robertson, this Court should nevertheless compel Ms. Robertson's compliance with the Subpoena *Duces Tecum* because Ellen Turner ("Mother") has placed the mental health of the parties at issue in this action.

¹ The Modified Shared Parenting Plan ("Plan") entered on December 8, 2008 provides, in relevant part, that:

- (1) "[T]he parents shall discuss and cooperate on matters pertaining to health..." (Page 1, Paragraph 6);
- (2) "Instructions shall be given that both parents receive all notices and have access to all records." (Article I, Section (O));
- (3) "The keeper of any record that is related to the child and to which one parent legally is provided access shall permit the other parent of the child to have access to the record under the same terms and conditions under which access is provided to the one parent." (Article I, Section (Q));
- (4) "Each party shall have access to all health records of the child." (Article VI, Section D);
- (5) "All major medical decisions regarding the child's... psychological... care, attention or treatment shall be mutually discussed and agreed upon provided there is no emergency." (Article VI, Section D);

Accordingly, this Court should require Ms. Robertson to provide documents and testimony pertaining to any and all treatment records relating to Ellen L. Turner and/or Madeleine Entine.

I. **STATEMENT OF THE RELEVANT FACTS**

The Modified Shared Parenting Plan, which sets forth many of the rights and responsibilities of the parties to this action, was entered by this Court on December 8, 2008. The next filing relevant to the present Motion was a Motion for Psychological Examination of Jon H. Entine filed by Mother on February 4, 2013. Finally, Father filed a Motion for Contempt against Mother on April 17, 2013 alleging inter alia that Mother violated the Modified Shared Parenting Plan by taking Maddie to numerous appointments with Ms. Robertson without Father's knowledge or consent. On April 18, 2013, Ms. Rita Robertson was served with the subpoena *duces tecum* at issue and Father later filed a Notice of Service of Subpoena on Rita Robertson, M.S.W.

(6) "Dr. Fliman shall continue to oversee Maddie's mental health, unless both parties agree otherwise." (Article VI, Section F);

(7) "The other parent is free to attend all scheduled appointments. If the non-scheduling parent does not attend, the scheduling parent shall post any non-routine issues on the message board of OFW by that same evening. Each parent shall have the right to attend any non-routine appointments with or treatments/surgeries by medical/dental specialists both parents [sic], unless an emergency situation dictates otherwise. Non-routine appointments with or treatments/surgeries/medications recommended or prescribed by medical/dental specialists shall not take place without notice to the other parent by posting on the message board OFW and email no later than the end of the day on which the appointment or recommendation is made." (Article VI, Section G); and

(8) "The parents will utilize the message board on Our Family Wizard (OFW) to (1) schedule and advise the other parent of changes or requests regarding parenting time (2) advise of the scheduling or cancellation of wellness visits (3) notify the other parent of matters regarding Maddie that the notifying parent would deem pertinent to Maddie's welfare if the roles were reversed (i.e. the "golden rule"), and (3) [sic] to carry out the other notice provisions set forth in this Plan." (Article VIII).

with this Court. On May 27, 2013, in response to the subpoena, Ms. Robertson emailed Mr. Meyers, counsel for Father, informing Mr. Meyers that she would not comply. See Exhibit A. On May 30, 2013, Ms. Anne B. Flottman, Esq., Guardian ad Litem for Madeleine Entine, filed a Motion to Quash Subpoena of Rita Robertson, M.S.W. and Motion for Protective Order, and in response, Father filed a Memorandum in Opposition to the Non-Party Motion to Quash on June 19, 2013. Mother has not objected to the subpoena served on Ms. Robertson. The Notice of Service and Subpoena to Ms. Robertson are attached and marked Exhibit B.

Father is entitled to depose Ms. Robertson to discover information concerning Mother's mental health and fitness to parent and the extent of Ms. Robertson's interactions with his daughter, among other things that may be relevant to this action and may lead to the discovery of admissible evidence.

II. LAW AND ARGUMENT

Regardless of whether Ms. Robertson believes that Madeleine Entine was Ms. Robertson's patient, records and testimony regarding Ms. Robertson's interactions with Ellen Turner and Madeleine Entine are discoverable. Father is entitled to depose Ms. Robertson and obtain medical records concerning matters relevant to this action, and as such, Father urges this Court to compel Ms. Robertson's compliance with the Subpoena *Duces Tecum* served April 18, 2013.

A. **This Court should compel Ms. Robertson's compliance with the subpoena in order to determine whether Mother and/or Madeleine Entine were patients of Ms. Robertson.**

To the extent that Madeleine Entine was provided psychological "care, attention or treatment" by Ms. Robertson, such contact was unauthorized under the

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terms of the Modified Shared Parenting Plan making such records discoverable to show the extent to which Mother violated said agreement and court order. See *supra* note 1. The Modified Shared Parenting Plan requires a consultation with Dr. Fliman in the event of parental deadlock on healthcare issues. See, e.g., Modified Shared Parenting Plan, Article VI, Section G. Additionally, Article VI, Section F provides that Dr. Fliman shall continue to oversee the mental health of Madeleine Entine unless otherwise agreed. Considering the apparent importance of Dr. Fliman to the parties, bringing Madeleine to appointments with a counselor other than Dr. Fliman is a "major medical decision" as used in Article VI, Section D, which requires mutual discussion and agreement. Ms. Robertson admits that she interacted with Madeleine Entine during therapy sessions.² Ms. Robertson's unsworn statement and lay opinion that a privilege applies and that no patient-counselor relationship exists between Ms. Robertson and Madeleine Entine is simply insufficient to establish the truth of the matter.

The determination of whether this Court's order has been violated or a privilege applies to the records in question are legal issues requiring analysis of the relevant facts – namely, testimony of Ms. Robertson and Ms. Robertson's records. As such, the records are discoverable and this Court should compel Ms. Robertson to comply with the Subpoena *Duces Tecum* served by Father.

B. To the extent Madeleine Entine was provided care, attention or treatment by Ms. Robertson, Father is entitled to any records or information in Ms. Robertson's custody regarding his daughter.

The Modified Shared Parenting Agreement entered by this Court specifically

² See Exhibit A ("All contact with Maddie Entine occurred in the service of addressing the issues Ms. Ellen Turner brought to our treatment.")

provides that Father is entitled to information and records regarding Madeleine Entine's mental health. Under Article VI, Section G of the Modified Shared Parenting agreement, Father is, at the very least, entitled to Notice of the appointments between Madeleine Entine and Ms. Robertson, a medical specialist. The Modified Shared Parenting agreement also provides that both parties have the right to (1) receive notice of Maddie's appointments with health care providers, (2) weigh in on the discussion of Maddie's health care, and (3) access all records related to Maddie. See *supra* note 1.

Father's right to these records is also protected by statute, and no protective order should be issued by this Court. To the extent that such records relate to Madeleine Entine, a minor, a protective order, such as the one requested by the Guardian Ad Litem assigned to this case, preventing Father's access to Ms. Robertson's treatment records relating to Madeleine Entine is against Ohio law. Both residential and non-residential parents have equal rights to records relating to the child. See R.C. 3109.051(H). This includes any record, document, file, or other material that contains information directly related to the child. See R.C. 3109.051(O)(5) (emphasis added).

Additionally, to deny Father his parental rights is a constitutional violation and to disregard a prior order of this Court would be against the public policy of judicial consistency. Father's parental rights include access to his daughter's medical records and the power to authorize medical care or treatment. See, e.g., *In re Bonfield*, 96 Ohio St. 3d 218, 2002-Ohio-4182, 773 N.E.2d 507, ¶ 4, *reversed in part on other grounds by*, *In re Bonfield*, 97 Ohio St. 3d 387, 2002-Ohio-6660, 780 N.E.2d 241, ¶ 7 (recognizing that parental rights include access to the child's medical or

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school records and the ability to authorize medical care). Parental rights are fundamental rights protected by the United States Constitution and recognized by Ohio law. See, e.g., *In re Keylor*, 7th Dist. No. 04 MO 02, 2005-Ohio-1661, ¶ 19 (citing *Troxel v. Granville*, 530 U.S. 57, 68-69 (2000)). Consequently, Father's parental rights require that any health care records regarding Madeleine Entine in Ms. Robertson's custody be disclosed to Father.

Finally, even if this Court determines that Madeleine Entine was not provided care, attention or treatment by Ms. Robertson, any records relating to Madeleine Entine remain discoverable. Under Ohio statute, the privilege asserted by Ms. Robertson is limited to "confidential communication received from a client in that relation." See R.C. 2317.02(G)(1). Ms. Robertson admits that, in her opinion, Madeleine Entine is not a patient. See Exhibit A. Therefore, to the extent that Ms. Robertson's records contain statements from Madeleine Entine, such records are not privileged at all.

For these reasons, Father is entitled to depose Ms. Robertson and obtain all records sought, and this Court should compel Ms. Robertson to comply with the Subpoena *Duces Tecum* served by Father.

C. To the extent that only Mother was a patient of Ms. Robertson, this Court should compel Ms. Robertson's testimony because Mother has placed mental health at issue in this action.

Although generally, counseling records are not discoverable, this instance falls under an exception. See Civ. R. 45(C)(3). By virtue of the present legal action, Mother has placed mental health and parenting of Madeleine Entine at issue. It is well-settled that where a parent commences divorce proceedings, a determination of

custody proceeding, or a modification of existing parenting allocation orders, that parent places his or her mental health in issue, and as such, his or her medical records can be released to the court. See *Hageman v. Southwest Gen. Health Ctr.*, 8th Dist. No. 87826, 2006-Ohio-6765, *affirmed by and remanded by* 119 Ohio St. 3d 185, 2008-Ohio-3343, 893 N.E.2d 153; see also *Neftzer v. Neftzer*, 140 Ohio App. 3d 618, 748 N.E.2d 608 (12th Dist. 2000). This is because, under R.C. 2317.02(B), the filing of any civil action by a patient waives the physician-patient privilege as to any communication that related causally or historically to the civil action. Also, as stated in R.C. 3109.04(F)(1)(e), the mental health of the parents in a custody action is of major importance and as such the mental conditions of the parents are in issue.

Because Mother has placed mental health at issue in this case, the records at issue are discoverable and this Court should compel Ms. Robertson to comply with the Subpoena *Duces Tecum* served by Father.

IV. CONCLUSION

Based upon the foregoing, Father hereby requests that the Court enforce the subpoena issued to Ms. Robertson and compel Ms. Robertson to appear at the deposition noticed in the matter on July 10, 2013.

Respectfully submitted,

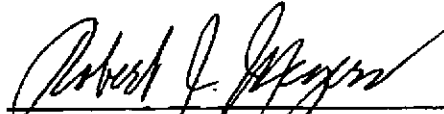


Robert J. Meyers (0014889)
Attorney for Defendant
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NOTICE OF HEARING

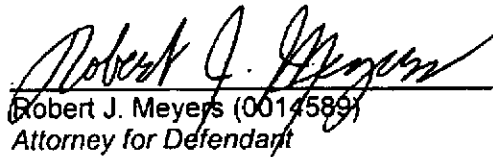
Please take notice that a hearing on the foregoing Motion to Compel Compliance with Subpoena *Duces Tecum* has been scheduled for the 24th day of July, 2013 at 9:00 a.m. for 7 hrs. before Magistrate Theile, Room 2-102, at the Hamilton County Domestic Relations Court, 800 Broadway, Cincinnati, Ohio 45202.



Robert J. Meyers (0014589)
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Motion to Compel has been served upon Wijdan Jreisat, Esq., Attorney for Plaintiff, Katz, Teller, Brant & Hild, 255 E. Fifth Street, Suite 2400, Cincinnati, Ohio 45202, Anne B. Flottman, Esq., Guardian Ad Litem, Wood & Lamping LLP, 600 Vine Street, Suite 2500, Cincinnati, Ohio 45202 and Rita Robertson, M.S.W., 333 Lafayette Avenue, Cincinnati, Ohio 45220 by regular U.S. mail, postage prepaid, this 2ND day of July, 2013.



