

*Handwritten signature/initials*

IN THE SUPERIOR COURT OF GORDON COUNTY

STATE OF GEORGIA

STATE OF GEORGIA,

vs.

Case No.: 16471

**FILED**  
**Clerk Superior Ct., Gordon County**

**DEC 12 2005**

**Brian Brannon**  
**Clerk**

JERRY WILLIAM JONES,

Defendant.

MOTION TO QUASH SUBPOENA AND MOTION FOR PROTECTIVE ORDER  
and  
OBJECTION AND RESPONSE OF THE GEORGIA DEPARTMENT OF HUMAN  
RESOURCES/GORDON COUNTY DEPARTMENT OF HUMAN RESOURCES, "DFACS,"  
and  
MERZ CONSULTING, INC. TO DEFENDANT'S REQUEST FOR  
PRODUCTION OF DOCUMENTS TO NON-PARTY

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COMES NOW the Georgia Department of Human Resources, Gordon County Department of Family and Children Services, (hereinafter "DFACS"), and Merz Consulting, and file this Motion to Quash Subpoenas for the Production of Evidence in the above-styled case and this Motion for Protective Order and shows to this Honorable Court the following:

1.

That a true copy of said subpoenas/notices to produce are attached as follows:

Subpoena for the production of evidence - to Gordon County DFACS, attached hereto as Exhibit A;

Subpoena for the production of evidence - to DFACS/DHR, attached hereto as Exhibit B;

Subpoena for the production of evidence - to Merz Consulting, Inc., attached hereto as Exhibit C.

Further, any and all records as maintained by Merz Consulting, Inc. are due to an official contract by the DHR/DFACS with said Merz Consulting, Inc. pursuant to O.C.G.A. Section 49-2-1.

Any and all records as maintained by Merz Consulting, Inc. due to it's contract with DHR/DFACS are owned by DHR/DFACS. Thus, all laws pertaining to confidentiality as applicable to DHR/DFACS apply to Merz Consulting, Inc. because said records are derived directly as a result of the business relationship as stated above.

2.

The subpoenas for the production of evidence require the production of material that is confidential and protected under O.C.G.A. Section 49-5-40 (b), which declares records of child abuse to be confidential and, subject to certain exceptions, prohibits access thereto, as mandated by 42 U.S.C. Section 5106a(b)(2)(A)(v) and 45 C.F.R. Section 1340.14(i).

The subpoenas for the production of evidence require the production of material that is in the DHR/DFACS and Merz Consulting, Inc.'s possession, custody or control concerning possible medicaid, which is expressly protected from disclosure under state and federal law. See O.C.G.A. Section 49-4-150 (Supp. 2001); Ga Comp. R. & Regs. R. 350-5-.01 (2001); 42 U.S.C. 1396a.

The records sought by the request are privileged in character and may not be disclosed under federal and state law.

The records requested are confidential and contain information relating to child abuse or neglect, medical assistance or other State-related matters, and are therefore declared to be absolutely confidential. O.C.G.A. 49-5-40(b).

Further, regarding records of TANF, medicaid and food stamps, the DHR/DFACS and Merz Consulting, Inc. object to the subpoenas for the production of evidence because the notices seek the production of records and/or information in the DHR/DFACS and possibly Merz Consulting, Inc.'s possession, custody or control concerning Temporary Assistance to Needy Families, Medicaid, and Food Stamps, which are expressly protected from disclosure under state and federal law. See O.C.G.A. Sections 49-4-14, 49-4-150 (Supp. 2001), 49-4-157 (Supp. 2001); 42 U.S.C. Section 602(a)(1)(A) (iv); 45 C.F.R. Section 205.50 (a) (2); 7 U.S.C. Section 2020 (e)(8); 7 C.F.R., Section 272.1 ©.

Further, the Georgia Courts have been sensitive to the needs of individuals who have supplied information for public purposes and have recognized the proposition that an individual's right to privacy should be accommodated in the discovery process. See *Borenstein v. Blumenfeld*, 151 Ga App 420, 421, (1979).