Robert J. Meyers (0014589)
Attorney for Defendant

193176

BUECHNER HAFFER
MEYERS & KOENIG
CO., L.P.A.
Suite 300
105 East Fourth Street
Cincinnati, Ohio 45202
(513) 579-1500

Robert J. Meyers

From: robski6@aol.com
Sent: Monday, May 27, 2013 12:31 PM
To: Robert J. Meyers; abflottman@woodlamping.com; wjreisat@katzteller.com
Subject: subpoena

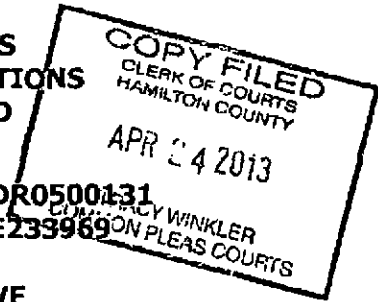
Dear Mr. Meyer,

I am writing to let you know that I have received the subpoena for testimony and treatment records for Ellen Turner and Maddie Entine. I strongly object to this subpoena and cannot comply as it violates the rules of confidentiality by which I am bound. My patient is Ms. Ellen Turner, who contacted me for personal and parenting help. Since she is my patient and has not provided consent for me to communicate with you, I am not allowed to produce records or to speak with you about her or her treatment. All contact with Maddie Entine occurred in the service of addressing the issues Ms. Ellen Turner brought to our treatment.

If you have further questions, feel free to contact me at 513-659-0905, or by email.

Rita Robertson LISW

COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO



Ellen L. Turner

Plaintiff,

vs.

Jon H. Entine

Defendant.

: CASE NO. DR0500131
FILE NO: E239969
: JUDGE SIEVE
: MAGISTRATE THEILE
: DEFENDANT'S NOTICE OF SERVICE
: OF SUBPOENA ON RITA
: ROBERTSON, M.S.W.

PLEASE TAKE NOTICE that a subpoena *duces tecum* has been issued and served via Process Server on Rita Robertson, M.S.W., 333 Lafayette Avenue, Cincinnati, Ohio 45220. A copy of the subpoena is attached hereto as Exhibit A.

Respectfully submitted,

Robert J. Meyers #0014589
Attorney for Defendant
BUECHNER HAFFER MEYERS
& KOENIG CO., L.P.A.
105 East Fourth Street
300 Fourth & Walnut Centre
Cincinnati, Ohio 45202
Telephone No.: 513-579-1500
Fax No.: 513-977-4361
Email: rmeyers@bhmklaw.com

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Defendant's Notice of Service of Subpoena on Rita Robertson, M.S.W. has been served upon Wijdan Jreisat, Esq., Attorney for Plaintiff, Katz, Teller, Brant & Hild, 255 E. Fifth Street, Suite 2400, Cincinnati, Ohio 45202, and Anne B. Flottman, Esq., Guardian Ad Litem, Wood & Lamping LLP, 600 Vine Street, Suite 2500, Cincinnati, Ohio 45202 by regular U.S. mail, postage prepaid, this 23rd day of April, 2013.

Robert J. Meyers (0014589)
Attorney for Defendant

BUECHNER HAFFER
MEYERS & KOENIG
CO., L.P.A.
Suite 300
105 E. Fourth Street
Cincinnati, Ohio 45202
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EXHIBIT B

**COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO**

[Handwritten scribble]

ELLEN L. TURNER, Plaintiff : CASE NO. DR0500131
FILE NO. E233969

v.

JON H. ENTINE, Defendant : JUDGE SIEVE
MAGISTRATE THEILE

: SUBPOENA FOR WITNESS DUCES TECUM

COPY FILED
CLERK OF COURTS
HAMILTON COUNTY
APR 16 2013
TRACY WINKLER
COMMON PLEAS COURTS

TO: Rita Robertson, M.S.W.
333 Lafayette Avenue
Cincinnati, Ohio 45220

YOU ARE COMMANDED to appear in the Hamilton County Court of Common Pleas at the place, date, and time specified below to attend hearing in the above case.

PLACE OF TESTIMONY Hamilton County Domestic Relations Court 800 Broadway Cincinnati, Ohio 45202	COURTROOM 2-102 -- Magistrate Gregory Theile
	DATE AND TIME Wednesday, July 24, 2013 at 9:00 a.m.

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE	DATE AND TIME

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below:

Any and all treatment records relating to Ellen L. Turner and/or Madeleine Entine (DOB: 5/22/98)

PLACE 105 E. Fourth Street, Suite 300 Cincinnati, Ohio 45202	DATE AND TIME Wednesday, July 10, 2013 at 9:00 a.m.
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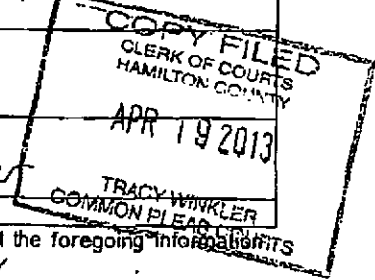
YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, director, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Ohio Rules of Civil Procedure, 30(B)(6).

ISSUING OFFICER SIGNATURE AND TITLE <i>Robert J. Meyers</i> Attorney for Defendant	DATE April 16, 2013
ISSUING OFFICER'S NAME ADDRESS AND PHONE NUMBER Robert J. Meyers, Attorney for Defendant, #0014589, (513) 579-1500 Buechner Haffer Meyers & Koenig Co., LPA, 105 E. Fourth Street, Suite 300, Cincinnati, Ohio 45202	

PROOF OF SERVICE		
SERVED <i>Personally</i>	DATE <i>4-18-13</i>	PLACE 333 Lafayette Avenue Cincinnati, Ohio 45220
SERVED ON (PRINT NAME) Rita Robertson, M.S.W.	MANNER OF SERVICE Process Server	
SERVED BY (PRINT NAME) <i>James Eckels</i>	TITLE <i>Process Server</i>	



DECLARATION OF SERVICE

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on *4-18-13*
DATE

J-M
SIGNATURE OF SERVER
S. McCormick TR
11175 2nd 45750
ADDRESS OF SERVER
(513) 624-0410

Rule 45, Ohio Rules of Civil Procedure, Parts C&D:

(C) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena.

(2)(a) A person commanded to produce under divisions (A)(1)(b) (i), (ii), (iii), (iv), or (v) of this rule need not appear in person at the place of production or inspection unless commanded to attend and give testimony at a deposition, hearing or trial.

(b) Subject to division (D)(2) of this rule, a person commanded to produce under divisions (A)(1)(b)(i), (ii), (iii), (iv), or (v) of this rule may, within fourteen days after service of the subpoena or before the time specified for compliance if such time is less than fourteen days after service, serve upon the party or attorney designated in the subpoena written objections to production. If objection is made, the party serving the subpoena shall not be entitled to production except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena, upon notice to the person commanded to produce, may move at any time for an order to compel the production. An order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the production commanded.

(3) On timely motion, the court from which the subpoena was issued shall quash or modify the subpoena, or order appearance or production only under specified conditions, if the subpoena does any of the following:

- (a) fails to allow reasonable time to comply;
- (b) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies;
- (c) requires disclosure of a fact known or opinion held by an expert not retained or specifically employed by any party in anticipation of litigation or preparation for trial as described by Civ. R. 26(B)(4), if the fact or opinion does not describe specific events or occurrences in dispute and results from study by that expert that was not made at the request of any party;
- (d) subjects a person to undue burden

(4) Before filing a motion pursuant to a division (C)(3)(d) of this rule, a person resisting discovery under this rule shall attempt to resolve any claim of undue burden through discussions with the issuing attorney. A motion filed pursuant to division (C)(3)(d) of this rule shall be supported by an affidavit of the subpoenaed person or a certificate of that person's attorney of the efforts made to resolve any claim of undue burden.

(5) If a motion is made under division (C)(3)(c) or (C)(3)(d) of this rule, the court shall quash or modify the subpoena unless the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated.

(D) Duties in Responding to Subpoena.

(1) A person responding to a subpoena to produce documents shall, at the person's option, produce them as they are kept in the usual course of business or organized and labeled to correspond with the categories in the subpoena. A person producing documents pursuant to a subpoena for them shall permit their inspection and copying by all parties present at the time and place set in the subpoena for inspection and copying.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials under Civ. R. 26(B)(3) or (4), the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO



Ellen L Turner
Plaintiff

Enter: _____

Date: 06/26/2013

Case No. DR0500131

File No. E233969

CSEA No. 7053135062

Judge: Jon H Sieve



-vs-

Jon H Entine
Defendant

ENTRY ON MOTIONS TO SET ASIDE

This matter came before the Court for hearing on June 11, 2013 pursuant to Defendant/Father's (hereinafter "Father") and Plaintiff/Mother's (hereinafter "Mother") Motions To Set Aside the Order of Magistrate Gregory R. Theile entered April 4, 2013. Father's motion was timely filed on April 11, 2013. Mother's motion was timely filed on April 15, 2013. Present before the Court were counsel for Mother, Wijdan Jreisat, Esq., Father with counsel, Robert J. Meyers, Esq., and Anne B. Flottman, Guardian ad litem.

Based upon an independent and thorough review of the record, oral arguments, and the applicable law, the Court finds and Orders as follows:

The Court will address the pending motions in the order they were filed.

Father moves the Court to set aside the Magistrate's Order denying his Motion For In Camera Interview of the parties' minor child. Father argues that the Magistrate improperly found R.C. §3109.051 controlling in denying his request to interview the parties' minor child. Father avers that the applicable statute is R.C. §3109.04(B)(1), which requires the Court to



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interview the minor child upon the request of a parent. Father claims it is clear from R.C. §3109.051 that the provision does not apply where the Court has issued a Shared Parenting Plan.

The Court does not find Father's argument persuasive. R.C. §3109.04 applies in the allocation of parental rights and responsibilities. As the Magistrate aptly stated, neither party is seeking to terminate the shared parenting plan and be designated the residential parent. Father is merely seeking an adjustment of parenting time. The Court finds the controlling statute in this circumstance is R.C. §3109.051, which provides the Court discretion upon a party's request to interview the child. Furthermore, a Guardian ad litem is in place to represent the child's interests. Therefore, Father's motion to set aside is found not well taken and is hereby denied.

Mother moves the Court to set aside the Magistrate's Order denying her Motion For Psychological Examination and Evaluation. The Magistrate concluded in part, "[a]s the current substantive issue before the court is that of the adjustment of parenting time, [Mother] has not shown good cause to require [Father] to obtain a psychological examination." Mother states that no evidence was taken on her motion. Mother's counsel further represents that she sought to call witnesses at the hearing and the Magistrate would not take testimony on the matter.

One of the three requirements to be met before a Court may order a psychological evaluation is that the moving party demonstrate "good cause" for the examination.¹ This Court makes no conclusion as to whether this requirement can be met. Mother, however, was not afforded the opportunity to satisfy this requirement because no evidence was taken on the issue. Therefore, Mother's Motion To Set Aside is found well taken and is hereby granted. This matter is hereby remanded to Magistrate Theile for an evidentiary hearing regarding Mother's Motion

¹ Civ. R. 35(A); *Brossia v. Brossia*, 65 Ohio App.3d 211, 215, 583 N.E.2d 978 (6th Dist. 1989).

For Psychological Examination and Evaluation. Mother shall obtain a hearing date no later than thirty (30) days from the date of this Entry.²

The Court hereby accepts and adopts those portions of the Magistrate's Order entered April 4, 2013 not inconsistent with this Entry.

IT IS SO ORDERED.

TRANSCRIPT OF PROCEEDINGS HAS
NOT BEEN PROVIDED TO THE
COURT

Copies sent by Clerk of Courts to:
Wijdan Jreisat, Esq., Attorney For Plaintiff
Robert J. Meyers, Esq., Attorney For Defendant
Anne B. Flottman, Esq., Guardian Ad Litem

² Mother's counsel shall initiate the telephone call to the docket office within thirty (30) days of this Entry and schedule a date that is also available for Father's counsel.

COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO

Ellen L Turner

Case No. DR0500131

-vs/and-

File No. E233969

Jon H Entine

WRITTEN REQUEST FOR SERVICE
(Type of Papers Being Served)
Entry on Motions to Set Aside

THE COURT REQUESTS:

CERTIFIED MAIL SERVICE	_____	REGULAR MAIL SERVICE	<u>XX</u>
PERSONAL SERVICE	_____	RESIDENCE SERVICE	_____
PROCESS SERVICE	_____	FOREIGN SHERIFF	_____

_____ IN ACCORDANCE WITH CIVIL RULE 4.6 (C) OR (D) AND 4.6 (E)
AN ORDINARY MAIL WAIVER IS REQUESTED

LIST NAME AND ADDRESS OF PERSON(S) TO BE SERVED:

Anne B. Flottman, Esq. 600 Vine St., Suite 2500 Cincinnati OH 45202



D102575115

TRACY WINKLER
CLERK OF COURTS
HAMILTON COUNTY, OH
2013 JUN 26 P 1:37
FILED

COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO

Ellen L Turner

Case No. DR0500131

-vs/and-

File No. E233969

Jon H Entine

WRITTEN REQUEST FOR SERVICE
(Type of Papers Being Served)
Entry on Motions to Set Aside

THE COURT REQUESTS:

CERTIFIED MAIL SERVICE _____ REGULAR MAIL SERVICE XX

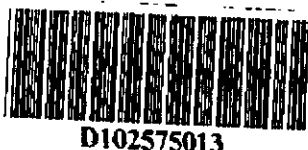
PERSONAL SERVICE _____ RESIDENCE SERVICE _____

PROCESS SERVICE _____ FOREIGN SHERIFF _____

**IN ACCORDANCE WITH CIVIL RULE 4.6 (C) OR (D) AND 4.6 (E)
AN ORDINARY MAIL WAIVER IS REQUESTED**

LIST NAME AND ADDRESS OF PERSON(S) TO BE SERVED:

Robert J Meyers Esq 105 E 4TH ST SUITE 300 CINCINNATI OH 45202



TRACY WINKLER
CLERK OF COURTS
HAMILTON COUNTY, OH
2013 JUN 26 P 1:37
FILED

**COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO**

Ellen L. Turner

CASE NO. DR0500131

-vs-

**WRITTEN REQUEST FOR SERVICE
(TYPE OF PAPERS BEING SERVED)**

Jon H. Entine

Motion to Hold Mother in Contem

PLAINTIFF / DEFENDANT REQUESTS:

CERTIFIED MAIL SERVICE

REGULAR MAIL SERVICE _____

PERSONAL SERVICE _____

RESIDENCE SERVICE _____

PROCESS SERVICE _____

FOREIGN SHERIFF _____



IN ACCORDANCE WITH CIVIL RULE 4.6(C) OR (D) AND 4.6(E) AN ORDINARY MAIL WAIVER IS REQUESTED

FILED

2013 JUN 21 P 1:26

TRACY WINKLER
CLERK OF COURTS
HAMILTON COUNTY, OH

LIST NAME AND ADDRESS OF PERSON(S) TO BE SERVED

Ellen L. Turner

6720 Camaridge Lane

Cincinnati Ohio 45222



D102529326

Robert J. Meyers
ATTORNEY

(513) 579-1500
PHONE NUMBER

105 E. 4th St., #300 Cinti OH
ADDRESS

0014589
ATTORNEY NUMBER

SECURITY FOR COSTS IN THE SUM OF \$ 125.00
14589
POSITIVE

() PRE-DECREE (X) POST DECREE

() Chg. of Cust.

COURT OF COMMON PLEAS () Vis. Enforce/Mod.
DIVISION OF DOMESTIC RELATIONS Sup. Enforce/Mod.
HAMILTON COUNTY, OHIO (X) Others

Ellen L. Turner
Plaintiff,

: CASE NO. DR0500131
FILE NO: E233969
:
JUDGE SIEVE
MAGISTRATE THEILE

vs.

Jon H. Entine
Defendant.

: MOTION TO HOLD MOTHER IN
CONTEMPT FOR VIOLATIONS OF
THE MODIFIED SHARED PARENTING
PLAN

Jon H. Entine ("Father"), by and through counsel, moves the Court to find Ellen L. Turner ("Mother") in contempt for violating the Modified Shared Parenting Plan which was entered of record on December 9, 2008. This Motion is supported by the following Memorandum.

FILED
2008 JUN 21 P 1:26
TRACY WINKLER
CLERK OF COURTS
HAMILTON COUNTY, OH

Respectfully submitted,
Robert J. Meyers

Robert J. Meyers #0014589
Attorney for Defendant
BUECHNER HAFFER MEYERS
& KOENIG CO., L.P.A.
105 East Fourth Street
300 Fourth & Walnut Centre
Cincinnati, Ohio 45202
Telephone No.: 513-579-1500
Fax No.: 513-977-4361
Email: rmeyers@bhmklaw.com

BUECHNER HAFFER
MEYERS & KOENIG
CO., L.P.A.
Suite 300
105 East Fourth Street
Cincinnati, Ohio 45202
(513) 579-1500



MEMORANDUM

On December 9, 2008, a Modified Shared Parenting Plan was entered with the Court hereafter ("the Plan"). The Plan allocated the parental rights and responsibilities of the parties' minor child, Madeleine Entine ("Maddie") born, May 22, 1998.

Pursuant to Article IV(D) of the Plan regarding healthcare, the parties agreed that: "All major decisions regarding the child's medical, dental, orthodontic, optical, psychological, psychiatric, pharmaceutical drugs and hospital, or physical care, attention or treatment shall be mutually discussed and agreed upon provided there is no emergency."

Further, Article IV(F) states that: "The parent in charge of the routine dental and medical care shall post all scheduled or cancelled appointments on the message board on Our Family Wizard (OFW) within four (4) hours of scheduling them".

FIRST ISSUE OF CONTEMPT

On May 26, 2013, a prescription for Naproxen was prescribed for Maddie by Dr. Michael B. Lee for back pain. On January 14, 2013, an antibiotic was prescribed for Maddie by Dr. Michael B. Lee. A copy of the prescription bottle and Patient Prescription Record are attached hereto as Exhibit A. Dr. Michael B. Lee is an oral surgeon and is also Mother's boyfriend and now new Husband. He is not one of Maddie's treating physicians or dentists. Maddie is currently under treatment for her back pain with a specialist, Dr. Paul Gango, who sees Maddie on a regular basis. Both the prescription for Naproxen and the prescription for an antibiotic medication were prescribed by Dr. Lee to Maddie without Father's knowledge, consent, or authorization. Father was not consulted concerning these prescriptions and he was not aware that the prescription medication had been provided to Maddie. The decision by Mother to provide prescribed pharmaceutical drugs to Maddie without first discussing the matters with Father, obtaining Father's approval, and without Father's knowledge or consent is a direct violation of the Plan.

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105 East Fourth Street
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SECOND ISSUE OF CONTEMPT

In May, June and July of 2012, Mother scheduled appointments for Maddie with Brett Clarke, a licensed social worker, for therapy sessions without notifying Father of the scheduled appointments. These sessions were scheduled on May 4, May 18, May 25, June 1, June 8, July 1, and July 17 in 2012. The decision by Mother to schedule therapy sessions for Maddie with a social worker without discussing the sessions with Father and without Father's knowledge or consent is a direct violation of the Plan. In addition, the fact that Mother failed to notify Father of the scheduled appointments within four hours of scheduling them is a direct violation of the Plan.

THIRD ISSUE OF CONTEMPT

Maddie was receiving treatment for nodes on her neck by Dr. Sally Schott, an ENT Specialist at Children's Hospital. Some nodes had been surgically removed by Dr. Schott. Maddie was scheduled for a follow-up appointment with Dr. Schott. Father communicated via e-mail with Mother to remind her of the appointment with Dr. Schott. Father followed up with Mother afterward by e-mail in order that she could advise Father of the results. Father received no response from Mother. About a month after the scheduled appointment, Father learned from the Children's Hospital billing department that the appointment had been cancelled after he had called the billing department to find out why he had not received a bill. Thereafter, Father questioned Maddie about the appointment with Dr. Schott. Maddie became quite upset at the inquiry. Maddie confirmed that the appointment had been cancelled. It is Father's understanding that Maddie was instructed by Mother not to tell Father that the appointment was cancelled. Father discovered that Maddie was examined by Dr. Michael Lee, an oral surgeon, who is Mother's boyfriend and now husband. Dr. Lee determined that there were no nodes on Maddie's neck and that no treatment or visit with Dr. Schott was necessary. In fact, it is Father's understanding that Dr. Lee called Dr. Schott's office to cancel

the appointment. Father subsequently took Maddie to Dr. Schott for a follow-up appointment and Dr. Schott diagnosed that Maddie continued to have nodes that needed to be monitored. The decision by Mother to cancel the appointment for Maddie with Dr. Schott without discussion with Father and without Father's knowledge or consent is a direct violation of the Plan.

CONCLUSION

Mother's actions in having pharmaceutical drugs prescribed for the minor child, scheduling and having the child attend therapy sessions with a licensed social worker and cancelling a doctor's appointment, all done without discussing the matters with Father and without Father's knowledge, involvement or consent, violate the provisions of the Plan. Therefore, Mother should be held in contempt of Court for each of the violations.

Father respectfully requests this Court find Mother in Contempt for failing to comply with the terms of the Modified Shared Parenting Plan; that he be awarded reasonable attorney's fees incurred in prosecuting this Motion for Contempt plus costs; and any and all other remedies which this Court deems appropriate.

Respectfully submitted,



Robert J. Meyers (0014589)
Attorney for Defendant
BUECHNER HAFFER MEYERS
& KOENIG CO., LPA
105 E. Fourth Street, Suite 300
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rmeyers@bhmklaw.com

BUECHNER HAFFER
MEYERS & KOENIG
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Suite 300
105 East Fourth Street
Cincinnati, Ohio 45202
(513) 579-1500

NOTICE OF HEARING

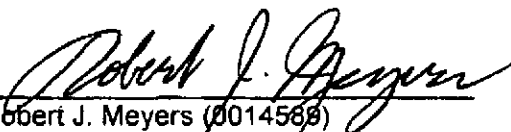
Please take notice that a hearing on the foregoing Motion for Contempt of Modified Shared Parenting Plan has been scheduled for the 24th day of July, 2013 at 9:00 a.m./p.m. for ____ (mins./hrs.) before Magistrate Theile, Room 2-102, at the Hamilton County Domestic Relations Court, 800 Broadway, Cincinnati, Ohio 45202.



Robert J. Meyers (0014589)
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Motion for Contempt of Modified Shared Parenting Plan has been served upon Wijdan Jreisat, Esq., Attorney for Plaintiff, Katz, Teller, Brant & Hild, 255 E. Fifth Street, Suite 2400, Cincinnati, Ohio 45202, and Anne B. Flottman, Esq., Guardian Ad Litem, Wood & Lamping LLP, 600 Vine Street, Suite 2500, Cincinnati, Ohio 45202 by regular U.S. mail, postage prepaid, this 21st day of June, 2013.



Robert J. Meyers (0014589)
Attorney for Defendant

192982

BUECHNER HAFFER
MEYERS & KOENIG
CO., L.P.A.
Suite 300
105 East Fourth Street
Cincinnati, Ohio 45202
(513) 579-1500

EXHIBIT A

CVS Pharmacy

700 MIAMI AVE., CINCINNATI, OH 45243

MADELEINE EN

920 CAMBRIDGE LN., CINCINNATI, OH 452430000

ICNAPROXEN 250

TABLET

SUBSTITUTED FOR: NAPROXEN 250 MG TABLET

TAKE 2 TABLETS NOW

TABLET EVERY 8 HOURS

NEEDED FOR PAIN

Qty 30

R. fills reqd

More Phone: (513)

42280

Sub: MICHAEL B. LEE



MINDO
MINDO

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THIS MEDICATION WITH
OF WATER

John P. Rudy

05/26/2013

Date filled: 05/26/2013

Card After: 05/26/2013

LIGHTER
shaped TABLET imprinted
on the front and 147 on

FOR YOUR MEDICATION
MINDO

OHIO CVS STORES, L.L.C. # 06103
PATIENT PRESCRIPTION RECORD
01/01/2013 THRU 06/12/2013

Date: 06/12/2013 Time: 10:21:53 AM

PHARMACY NAME: 06103 # 06103
ADDRESS: 7001 MIAMI AVE.
CITY, ST, ZIP: CINCINNATI, OH, 45243
PATIENT KEY: 8715006131
PATIENT NAME: ENTINE, MADELEINE
ADDRESS: 6720 CAMARIDGE LN
CITY, ST, ZIP: CINCINNATI, OH, 452430000

TELEPHONE: (513) 561-2857
BIRTHDATE: 05/22/1998
GENDER: F
RELATIONSHIP: Child

STORE NO #	RX NUMBER	RFL	NDC NUMBER	DRUG DESCRIPTION	PRESCRIBER NAME	DATE FILLED	QUANT DISP	PATIENT PD AMT
36103	0411935	000	59762306001	AZITHROMYCIN 250 MG DOSE PACK	LEE, MICHAEL	01/14/2013	6.00	14.35
36103	0422803	000	00093014701	NAPROXEN 250 MG TABLET	LEE, MICHAEL	05/26/2013	30.00	10.05

TOTAL # OF PRESCRIPTIONS: 2 TOTAL PATIENT PAID AMOUNT : 24.40

For customers who require additional information please contact the CVS privacy office at 800-287-2414.

Private and Confidential Intended for Addressee only

50
2/16



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COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO

Handwritten notes:
moving to
OK
the

Ellen L. Turner

Plaintiff,

vs.

Jon H. Entine

Defendant.

: CASE NO. DR0500131
FILE NO: E233969

: JUDGE SIEVE
: MAGISTRATE THEILE

: DEFENDANT'S MEMORANDUM IN
: OPPOSITION TO NON-PARTY
: MOTION TO QUASH SUBPOENA OF
: RITA ROBERTSON AND REQUEST
: FOR HEARING

Defendant Jon H. Entine ("Father"), by and through counsel, submits his Memorandum in Opposition to Non-Party Motion to Quash Subpoena of Rita Robertson M.S.W. and Motion for Protective Order filed on May 30, 2013 for the deposition set for July 10, 2013 at the law offices of Buechner Haffer Meyers & Koenig Co. L.P.A.

TRACY WINKLER
CLERK
HAMILTON COUNTY
D 3 0 7

Father strongly opposes this Motion and posits that because (1) correspondence with Rita Robertson indicates Madeleine Entine was not the patient in this instance, and (2) the records in question are not privileged for purposes of this action, Ms. Flottman's objections to the Subpoena should be overruled.

As such, Father respectfully requests that this Court deny the Motion to Quash filed by Anne B. Flottman, Esq., Guardian ad Litem for Madeleine Entine and require Ms. Rita Robertson to provide documents and testimony pertaining to any and all treatment records relating to Ellen L. Turner and Madeleine Entine.

I. STATEMENT OF THE RELEVANT FACTS

On January 9, 2013 Father filed a Motion to Modify the Modified Shared Parenting Plan. On March 19, 2013, Plaintiff Ellen L. Turner ("Mother") filed a Motion to Further Modify the Provisions of the Modified Shared Parenting Plan. On April 12, 2013 Father filed an

additional Motion to Modify the Plan. On April 19, 2013, Father served Ms. Rita Robertson with a subpoena and later filed a Notice of Service of Subpoena on Rita Robertson, M.S.W. with this Court. On May 30, 2013, Ms. Anne B. Flottman, Esq., Guardian ad Litem for Madeleine Entine, filed a Motion to Quash Subpoena of Rita Robertson, M.S.W. and Motion for Protective Order to which this Memorandum responds.

It should be noted that email correspondence from Ms. Robertson (attached as "Exhibit A") indicates that Plaintiff Ellen Turner ("Mother") "contacted [Ms. Robertson] for personal and parenting help" and that Madeleine Entine is not the patient of Ms. Robertson. Father is entitled to depose Ms. Robertson to discover information concerning Mother's mental health and fitness to parent, among other things that may be relevant to this action and may lead to the discovery of admissible evidence.

II. LAW AND ARGUMENT

The Motion to Quash is factually inaccurate as Madeleine Entine was not the patient of Rita Robertson. Therefore it is unusual that Ms. Flottman, the Guardian ad Litem in this case, seeks to quash the subpoena of Ms. Robertson.

Although generally, counseling records are not discoverable, this instance falls under an exception. See Civ. R. 45(C)(3). By virtue of the present legal action, Mother has placed her mental health and parenting of Madeleine Entine at issue. It is well-settled that where a parent commences divorce proceedings, a determination of custody proceeding, or a modification of existing parenting allocation orders, that parent places his or her mental health in issue, and as such, his or her medical records can be released to the court. See *Hageman v. Southwest Gen. Health Ctr.*, 8th Dist. No. 87826, 2006-Ohio-6765, *affirmed by* and *remanded by* 119 Ohio St. 3d 185, 2008-Ohio-3343, 893 N.E.2d 153; see also *Neftzer v. Neftzer*, 140 Ohio App. 3d 618, 748 N.E.2d 608 (12th Dist. 2000). This is because, under

R.C. 2317.02(B), the filing of any civil action by a patient waives the physician-patient privilege as to any communication that related causally or historically to the civil action. Also, as stated in R.C. 3109.04(F)(1)(e), the mental health of the parents in a custody action is of major importance and as such the mental conditions of the parents are in issue.

Furthermore, under Ohio statute, the privilege in question is limited to "confidential communication received from a client in that relation." See R.C. 2317.02(G)(1). Therefore, under law, all Ms. Robertson's records related to Madeleine Entine – who was not Ms. Robertson's patient – are not privileged at all.

Finally, to the extent that such records relate to Madeleine Entine, a minor, a protective order preventing Father's access to Ms. Robertson's treatment records relating to Madeleine Entine is against Ohio law. Both residential and non-residential parents have equal rights to records relating to the child. See R.C. 3109.051(H). This includes any record, document, file, or other material that contains information directly related to the child. See R.C. 3109.051(O)(5).

For these reasons, Father is entitled to depose Ms. Robertson and obtain medical records concerning matters relevant to this action.

IV. CONCLUSION

Based upon the foregoing, Ms. Flottman's Motion to Quash Subpoena must be denied. Father respectfully requests that the Court enforce the subpoena issued to Ms. Robertson and compel Ms. Robertson to appear at the deposition noticed in the matter on July 10, 2013.

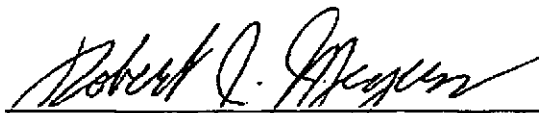
Respectfully submitted,



Robert J. Meyers/ #0014589
Attorney for Defendant Jon H. Entine
BUECHNER HAFFER MEYERS
& KOENIG CO., L.P.A.
105 E. Fourth Street, Suite 300
Cincinnati, OH 45202
Telephone: (513) 579-1500
Facsimile: (513) 977-4361
rmeyers@bhmklaw.com

NOTICE OF HEARING

Please take notice that a hearing on the foregoing Defendant's Memorandum in Opposition to Non-Party Motion to Quash Subpoena of Rita Robertson and Request for Hearing has been scheduled for the 24th day of July, 2013 at 9 (a.m./p.m.) for 1 (mins./hrs.) before Magistrate Theile, Room 2-102, at the Hamilton County Domestic Relations Court, 800 Broadway, Cincinnati, Ohio 45202.




Robert J. Meyers (0014589)
Attorney for Defendant

BUECHNER HAFFER
MEYERS & KOENIG
CO., L.P.A.
Suite 300
105 East Fourth Street
Cincinnati, Ohio 45202
(513) 579-1500

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Defendant's Memorandum in Opposition to Non-Party Motion to Quash Subpoena of Rita Robertson and Request for Hearing has been served upon Wijdan Jreisat, Esq., Attorney for Plaintiff, Katz, Teller, Brant & Hild, 255 E. Fifth Street, Suite 2400, Cincinnati, Ohio 45202, and Anne B. Flottman, Esq., Guardian Ad Litem, Wood & Lamping LLP, 600 Vine Street, Suite 2500, Cincinnati, Ohio 45202 by regular U.S. mail, postage prepaid, this 11th day of June, 2013.


Robert J. Meyers (0014589)
Attorney for Defendant

192680

EXHIBIT A

Robert J. Meyers

From: robski6@aol.com
Sent: Monday, May 27, 2013 12:31 PM
To: Robert J. Meyers; abflottman@woodlamping.com; wjreisat@katzteller.com
Subject: subpoena

Dear Mr. Meyer,

I am writing to let you know that I have received the subpoena for testimony and treatment records for Ellen Turner and Maddie Entine. I strongly object to this subpoena and cannot comply as it violates the rules of confidentiality by which I am bound. My patient is Ms. Ellen Turner, who contacted me for personal and parenting help. Since she is my patient and has not provided consent for me to communicate with you, I am not allowed to produce records or to speak with you about her or her treatment. All contact with Maddie Entine occurred in the service of addressing the issues Ms. Ellen Turner brought to our treatment.

If you have further questions, feel free to contact me at 513-659-0905, or by email.

Rita Robertson LISW



D102307496

SG

COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO

ELLEN L. TURNER,	:	Case No. DR0500131
Plaintiff,	:	File No. E233969
v.	:	<u>MEMORANDUM IN OPPOSITION</u>
	:	<u>TO MOTION TO SET ASIDE</u>
	:	<u>MAGISTRATE'S ORDER DATED</u>
	:	<u>APRIL 4, 2013</u>
JOHN H. ENTINE,	:	
Defendant.	:	Judge Sieve
	:	Magistrate Theile

Father has filed a motion seeking to set aside the Magistrate's order denying his request to interview the minor child. Father seeks to have the child interviewed regarding his motion to modify the parenting plan. In fact, the motion seeks to vest the decision-making authority as to the allocation of parenting time to the couple's daughter.

The Magistrate cites the discretionary aspect of R.C. 3109.051(C), which allows, but does not require, a court to conduct an interview of a child. Father argues that the proper statutory provision is R.C. 3109.04(B)(1) which provides no discretion upon a party's request to interview the child. In support of his argument that the Magistrate incorrectly relied on R.C. 3109.051, Father points to the language in subsection (A) that imposes a condition precedent – the non-issuance of a shared parenting decree – to argue that statute has no application where a shared parenting decree has issued. Nonetheless, that condition precedent does not apply to the applicable provision, subparagraph (C), which concerns a court's discretion to conduct an interview with a child incident to making a determination with respect to parenting time. Had the legislature wished the condition precedent to apply throughout the statute, the clause

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CLERK OF COURTS
HAMILTON COUNTY, OH

would have preceded subparagraph (A), such that the statute would read as follows:

"If a divorce, dissolution, legal separation, or annulment proceeding involves a child and if the court has not issued a shared parenting decree,

(A) the court shall consider any mediation report..."

Instead, the condition precedent resides wholly within subparagraph (A) and can only be read to apply to determinations made under that subparagraph, not the remainder of the statute and certainly not subparagraph (C), which is controlling here.

R.C. 3109.051(C) applies of its own terms because Father's motion seeks a modification of parenting time. That section provides as follows:

(C) . . . In considering the factors listed in division (D) of this section for purposes of determining whether to grant parenting time or visitation rights, establishing a specific parenting time or visitation schedule, determining other parenting time matters under this section or section 3109.12 of the Revised Code or visitation matters under this section or under section 3109.11 or 3109.12 of the Revised Code, and resolving any issues related to the making of any determination with respect to parenting time or visitation rights or the establishment of any specific parenting time or visitation schedule, the court, in its discretion, may interview in chambers any or all involved children regarding their wishes and concerns. . . . (Emphasis added).