In addition, federal and state laws prohibit the release of medical, psychological and other such privileged information contained in a DHR/DFACS' record. Furthermore, The Health Insurance Portability and Accountability Act ("HIPPA") specifically prohibits the release of applicable documents.

3.

The DHR/DFACS and Merz Consulting are precluded from releasing any such information without a court order issued following an in camera inspection pursuant to O.C.G.A. Section 49-5-41 (a)(2). The documents should not be released unless the Court finds that disclosure of the requested information is necessary for resolution of an issue before the Court and is otherwise admissible under the rules of evidence, as required by O.C.G.A. Section 49-5-41(a)(2); 42 U.S.C. Section 5106a(b)(2); and 45 C.F.R. Section 1340.14(i)(2)(i-xi).

DHR/DFACS and Merz Consulting, Inc. requests that if the Court requires the DHR/DFACS and Merz Consulting, Inc. to produce its' confidential records reflected in the Requests for Production of Documents, that the Court first make an in camera inspection of such records and delete from said records that material which is confidential or not reasonably related

to the above-styled case or any issue therein.

Further, DHR/DFACS and Merz Consulting, Inc., requests that if the Court, upon an in camera inspection of the files, orders the records to be provided to counsel for the parties in the above-styled action, that the name of any reporters be stricken from the record as this is information that cannot be divulged due to confidentiality laws. O.C.G.A. Sections 49-5-41 and 50-18-72.

4.

49-215  
 That a true copy of the notices to produce are attached as stated above. Further, the notices to produce on DHR/DFACS are invalid due to the fact the Commissioner of the Department of Human Resources was not personally served said notice. Said notices to produce were served upon an employee not authorized to accept service of said notice to produce.

5.

That said subpoenas/notices to produce require DHR/ DFACS and Merz Consulting, Inc. to divulge information about which said DHR/DFACS and Merz Consulting know due only to employment with DHR/DFACS and Merz Consulting, Inc. and which is confidential under the authorities cited above.

Records maintained by DHR/DFACS and Merz Consulting, Inc. in reference to the names as stated in the notices to produce would be in existence as a result of an official contact with these parties, said records are declared to be absolutely confidential and access thereto prohibited by O.C.G.A. Section 49-5-40.

WHEREFORE, DHR/DFACS and Merz Consulting request that the subject subpoena/notice to produce be quashed and that DHR/ DFACS and Merz Consulting be released from any requirement to produce such records or to appear as a witness in this case and that, pursuant to O.C.G.A. Section 9-11-26©, the subject notice to take the subpoena to appear in Court issued to DHR/DFACS and Merz Consulting, Inc. be vacated.

FURTHER, DHR/DFACS and Merz Consulting, Inc. pray for an order relieving DHR/DFACS and Merz Consulting and their said agents from having to produce the said requested records unless so ordered by the Court, and for such other and further relief as may be appropriate.

FURTHER, DHR/DFACS and Merz Consulting, Inc. request that the notices to produce/subpoenas for the production of evidence be quashed for the following additional reasons:

- a. The requests are overbroad and unreasonable;
- b. The requests request information that is confidential and the release of which would be a violation of the law;
- c. The requests are not designed to produce information that is relevant to any issue before the Court from which it issued;
- d. The requested information cannot be released prior to an in camera inspection by the Court.



SUBPOENA EVIDENCE

SC-9

CLYDE CASTLEBERRY COMPANY

SUBPOENA FOR THE PRODUCTION OF EVIDENCE

STATE OF GEORGIA

Gordon COUNTY

TO: Gordon County DFACS

You are hereby required to be and appear at the Gordon County Superior Court before The Hon. G. Carey Nelson, Judge of

Superior Court, in Room Annex of the Gordon County Courthouse at 8:30 o'clock A.M./P.M. on the

12 day of December, 20 05, and to bring with you into said Court certain documents to be used as

evidence by the defendant in a certain case pending in said Court between

State of Georgia and Jerry William Jones

Case No. 16471

The following are hereby subpoenaed:

Any and all files, records and other documents, including, but not limited to, investigative reports or summaries, incident reports, psychological evaluations or assessments, narrative reports, progress notes, case workers, social workers or counselors' notes, medical charts, and any records normally deemed confidential, held by or under the control the Gordon County Department of Family and Children Services pertaining to:

- Brittany Phelps - DOB: 1/1/1994
- Brandy Jones a.k.a. Brandy Peeler - DOB: 2/9/1999
- Tammy Hope Jones a.k.a. Tammy Hope Peeler - DOB: 3/31/2000
- Melissa Ann Peeler (MOTHER) - SSN: 253-27-6902 DOB: 06/21/1976,

Herein fail not, under penalty of the law.

Witness, The Hon. G. Carey Nelson, Judge of said Court

this 2 day of December, 20 05

[Signature]

If you have questions contact Attorney For Plaintiff

Defendant

Clerk Superior Court

Georgia Capital Defender  
225 Peachtree St, Ste 900  
Atlanta, GA 30303

Phone: 404. 739. 5151

Exhibit "A"

SUBPOENA EVIDENCE

SC-9

CLYDE CASTLEBERRY COMPANY

SUBPOENA FOR THE PRODUCTION OF EVIDENCE

STATE OF GEORGIA

Gordon COUNTY

TO: DFAOS/DHR

You are hereby required to be and appear at the Gordon County Superior Court before The Hon. G. Carey Nelson, Judge of Superior Court, in Room Annex of the Gordon County Courthouse at 8:30 o'clock AM on the 12 day of December, 20 05, and to bring with you into said Court certain documents to be used as evidence by the defendant in a certain case pending in said Court between

State of Georgia and Jerry William Jones

Case No. 16471

The following are hereby subpoenaed:

All and all files, records and other documents, including, but not limited to, investigative reports or summaries, incident reports, psychological evaluations or assessments, narrative reports, progress notes, case workers, social workers or counselors' notes, medical charts, and any records normally deemed confidential, held by or under the control of the Department of Human Resources/Department of Family and Children Services pertaining to:

- Judy Ann Medeiros - (aka Judy Clements, Judy Jones or Judy Schramm) SSN 255-84-9056 DOB: 0-28-1951
- Jerry William Jones, Jr. - SSN: 256-31-8775 DOB: 05-01-1972
- John Chad Jones - SSN: 256-31-8635 DOB: 08-19-1969
- Robert Medeiros - SSN: 051-32-5100 DOB: 03-05-1942
- Tami Schramm - SSN: 257-63-8443 DOB: 07-01-1977
- Hope Medeiros - SSN: 253-63-9379
- Dean Schramm - SSN: 257-68-3811 DOB: 01/1946

Herein fail not, under penalty of the law.

Witness The Hon. G. Carey Nelson, Judge of said Court

this 5 day of December, 20 05

Bonnie Brannon

If you have questions contact Attorney For Plaintiff/Defendant

Clerk Superior Court

Georgia Capital Defender  
225 Peachtree St, Suite 900  
Atlanta, GA 30303  
Phone: 404-739-5151

Exhibit "B"

SUBPOENA EVIDENCE

80-9

CLYDE CASTLEBERRY COMPANY

SUBPOENA FOR THE PRODUCTION OF EVIDENCE

STATE OF GEORGIA

Gordon COUNTY

TO: Merz Consulting, Inc.

You are hereby required to be and appear at the Gordon County Superior Court before The Hon. G. Carey Nelson, Judge of

Superior Court, in Room Annex of the Gordon County Courthouse at 8:30 o'clock AM on the 12 day of December, 2005 and to bring with you into said Court certain documents to be used as evidence by the defendant in a certain case pending in said Court between

State of Georgia and Jerry William Jones

Case No. 16471

The following are hereby subpoenaed:

Any and all files, records and other documents, including, but not limited to records relating to counseling, rehabilitation (drug and alcohol), results of psychological or standardized tests that may have been recommended, conducted or administered, psychological evaluations or assessments, narrative reports, progress notes, case workers', social workers' and/or counselors' notes, medical charts, and any records normally deemed confidential, held by or under the control of Merz Consulting, Inc., pertaining to:

- Brittany Phelps - DOB: 1/1/1994
- Brandy Jones a.k.a. Brandy Peeler - DOB: 2/9/1999
- Tammy Hope Jones a.k.a. Tammy Hope Peeler - DOB: 3/31/2000
- Mother Ann Peeler (MOTHER) - SSN: 253-27-6902 DOB: 06/21/1976,

Herein fall not, under penalty of the law.