As Father acknowledges and cites, the *Braatz v. Braatz* case holds that R.C. 3109.051 governs. Moreover, the general language of the statute applies it to both parenting and visitation time. So, Father's argument that the statute only applies to visitation for the non-custodial parent too narrowly construes the statute.

Even under RC 3109.04, certain issues are to be determined by the Court in any interview of a child. Those preliminary determinations include "whether, because of special circumstances, it would not be in the best interest of the child to determine the

child's wishes and concerns with respect to the allocation" or if "it would be in the best interests of the child to determine the child's wishes and concerns with respect to the allocation". In this case, a Guardian ad Litem is in place in this case to represent the child's interests and report on her concerns and desires. Given the Magistrate's long history with the case, the parties, and the involvement of professionals, the Magistrate correctly concluded that Father's request to interview the child serves no purpose.

Respectfully submitted,



Wijdan Jreisat (0063955)
Trial Attorney for Plaintiff
Katz, Teller, Brant & Hild
255 East Fifth Street, Suite 2400
Cincinnati, Ohio 45202-4787
(513) 721-4532
(513) 762-0021 (facsimile)
wjreisat@katzteller.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via hand delivery this 4th day of June, 2013 upon:

Robert J. Meyers, Esq.
Buechner Haffer Meyers & Koenig Co., LPA
105 E. Fourth Street, Suite 300
Cincinnati, OH 45202

and

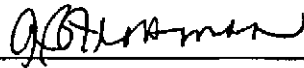
Anne Barry Flottman, Esq.
Wood & Lamping, LLP
600 Vine Street, Suite 2500
Cincinnati, OH 45202



Wijdan Jreisat

KTBH: 4830-0872-9364, v. 1

Respectfully submitted,



ANNE B. FLOTTMAN (0074394)
Guardian ad Litem
Wood & Lamping LLP
600 Vine Street, Suite 2500
Cincinnati, OH 45202-2491
(Telephone) (513) 852-6094
(Facsimile) (513) 419-6494
(Email) abflottman@woodlamping.com

MEMORANDUM IN SUPPORT

The parties, Jon Entine (“Father”) and Plaintiff Ellen Turner (“Mother”), have several motions pending, none of which seeks termination of the Shared Parenting Plan. Undersigned counsel is the duly appointed Guardian ad Litem (“GAL”) for Madeleine.

On or about April 18, 2013, Father issued a subpoena duces tecum to Rita Robertson, requiring her to produce “[a]ny and all treatment records relating to Ellen L. Turner and/or Madeleine Entine[.]” This subpoena was issued pursuant to Ohio Civ.R. 45. Rule 45(C)(3) provides that “[o]n timely motion, the court from which the subpoena was issued shall quash or modify the subpoena, or order appearance or production only under specified conditions” if, among other things, the subpoena “requires disclosure of privileged or otherwise protected matter and no exception or waiver applies.” Civ.R. 45(C)(3).

Rita Robertson, M.S.W., is a Licensed Social Worker who provides a range of professional therapy and counseling services, including individual and family therapy. During the pendency of this litigation, she has conducted therapy sessions with Mother. In the course of providing therapy to Mother, Ms. Robertson has at times conducted brief sessions with Madeleine, as she works on the mother-daughter relationship.


Father’s subpoena seeks the discovery of privileged material. R.C. 4757.11 authorizes the governing licensure body for counselors, social workers, and marriage and family therapists to establish a code of ethical practice, including standards for maintaining client confidentiality. OAC 4757-5-02(D)(1) sets forth the general ethical standard:

“Counselors, social workers, and marriage and family therapists shall have a primary obligation to protect the client’s right to confidentiality as established by law and the professional standards of practice. Confidential information shall only be revealed to others when the clients or other persons legally authorized to give consent on behalf of the clients, have given their informed consent, except in those circumstances in which failure to do so would violate other laws or result in clear and present danger to the client or others. Unless specifically contraindicated by such situations, clients shall be informed and written consent shall be obtained before the confidential information is revealed.”

In the present case, Robertson provided therapy services to Mother. Mother has not (to the GAL’s knowledge) authorized the release of these records. The production of any records pertaining to Madeleine’s participation in these sessions will necessarily and inevitably result in the disclosure of privileged information.

The GAL acknowledges that a mere recitation of the number of sessions attended and persons present at each session will not necessarily violate confidentiality. But the subpoena seeks “all treatment records,” ostensibly including Ms. Robertson’s notes, impressions, conclusions, diagnoses, etc. Such information is privileged and the subpoena should be quashed pursuant to Civ. 45(C)(3). In addition, the Court should consider issuing a protective order shielding Ms. Robertson from further legal process intended to elicit records or testimony that are covered by the privilege.

Respectfully submitted,



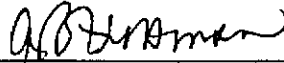
ANNE B. FLOTTMAN (0074394)
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(Facsimile) (513) 419-6494
(Email) abflottman@woodlamping.com

NOTICE OF HEARING

Please take notice that the within Motion will be heard on the ~~27~~³⁰th day of July, 2013 at 9:00 a.m. before Magistrate Gregory Theile of the Hamilton County Domestic Relations Court, located at 800 Broadway, Cincinnati, Ohio 45202.

CERTIFICATE OF SERVICE

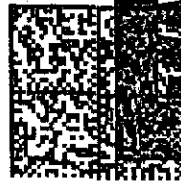
I hereby certify that a copy of the foregoing Motion to Quash Father's Subpoena of Rita Robertson, M.S.W. and Motion for Protective Order was served via regular U.S. Mail on this ~~30~~³⁰th day of May, 2013, upon Wijdan Jreisat, attorney for Mother, directed to Katz, Teller, Brant & Hild, 255 East Fifth Street, Suite 2400, Cincinnati, Ohio 45202 and upon Robert J. Meyers, attorney for Father, directed to Buechner, Haffer, Meyers & Koenig Co., LPA, 105 East Fourth Street, Suite 300, Cincinnati, Ohio 45202.



ANNE B. FLOTTMAN (0074394)
Guardian Ad Litem

TRACY WINKLER
1000 MAIN STREET, ROOM 315
CINCINNATI OH 45202
DOMESTIC RELATIONS

CERTIFIED MAIL



04982053402
\$05.010
04/18/2013
Mailed From 45202
US POSTAGE

7194 5168 6310 0668 8913

4347
LN 4-19-13

04/18/2013 MOTION
DR0500131 P 1 WAV
ELLEN L TURNER
6720 CAMARIDGE LN
CINCINNATI OH 45243

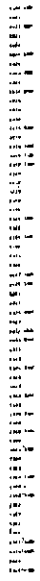
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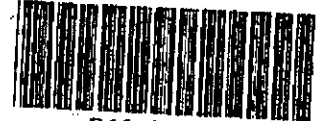
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D101979988

COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO



D101860840

Ellen L Turner

Plaintiff

-vs-

Jon H Entine

Defendant

Case No: DR0500131 POST

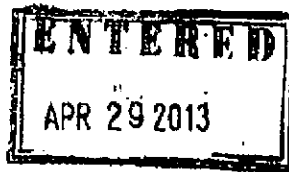
File No: E233969

CSEA: 7053135062

MAGISTRATE'S DECISION
WITH FINDINGS OF FACT
AND CONCLUSIONS OF LAW

Judge Jon H Sieve

Magistrate Theile



An Entry, captioned "General Order of Reference" which is a matter of record in this Court, provides ". . . that all matters be and are hereby referred to a Magistrate in accordance with Rule 53 of Ohio Rules of Civil Procedure".

A hearing was conducted on April 24, 2013. This hearing was set after a hearing conducted on February 27, 2013. Plaintiff/Wife was present represented by Wijdan Jreisat, Esquire. Defendant/Husband was present represented by Robert Meyers, Esquire

FINDINGS OF FACT

On January 24, 2013, Defendant/Husband filed a pro se motion captioned *Motion For Contempt For Non-Payment Of Medical Expenses*. Plaintiff/Wife filed a response captioned *Memorandum In Opposition To Motion For Contempt For Non-payment Of Medical Expenses*. The hearing on this motion was initially conducted on February 27, 2013 and continued in progress to April 3, 2013. On March 20, 2013, subsequent to first hearing in this matter, Wife filed a *Motion To Dismiss Father's Motion For Contempt For Non-payment Of Medical Expenses*. On April 3, 2013, Husband filed a *Reply Memorandum In Support Of Motion For Contempt For Nonpayment Of Medical Expense*. Wife was present represented by Wijdan Jreisat, Esquire. Husband was present, pro se, at the February 27, 2013 hearing. He was represented by Robert Meyer, Esquire at subsequent hearings.

A magistrate's decision entered April 9, 2013, found that as result of the inadmissibility of a partial mediation settlement, Husband could not prevail on his January 24, 2013 motion for

contempt and accordingly granted Wife's motion to dismiss Husband's motion and denied Husband's motion for contempt.

Wife's motion to dismiss filed March 20, 2013 stated, "Mother is entitled to her expenses in defending against this frivolous motion." The memorandum in support of that motion sought "her fees in defending the matter." The notice of hearing on this motion indicated the hearing on this motion was scheduled on April 3, 2013. Other motions were also pending before this magistrate on that date.¹ A scheduling order prepared after the hearing on April 3, 2013 and journalized on April 5, 2013, provided that "all pending motions, except (Husband's) 1-24-13 motion, to be heard on the above date (July 24, 2013)".

Neither party filed objections to the magistrate's decision entered April 9, 2013, and it is now an order of the court.

Wife seeks an award of attorney fees arguing Husband's contempt motion was filed in violation of Civil Rule 11 and/or is frivolous conduct. Alternatively, she seeks an award of attorney fees under R.C. §3105.73. Husband argues that the magistrate's decision did not address the issue of attorney fees and therefore Wife's motion for attorney fees was implicitly denied. He argues that her relief would have been to file objections to the magistrate's April 9, 2013 decision.

Wife submitted evidence that she has incurred attorney's fees, in defending Husband's pro se motion for contempt, of \$2873. She was also required to pay a \$125 filing fee for her motion to dismiss.

Wife has current income of between \$300,000 and \$400,000 per year. Husband has income of approximately \$240,000 per year.

CONCLUSIONS OF LAW

Civ. R 11 provides:

Every pleading, motion, or other document of a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address, attorney registration number, telephone number, telefax number, if any, and business e-mail address, if any, shall be stated. A party who is not represented by an attorney shall sign the pleading, motion, or other document and state the party's address. Except when otherwise specifically

¹ As result of the hearings on that date, this magistrate, *inter alia*, issued an order denying Wife's motion to have Husband submit to psychological testing and Husband's motion for an in camera interview of the parties' minor child.

provided by these rules, pleadings need not be verified or accompanied by affidavit. The signature of an attorney or pro se party constitutes a certificate by the attorney or party that the attorney or party has read the document; that to the best of the attorney's or party's knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. If a document is not signed or is signed with intent to defeat the purpose of this rule, it may be stricken as sham and false and the action may proceed as though the document had not been served. For a willful violation of this rule, an attorney or pro se party, upon motion of a party or upon the court's own motion, may be subjected to appropriate action, including an award to the opposing party of expenses and reasonable attorney fees incurred in bringing any motion under this rule. Similar action may be taken if scandalous or indecent matter is inserted.

The Ohio Supreme Court has explained,

"...Civ.R. 11, which provides that an attorney's signature on a pleading 'constitutes a certificate by the attorney * * * that the attorney * * * has read the document; that to the best of the attorney's * * * knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay.' We note that 'Civ.R. 11 employs a subjective bad-faith standard to invoke sanctions by requiring that any violation must be willful.' *State ex rel. Dreamer v. Mason*, 115 Ohio St.3d 190, 2007 Ohio 4789, ¶19, 874 N.E.2d 510. ...

...The Supreme Court has described the bad faith requirement of Civ.R. 11 as 'not simply bad judgment * * * [but a] conscious doing of wrong * * * 'with actual intent to mislead or deceive another.' *State ex rel. Bardwell v. Cuyahoga Cty. Bd. of Commrs.*, 127 Ohio St.3d 202, 2010 Ohio 5073, at ¶ 8, 937 N.E.2d 1274, quoting *Slater v. Motorists Mut. Ins. Co.* (1962), 174 Ohio St. 148, 151, 187 N.E.2d 45.²

The Ohio Supreme Court has "described bad faith as 'a general and somewhat indefinite term. It has no constricted meaning. It cannot be defined with exactness. It is not simply bad judgment. It is not merely negligence. It imports a dishonest purpose or some moral obliquity. It implies conscious doing of wrong. It means a breach of a known duty through some motive of interest or ill will. It partakes of the nature of fraud. * * * It means "with actual intent to mislead or deceive another."' (Citations omitted)(bad faith is "[d]ishonesty of belief or purpose"). Under Civ.R. 11, a court can impose sanctions only when the attorney or pro se litigant acts willfully and in bad faith by filing a pleading that he or she believes lacks good grounds or is filed merely for the purpose of delay.³

"R.C. 2323.51 provides for an award of attorney fees to a party harmed by 'frivolous conduct' in a civil action." (Citations omitted). The General Assembly vests the decision whether to award sanctions, including an award of reasonable attorney fees, in the court. R.C. 2323.51(B)(1) ("The court may assess and make

² *Swartz v. Hendrix*, 2011 Ohio 3422, ¶11-P12 (Ohio Ct. App., Darke County July 8, 2011)

³ *State ex rel. Bardwell v. Cuyahoga County Bd. of Comm'rs*, 127 Ohio St. 3d 202, 203-204; 2010 Ohio 5073; 937 N.E.2d 1274

an award to any party to the civil action or appeal who was adversely affected by frivolous conduct * * *").⁴

"Frivolous conduct" under R.C. 2323.51 includes:

(a) Conduct of a * * * party to a civil action * * * that satisfies any of the following:

(i) It obviously serves merely to harass or maliciously injure another party to the civil action * * * or is for another improper purpose, including, but not limited to, causing unnecessary delay or a needless increase in the cost of litigation.

(ii) It is not warranted under existing law, cannot be supported by a good faith argument for an extension, modification, or reversal of existing law, or cannot be supported by a good faith argument for the establishment of new law."⁵

The mere failure to prevail on a motion, standing alone, does not demonstrate frivolous conduct.⁶

R.C. § 3105.73 provides:

(B) In any post-decree motion or proceeding that arises out of an action for divorce, dissolution, legal separation, or annulment of marriage or an appeal of that motion or proceeding, the court may award all or part of reasonable attorney's fees and litigation expenses to either party if the court finds the award equitable. In determining whether an award is equitable, the court may consider the parties' income, the conduct of the parties, and any other relevant factors the court deems appropriate, but it may not consider the parties' assets.

An award of attorney's fees under R.C. §3105.73 is discretionary.⁷

"(A)ny motion not expressly ruled on is deemed overruled."⁸ However, in this case, the magistrate's decision only ruled on Husband's contempt motion. Therefore it did not overrule Wife's motion for attorney fees.

As the record reflects that a "continued in progress" order specified that the only motion being resolved on April 3, 2013 (by the magistrates decision entered April 9, 2013) was that of Husband's contempt motion, Wife is not precluded from raising the issue of attorney fees. All remaining issues that were not resolved by that decision were "continued in progress" and not resolved by the magistrate's decision. Those issues include that of Wife's request for expenses/fees.

⁴ *State ex rel. Striker v. Cline*, 2011 Ohio 5350, P10 (Ohio Oct. 19, 2011)

⁵ *State ex rel. Striker v. Cline*, *Id* at, ¶12-¶15

⁶ *Eastwood v. Eastwood*, 2010 Ohio 6492 (9th Dist)

⁷ *Patterson v. Patterson*, 2011-Ohio-5644 (1st Dist)


⁸ *Venuto v. Pochiro*, 2004 Ohio 2631, citing *Takacs v. Baldwin* (1995), 106 Ohio App.3d 196, 209, 665 N.E.2d 736

DECISION

This magistrate does not find that Husband's conduct rises to a level of a violation of Civil Rule 11 or that his motion can be characterized as frivolous conduct. However, under R.C. §3105.73, an award of attorney fees of \$1000 is found to be equitable.

Husband shall pay to Wife as a contribution toward her attorney fees the sum of \$1000 within 30 days.

Copies of this Decision have been mailed to the parties or their counsel. Objections to this Magistrate's Decision must be filed within fourteen (14) days of the filing date of the Magistrate's Decision with a copy served on the opposing side.


Magistrate Gregory R Theile 04/25/2013

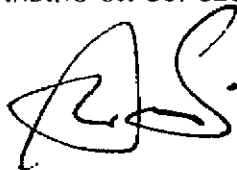
Copies sent by Clerk of Courts to:

Wijdan Jreisat Esq, Attorney For Plaintiff
2400 Chemed Center
255 E 5th St
Cincinnati, OH. 45202

Robert J Meyers Esq, Attorney For Defendant
105 E 4th St Suite 300
Cincinnati, OH. 45202

Entry Adopting Magistrate's Decision

Pursuant of Ohio Civil Rule 53, the Court hereby adopts the Magistrate's Decision. However, pursuant to that rule, the timely filing and serving of objections to the Magistrate's Decision, or the timely filing and serving of any civil post-judgment motions pursuant to Appellate Rule 4, shall operate as an automatic stay of execution of the judgment until the Court disposes of such objections or motions by vacating, modifying, or affirming same. **A PARTY SHALL NOT ASSIGN AS ERROR ON APPEAL THE COURT'S ADOPTION OF ANY FINDING OF FACT OR CONCLUSION OF LAW UNLESS THE PARTY TIMELY AND SPECIFICALLY OBJECTS TO THAT FINDING OR CONCLUSION AS REQUIRED BY OHIO CIVIL RULE 53(D)(3)(b).**



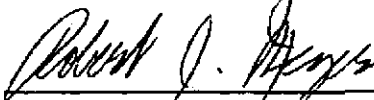
Judge, Court of Common Pleas
Division of Domestic Relations

COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO

Ellen L. Turner : CASE NO. DR0500131
 : FILE NO: E233969
Plaintiff, :
 : JUDGE SIEVE
vs. : MAGISTRATE THEILE
Jon H. Entine : DEFENDANT'S NOTICE OF SERVICE
 : OF SUBPOENA ON RITA
Defendant. : ROBERTSON, M.S.W.

PLEASE TAKE NOTICE that a subpoena *duces tecum* has been issued and served via Process Server on Rita Robertson, M.S.W., 333 Lafayette Avenue, Cincinnati, Ohio 45220. A copy of the subpoena is attached hereto as Exhibit A.

Respectfully submitted,


Robert J. Meyers #0014589
Attorney for Defendant
BUECHNER HAFFER MEYERS
& KOENIG CO., L.P.A.
105 East Fourth Street
300 Fourth & Walnut Centre
Cincinnati, Ohio 45202
Telephone No.: 513-579-1500
Fax No.: 513-977-4361
Email: rmeyers@bhmklaw.com

FILED
2013 APR 24 AM 10:45
TRACY WINKLER
CLERK OF COURTS
HAMILTON COUNTY, OH




D101804007

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Defendant's Notice of Service of Subpoena on Rita Robertson, M.S.W. has been served upon Wijdan Jreisat, Esq., Attorney for Plaintiff, Katz, Teller, Brant & Hild, 255 E. Fifth Street, Suite 2400, Cincinnati, Ohio 45202, and Anne B. Flottman, Esq., Guardian Ad Litem, Wood & Lamping LLP, 600 Vine Street, Suite 2500, Cincinnati, Ohio 45202 by regular U.S. mail, postage prepaid, this 23rd day of April, 2013.

BUECHNER HAFFER
MEYERS & KOENIG
CO., L.P.A.
Suite 300
105 East Fourth Street
Cincinnati, Ohio 45202
(513) 579-1500

191045


Robert J. Meyers (0014589)
Attorney for Defendant

**COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO**

Handwritten scribble

ELLEN L. TURNER, Plaintiff : CASE NO. DR0500131
 : FILE NO. E233969
 v. :
 : JUDGE SIEVE
 JON H. ENTINE, Defendant : MAGISTRATE THEILE
 :
 : SUBPOENA FOR WITNESS DUCES TECUM

COPY FILED
CLERK OF COURTS
HAMILTON COUNTY
APR 16 2013
TRACY WINKLER
COMMON PLEAS COURTS

TO: Rita Robertson, M.S.W.
333 Lafayette Avenue
Cincinnati, Ohio 45220

YOU ARE COMMANDED to appear in the Hamilton County Court of Common Pleas at the place, date, and time specified below to attend hearing in the above case.

PLACE OF TESTIMONY Hamilton County Domestic Relations Court 800 Broadway Cincinnati, Ohio 45202	COURTROOM 2-102 – Magistrate Gregory Theile
	DATE AND TIME Wednesday, July 24, 2013 at 9:00 a.m.

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE	DATE AND TIME

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below:

Any and all treatment records relating to Ellen L. Turner and/or Madeleine Entine (DOB: 5/22/98)

PLACE 105 E. Fourth Street, Suite 300 Cincinnati, Ohio 45202	DATE AND TIME Wednesday, July 10, 2013 at 9:00 a.m.
---	---

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, director, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Ohio Rules of Civil Procedure, 30(B)(6).

ISSUING OFFICER SIGNATURE AND TITLE <i>Robert J. Meyers</i> Attorney for Defendant	DATE April 16, 2013
ISSUING OFFICER'S NAME ADDRESS AND PHONE NUMBER Robert J. Meyers, Attorney for Defendant, #0014589, (513) 579-1500 Buechner Haffer Meyers & Koenig Co., LPA, 105 E. Fourth Street, Suite 300, Cincinnati, Ohio 45202	

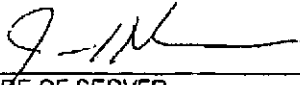
PROOF OF SERVICE		
SERVED <i>Personally</i>	DATE <i>4-18-13</i>	PLACE 333 Lafayette Avenue Cincinnati, Ohio 45220
SERVED ON (PRINT NAME) Rita Robertson, M.S.W.		MANNER OF SERVICE Process Server
SERVED BY (PRINT NAME) <i>James Eckels</i>		TITLE <i>Process Server</i>

COPY FILED
 CLERK OF COURTS
 HAMILTON COUNTY
 APR 19 2013
 TRACY WINKLER
 COMMON PLEAS CLERK

DECLARATION OF SERVICE

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on *4-18-13* DATE


 SIGNATURE OF SERVER
J. McCormick TR
1417 Fair St OH 45210
 ADDRESS OF SERVER
(513) 624-0110

Rule 45, Ohio Rules of Civil Procedure, Parts C&D:

- (C) Protection of Persons Subject to Subpoenas.
- (1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena.
- (2)(a) A person commanded to produce under divisions (A)(1)(b) (ii), (iii), (iv), or (v) of this rule need not appear in person at the place of production or inspection unless commanded to attend and give testimony at a deposition, hearing or trial.
- (b) Subject to division (D)(2) of this rule, a person commanded to produce under divisions (A)(1)(b)(ii), (iii), (iv), or (v) of this rule may, within fourteen days after service of the subpoena or before the time specified for compliance if such time is less than fourteen days after service, serve upon the party or attorney designated in the subpoena written objections to production. If objection is made, the party serving the subpoena shall not be entitled to production except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena, upon notice to the person commanded to produce, may move at any time for an order to compel the production. An order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the production commanded.
- (3) On timely motion, the court from which the subpoena was issued shall quash or modify the subpoena, or order appearance or production only under specified conditions, if the subpoena does any of the following:
- (a) fails to allow reasonable time to comply;
 - (b) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies;
 - (c) requires disclosure of a fact known or opinion held by an expert not retained or specifically employed by any party in anticipation of litigation or preparation for trial as described by Civ. R. 26(B)(4), if the fact or opinion does not describe specific events or occurrences in dispute and results from study by that expert that was not made at the request of any party;
 - (d) subjects a person to undue burden
- (4) Before filing a motion pursuant to a division (C)(3)(d) of this rule, a person resisting discovery under this rule shall attempt to resolve any claim of undue burden through discussions with the issuing attorney. A motion filed pursuant to division (C)(3)(d) of this rule shall be supported by an affidavit of the subpoenaed person or a certificate of that person's attorney of the efforts made to resolve any claim of undue burden.
- (5) If a motion is made under division (C)(3)(c) or (C)(3)(d) of this rule, the court shall quash or modify the subpoena unless the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated.

(D) Duties in Responding to Subpoena.

(1) A person responding to a subpoena to produce documents shall, at the person's option, produce them as they are kept in the usual course of business or organized and labeled to correspond with the categories in the subpoena. A person producing documents pursuant to a subpoena for them shall permit their inspection and copying by all parties present at the time and place set in the subpoena for inspection and copying.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials under Civ. R. 26(B)(3) or (4), the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

191092



**COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO**

ROBERT J. MEYERS

ELLEN L. TURNER, Plaintiff : CASE NO. DR0500131
FILE NO. E233969

v.

JON H. ENTINE, Defendant : JUDGE SIEVE
MAGISTRATE THEILE

: SUBPOENA FOR WITNESS DUCES TECUM

COPY FILED
CLERK OF COURTS
HAMILTON COUNTY
APR 16 2013
TRACY WINKLER
COMMON PLEAS COURTS

TO: Rita Robertson, M.S.W.
333 Lafayette Avenue
Cincinnati, Ohio 45220

YOU ARE COMMANDED to appear in the Hamilton County Court of Common Pleas at the place, date, and time specified below to attend hearing in the above case.

PLACE OF TESTIMONY Hamilton County Domestic Relations Court 800 Broadway Cincinnati, Ohio 45202	COURTROOM 2-102 – Magistrate Gregory Theile
	DATE AND TIME Wednesday, July 24, 2013 at 9:00 a.m.

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE	DATE AND TIME

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Any and all treatment records relating to Ellen L. Turner and/or Madeleine Entine (DOB: 5/22/98)

PLACE 105 E. Fourth Street, Suite 300 Cincinnati, Ohio 45202	DATE AND TIME Wednesday, July 10, 2013 at 9:00 a.m.
---	---

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, director, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Ohio Rules of Civil Procedure, 30(B)(6).

ISSUING OFFICER SIGNATURE AND TITLE  Attorney for Defendant	DATE April 16, 2013
ISSUING OFFICER'S NAME ADDRESS AND PHONE NUMBER Robert J. Meyers, Attorney for Defendant, #0014589, (513) 579-1500 Buechner Haffer Meyers & Koenig Co., LPA, 105 E. Fourth Street, Suite 300, Cincinnati, Ohio 45202	

PROOF OF SERVICE		
SERVED <i>Personally</i>	DATE <i>4-18-13</i>	PLACE 333 Lafayette Avenue Cincinnati, Ohio 45220
SERVED ON (PRINT NAME) Rita Robertson, M.S.W.		MANNER OF SERVICE Process Server
SERVED BY (PRINT NAME) <i>JAMES ECKELS</i>		TITLE <i>Process Server</i>

DECLARATION OF SERVICE

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on *4-18-13*
DATE

[Signature]
SIGNATURE OF SERVER
57 Mc... 45150
ADDRESS OF SERVER
(513) 624-0110

Rule 45, Ohio Rules of Civil Procedure, Parts C&D:

(C) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena.

(2)(a) A person commanded to produce under divisions (A)(1)(b) (ii), (iii), (iv), or (v) of this rule need not appear at the place of production or inspection unless commanded to attend and give testimony at a deposition, hearing or trial.

(b) Subject to division (D)(2) of this rule, a person commanded to produce under divisions (A)(1)(b)(i), (iii), (iv), or (v) of this rule may, within fourteen days after service of the subpoena or before the time specified for compliance if that time is less than fourteen days after service, serve upon the party or attorney designated in the subpoena written objections to production. If objection is made, the party serving the subpoena shall not be entitled to production except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena, upon notice to the person commanded to produce, may move at any time for an order to compel the production. An order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the production commanded.

(3) On timely motion, the court from which the subpoena was issued shall quash or modify the subpoena, or order appearance or production only under specified conditions, if the subpoena does any of the following:

- (a) fails to allow reasonable time to comply;
- (b) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies;
- (c) requires disclosure of a fact known or opinion held by an expert not retained or specifically employed by any party in anticipation of litigation or preparation for trial as described by Civ. R. 26(B)(4), if the fact or opinion does not describe specific events or occurrences in dispute and results from study by that expert that was not made at the request of any party;
- (d) subjects a person to undue burden

(4) Before filing a motion pursuant to a division (C)(3)(d) of this rule, a person resisting discovery under this rule shall attempt to resolve any claim of undue burden through discussions with the issuing attorney. A motion filed pursuant to division (C)(3)(d) of this rule shall be supported by an affidavit of the subpoenaed person or a certificate of that person's attorney of the efforts made to resolve any claim of undue burden.

(5) If a motion is made under division (C)(3)(c) or (C)(3)(d) of this rule, the court shall quash or modify the subpoena unless the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated.

FILED
 2013 APR 19 AM 10:00
 CLERK OF COURSE
 HAMILTON COUNTY OHIO
 TRACY WINKLER

(D) Duties in Responding to Subpoena.

(1) A person responding to a subpoena to produce documents shall, at the person's option, produce them as they are kept in the usual course of business or organized and labeled to correspond with the categories in the subpoena. A person producing documents pursuant to a subpoena for them shall permit their inspection and copying by all parties present at the time and place set in the subpoena for inspection and copying.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials under Civ. R. 26(B)(3) or (4), the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

SECURITY FOR COSTS IN THE SUM OF \$ 125
DEPOSITED BY 14589

() PRE-DECREE (x) POST-DECREE

() Chg. of Cust.
(x) Vis. Enforce/Mod.
() Sup. Enforce/Mod.
() Others

COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO

Ellen L. Turner

Plaintiff,

vs.

Jon H. Entine

Defendant.

: CASE NO. DR0500131

: FILE NO: E233969

: JUDGE SIEVE

: MAGISTRATE THEILE

: MOTION TO FIND MOTHER IN CONTEMPT OF AGREED ENTRY AND MODIFIED SHARED PARENTING PLAN

FILED

2013 APR 17 A

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Now comes the Defendant, Jon H. Entine, by and through counsel, and moves the Court to find Plaintiff Ellen L. Turner ("Mother") in contempt for violating the modification to Article VIII of the parties' Modified Shared Parenting Plan recommended by Anne Flottman and read into the court record on June 28, 2012 and eventually adopted by the Court on September 7, 2012 that states Mother should not invade Maddie's privacy when there is no evidence that she is in danger. Father also moves the Court to find Mother in contempt for violating Article VI D. and G. of the Modified Shared Parenting Plan by taking Maddie to a mental health specialist, Rita Robertson, without Father's knowledge or consent. This Motion is supported by the following Memorandum.

Respectfully submitted,

Robert J. Meyers #0014589
Attorney for Defendant
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MEMORANDUM

A. FIRST ISSUE OF CONTEMPT.

On June 28, 2012, amendments recommended by Anne Flottman ("GAL") were read into the Court record but not formally adopted by the Court until an Agreed Entry was placed of record on September 7, 2012 as part of the modification of the Modified Shared Parenting Plan ("MSPP") dated December 8, 2008.

In her recommendation, #11, the GAL wrote:

"Although she is only 14, Maddie has rights of privacy. She is a straight A student and is not in trouble with school or the law, is not using drugs, is not in a serious romantic relationship, or showing other behaviors that often cause parents to worry. Therefore Mother should stop looking through Maddie's cell phone and emails, until given a reason to believe that Maddie is misbehaving in some way, or until she feels Maddie may be in danger."

The next morning, on June 29, 2012, Mother called the mobile telephone number of Denise Hintz, a friend of Maddie's and Father who they had met on their just concluded vacation to Hawaii. Maddie and Father had become friends with Denise, her husband Sean and their two teenage children, and traveled with them to two islands. After getting the call, on the morning of June 29, 2012, Denise sent a text message to Father:

"Good morning Jon. This is Denise Hintz (Hawaii friend). I had a call from a woman this morning wanting to know who I was & why my phone # was on her bill? I realized after that it was the same area code as you & Maddie. Hope there's no misunderstanding for you. I'm so sorry. Maddie's mom didn't realize you were who we met on vacation. Sorry to cause trouble."

Father subsequently had a conversation with Ms. Hintz who expressed her bewilderment and concern at what she called a "bizarre" conversation with Maddie's mom. According to Denise, as told to Father, the caller refused to say who she was and proceeded to grill Denise as to who she was and why she had contact with Maddie. Denise said she was alarmed at the aggressive nature of the call, and immediately followed up with a text to

Father.

Father forwarded the text message to the GAL, who subsequently advised Father that Mother had violated the right of privacy provision contained in the verbal agreement read into the Court record on June 28th. The GAL said she would contact Mother's counsel to express her concern, and would request that counsel convey that concern to Mother.

In sum, less than 24 hours after being rebuked by the GAL in her Report for violating Maddie's privacy and within 24 hours of entering a verbal agreement to modify the MSPP to insure Maddie's privacy, Mother went through Maddie's cell phone records and aggressively called someone who had befriended Maddie in Hawaii. Those actions demonstrate a gross contempt of the verbal agreement reached less than 24 hours previously in Court. There was no evidence that Maddie was in danger; if there had been even suspicions of danger Mother was required to contact Father or the GAL. She did neither.

This behavior by Mother echoes her pattern of actions violating Maddie's privacy during 2011 and early 2012 that triggered Maddie's suicide note and the concerns expressed in the GAL's findings. Mother had regularly accessed Maddie's private email box online, took her phone out of her room at night to read her emails and texts, poured over telephone documents to "check on" Maddie, called people on Maddie's cell phone and/or cell phone records (which are identical) and otherwise violated her "digital privacy." This is inappropriate and invasive behavior absent any indication that Maddie was involved in inappropriate activities or was in danger.

Mother's actions violated the verbal agreement entered in the June 28th hearing and therefore Mother should be held in contempt by the Court.

B. SECOND ISSUE OF CONTEMPT.

The parties MSPP provides under Article VI as follows:

"D. All major decisions regarding the child's medical, dental, orthodontic,

optical, psychological, psychiatric, pharmaceutical, drugs and hospital, or physical care, attention or treatment shall be **mutually discussed and agreed upon** provided there is no emergency." (Emphasis added)

Further in Article VI it states as follows:

"G. The other parent is free to attend all scheduled appointments. If the non-scheduling parent does not attend, the scheduling parent shall post any non-routine issues on the message board of OFW by that same evening. Each parent shall have the right to attend any non-routine appointments with or treatments/surgeries by medical/dental specialists...unless an emergency situation dictates otherwise. Non-routine appointments with or treatments/surgeries/medications recommended or prescribed by medical/dental specialists shall not take place without notice to the other parent by posting on the message board OFW and email no later than the end of the day on which the appointment or recommendation is made. **Both parents must give consent to non-routine surgery, medications, or treatments.**" (Emphasis added.)

Beginning at some point prior to April of 2012, Mother surreptitiously and without Father's knowledge or consent took the parties' minor child to see a mental health specialist. The mental health specialist seen by Maddie was Rita Robertson. Apparently, Rita Robertson had approximately ten sessions with Maddie (with and without Mother) without Father's knowledge or consent.

Mother violated both of the above-referenced provisions of the MSPP by taking Maddie to see a mental health specialist without first informing or obtaining agreement from Father and without giving Father the opportunity to attend or participate in Maddie's medical care. Father at no time consented to such treatment for Maddie or was given an opportunity to participate in family counseling.

Father did not learn of Maddie's attendance at these therapy sessions until the spring of 2012 when Father took Maddie to her first session with Brett Clarke. At that time Father learned that Maddie had previously come to this treatment facility to see a different mental health person. Both Brett Clarke and Rita Robertson work with the Cincinnati Psychoanalytic Institute at 333 Lafayette Avenue in Cincinnati, Ohio. Attached is a copy of the website for the institute with the faculty list which includes

both Brett Clarke, M.S.W. and Rita Robertson, M.S.W. Furthermore, a copy of Rita Robertson's curriculum vitae on the website is attached.

It is Father's understanding that Mother took Maddie to see Rita Robertson on approximately 10 or more occasions for therapy sessions. It is Father's understanding that some of these were individual sessions. Father did not have knowledge of nor consent to any of this treatment of the minor child. If in fact, as Mother now contends, Maddie has a "psychological problem" embedded in the family dynamic, Father's knowledge and involvement and planning of her medical treatment would have been essential.

Mother's actions in treating the minor child, or in having the child attend therapy sessions with a licensed therapist, without Father's knowledge, involvement or consent, violated the provisions of the MSPP and therefore Mother should be held in contempt of Court.

Father respectfully requests this Court:

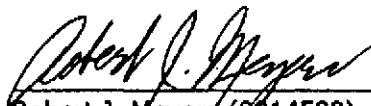
1. Find Mother in Contempt for failing to comply with the terms of the Modified Shared Parenting Plan as most recently amended by the Agreed Entry by violating the minor child's privacy;
2. Find Mother in contempt for having the minor child treated by a mental health specialist without the knowledge or consent of Father in violation of the Modified Shared Parenting Plan;
3. Order Mother to stop interfering with Maddie's digital privacy rights, and specifically bar Mother from reviewing Maddie's cell phone records'
4. Order Mother to cease and desist from any treatment of the minor child without full compliance with the provisions of the parties' Modified Shared Parenting Plan;
5. Order Mother to pay Father's attorney's fees and costs in addition to Guardian Ad

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- Litem Fees incurred by Father in addressing her violations; and
6. Order such further relief as this Court deems appropriate.

Respectfully submitted,



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rmeyers@bhmklaw.com
Attorney for Defendant

NOTICE OF HEARING

Please take notice that a hearing on the foregoing Motion to Find Mother in Contempt of Agreed Entry and Modified Shared Parenting Plan has been scheduled for the 24th day of July, 2013 at 9:00 a.m./~~p.m.~~ for 7 (~~mins.~~/hrs.) before Magistrate Theile, Room 2-102, at the Hamilton County Domestic Relations Court, 800 Broadway, Cincinnati, Ohio 45202.

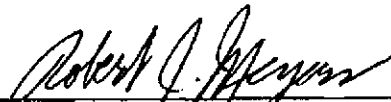


Robert J. Meyers (0014589)
Attorney for Defendant

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Motion to Find Mother in Contempt of Agreed Entry and Modified Shared Parenting Plan has been served upon Wijdan Jreisat, Esq., Attorney for Plaintiff, Katz, Teller, Brant & Hild, 255 E. Fifth Street, Suite 2400, Cincinnati, Ohio 45202, and Anne B. Flottman, Esq., Guardian Ad Litem, Wood & Lamping LLP, 600 Vine Street, Suite 2500, Cincinnati, Ohio 45202 by regular U.S. mail, postage prepaid, this 17th day of April, 2013.



Robert J. Meyers (0014589)
Attorney for Defendant

190916

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Your mental health is just as important as your physical health. And there's no shame in seeking help if you're feeling down or not quite yourself. I'm Rita Robertson MSW, LISW and I want you to know that I'm here for you in Cincinnati, OH. When you're in need of a dedicated therapist, I'll take good care of you.

I'll make sure that you receive an accurate diagnosis, thorough care, effective psychotherapy, and that you're treated with the utmost respect and that you're afforded strict confidentiality.

Caring attention, and a warm welcome are standard at my Cincinnati based office, as together we work towards achieving balance in your emotional, physical and interpersonal health and well being. Remember, there's nothing wrong reaching out when you're feeling down. I can help you feel better. Call me to set an appointment and I'll help you get back on track.

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Rita Robertson MSW, LISW in Cincinnati offers a full range of professional therapy and counseling services, including:

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- Parenting therapy
- Adolescent therapy

Get in touch if you would like more information about my practice in Cincinnati and how you can benefit from psychotherapy services.

About me

I'm a licensed and MSW/LISW certified professional, practicing for over 34 years. I have extensive experience in my field, which allows me to be more than qualified to provide you with the support and practical skills you need to work through your personal issues. I can offer help for all ages and family members, in a comfortable, safe and welcoming environment. I understand the individuality of each person,

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Message

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Hours of operation

By appointment


Contact information

Address
333 Lafayette Avenue
Cincinnati, OH 45220

Phone
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Email
info@ritarobertson.com

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Faculty List

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Merrilee Atkins, M.S.W.	Andrew Klafner, M.D.	Richard Purdy, Ph.D.**
Gail Barker, M.D.	Edward Klein, Ph.D. †	Rita Robertson, M.S.W.
Mia Biran, Ph.D.	Sarah Knox, M.D.*	Sam Robertson, M.D.*
William Carney, M.D.	Marlene Kocan, Ph.D.	Janice Singerman, M.D.
Brett Clarke, M.S.W.	Edward Kohn, M.D.*	Howard Sokolov, M.D.
Sergio Delgado, M.D.*	Peter Kotcher, M.D.	Louis Spitz, M.D.**
Bernard Foster, M.D.	Mary Landy, M.D.	Karl Stukenberg, Ph.D.
Noel Free, M.D.	Carol Lehman, Ph.D.	Allan Tasman, M.D.
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Richard Honig, M.D.*	John MacLeod, M.D.**	Roy Whitman, M.D.**
Katherine Holt, M.D.	Michael Maloney, M.D.	Ann Wierwille, M.D.
Marcia Kaplan, M.D.*	John Niehaus, M.S.W. †	
Debra Katz, M.D.	Melvyn Nizny, M.D. †	

* Training/Supervising Analyst
 ** Emeritus Faculty
 † Adjunct Faculty

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**COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO**

ELLEN L. TURNER, Plaintiff : CASE NO. DR0500131
v. : FILE NO. E233969
JON H. ENTINE, Defendant : JUDGE SIEVE
: MAGISTRATE THEILE
: SUBPOENA FOR WITNESS DUCES TECUM

RETURN TO ARISTONY

TO: Rita Robertson, M.S.W.
333 Lafayette Avenue
Cincinnati, Ohio 45220

YOU ARE COMMANDED to appear in the Hamilton County Court of Common Pleas at the place, date, and time specified below to attend hearing in the above case.

PLACE OF TESTIMONY Hamilton County Domestic Relations Court 800 Broadway Cincinnati, Ohio 45202	COURTROOM 2-102 – Magistrate Gregory Theile
	DATE AND TIME Wednesday, July 24, 2013 at 9:00 a.m.

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE	DATE AND TIME
-------	---------------

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below:

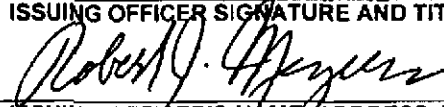
Any and all treatment records relating to Ellen L. Turner and/or Madeleine Entine (DOB: 5/22/98)

PLACE 105 E. Fourth Street, Suite 300 Cincinnati, Ohio 45202	DATE AND TIME Wednesday, July 10, 2013 at 9:00 a.m.
--	--

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME
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Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, director, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Ohio Rules of Civil Procedure, 30(B)(6).

ISSUING OFFICER SIGNATURE AND TITLE  Attorney for Defendant	DATE April 16, 2013
ISSUING OFFICER'S NAME ADDRESS AND PHONE NUMBER Robert J. Meyers, Attorney for Defendant, #0014589, (513) 579-1500 Buechner Hafer Meyers & Koenig Co., LPA, 105 E. Fourth Street, Suite 300, Cincinnati, Ohio 45202	

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HAMILTON COUNTY, OH

PROOF OF SERVICE		
SERVED	DATE	PLACE 333 Lafayette Avenue Cincinnati, Ohio 45220
SERVED ON (PRINT NAME) Rita Robertson, M.S.W.		MANNER OF SERVICE Process Server
SERVED BY (PRINT NAME)		TITLE

DECLARATION OF SERVICE

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____
DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, Ohio Rules of Civil Procedure, Parts C&D:

(C) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena.

(2)(a) A person commanded to produce under divisions (A)(1)(b) (ii), (iii), (iv), or (v) of this rule need not appear in person at the place of production or inspection unless commanded to attend and give testimony at a deposition, hearing or trial.

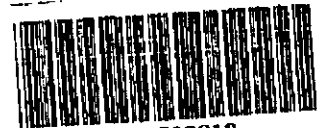
(b) Subject to division (D)(2) of this rule, a person commanded to produce under divisions (A)(1)(b)(ii), (iii), (iv), or (v) of this rule may, within fourteen days after service of the subpoena or before the time specified for compliance if such time is less than fourteen days after service, serve upon the party or attorney designated in the subpoena written objections to production. If objection is made, the party serving the subpoena shall not be entitled to production except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena, upon notice to the person commanded to produce, may move at any time for an order to compel the production. An order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the production commanded.

(3) On timely motion, the court from which the subpoena was issued shall quash or modify the subpoena, or order appearance or production only under specified conditions, if the subpoena does any of the following:

- (a) fails to allow reasonable time to comply;
- (b) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies;
- (c) requires disclosure of a fact known or opinion held by an expert not retained or specifically employed by any party in anticipation of litigation or preparation for trial as described by Civ. R. 26(B)(4), if the fact or opinion does not describe specific events or occurrences in dispute and results from study by that expert that was not made at the request of any party;
- (d) subjects a person to undue burden

(4) Before filing a motion pursuant to a division (C)(3)(d) of this rule, a person resisting discovery under this rule shall attempt to resolve any claim of undue burden through discussions with the issuing attorney. A motion filed pursuant to division (C)(3)(d) of this rule shall be supported by an affidavit of the subpoenaed person or a certificate of that person's attorney of the efforts made to resolve any claim of undue burden.

(5) If a motion is made under division (C)(3)(c) or (C)(3)(d) of this rule, the court shall quash or modify the subpoena unless the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated.



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(D) Duties in Responding to Subpoena.

(1) A person responding to a subpoena to produce documents shall, at the person's option, produce them as they are kept in the usual course of business or organized and labeled to correspond with the categories in the subpoena. A person producing documents pursuant to a subpoena for them shall permit their inspection and copying by all parties present at the time and place set in the subpoena for inspection and copying.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials under Civ. R. 26(B)(3) or (4), the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

**Hamilton County Court of Common Pleas
Division of Domestic Relations
Hamilton County, Ohio**

ELLEN L. TURNER
PLAINTIFF,

CASE NO. DR0500131

Vs.
JON H. ENTINE

**WRITTEN REQUEST FOR SERVICE
(TYPE OF PAPERS BEING SERVED)**

DEFENDANT.

Subpoena for Witness Duces Tecum

DEFENDANT REQUESTS:

CERTIFIED MAIL SERVICE	_____	REGULAR MAIL SERVICE	_____
PERSONAL SERVICE	_____	RESIDENCE SERVICE	_____
PROCESS SERVICE	<u> x </u>	FOREIGN SHERIFF	_____

**IN ACCORDANCE WITH CIVIL RULE 4.6(C) OR (D) AND
4.6(E) AN ORDINARY MAIL WAIVER IS REQUESTED**

LIST NAME AND ADDRESS OF PERSON(S) TO BE SERVED

<u>Rita Robertson, M.S.W.</u>	_____	_____
<u>333 Lafayette Avenue</u>	_____	_____
<u>Cincinnati, Ohio 45220</u>	_____	_____
_____	_____	_____
_____	_____	_____

<u>Robert J. Meyers, Esq.</u>	<u>(513) 579-1500</u>
ATTORNEY	PHONE NUMBER

<u>105 E. Fourth Street, Suite 300</u>	<u>0014589</u>
<u>Cincinnati, Ohio 45202</u>	<u>ATTORNEY NUMBER</u>
ADDRESS	

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