Witness, The Hon. G. Carey Nelson, Judge of said Court

this 7 day of December, 2005

Patricia Parham

If you have questions contact Attorney For Plaintiff/Defendant

Clerk Superior Court

Georgia Capital Defender  
225 Peachtree St., Ste 900  
Atlanta, GA 30303  
Phone: 404-739 5151

Exhibit "C"

IN THE SUPERIOR COURT OF GORDON COUNTY  
STATE OF GEORGIA

STATE OF GEORGIA,

vs.

CASE NO. 16471

JERRY WILLIAM JONES,

Defendant.

BRIEF IN SUPPORT OF MOTION TO QUASH SUBPOENA AND  
MOTION FOR PROTECTIVE ORDER

COMES NOW DHR/Gordon County Department of Family and Children Services, "DFACS," and Merz Consulting, Inc. and file this Brief in Support of Motion to Quash Subpoena and Motion for Protective Order and shows the following:

The DHR/DFACS and Merz Consulting, Inc. object to the production of any documents or identifying information requested on the ground that such items are confidential. Federal law mandates that states require records concerning child abuse and neglect be maintained as confidential. See 42 U.S.C. Section 5106a (b)(2); 45 C.F.R. Section 1340(i)(1), (2)(i-xi).

In furtherance of this federal requirement, Georgia law provides that:

Each and every record concerning reports of child abuse...which is in the custody of the Department...is declared to be confidential, and access thereto is prohibited except as provided in Code Section 49-5-41..."O.C.G.A. Section 49-5-40(b)

The only applicable exception provides that a court may have "reasonable access" to records containing child abuse reports "upon its finding that access to such records may be necessary for determination of an issue before such court..."O.C.G.A. Section 49-5-41(a)(2). The Court, however, is to examine them in camera and is only to allow public disclosure of the

records or information therein where that is "necessary for the resolution of an issue then before the Court and the record is otherwise admissible under the rules of evidence ..." See also Davidson v. State, 183 Ga App 557, 559 (1987).

The Georgia General Assembly's clear intent in enacting these provisions was to interpret broadly O.C.G.A. Section 49-5-40 in order to provide maximum protection to records and reports of child abuse and to interpret strictly O.C.G.A. Section 49-5-41 and 49-5-41.1 in order to limit the scope of statutory exceptions to confidentiality. See Home v. State, 192 Ga App 528, 531 (1989). As a result of this intent, Section 49-5-41 takes precedence over ordinary discovery procedures. *Id.* Confidential records of child abuse or neglect must be absolutely necessary for the resolution of an issue then before the Court in order for them to be released publicly. O.C.G.A. Section 49-5-41(a)(2).

In order for access to be necessary, the information in the records must be material, Davidson v. State, *supra*, 183 Ga App at 559, which depends on whether it might affect the trial's outcome. See also Barnes v. State, 157 Ga App 582, 587 (1981). The "mere possibility" that the information might help the defense or affect the outcome of the trial does not establish materiality in the constitutional sense. See Boyce v. State, 184 Ga App 578, 582 (1987). The Department respectfully urges the Court, therefore, not to release the requested information unless the requesting party can demonstrate that it would be necessary and material and would affect the outcome of the trial. The Court also must determine whether the subpoenaed records are "otherwise admissible under the rules of evidence. O.C.G.A. Section 49-5-41(a)(2). Until the Court makes such a determination, the DHR/DFACS and Merz Consulting, Inc. are precluded from releasing any such records which may be in their possession.

Alternatively, the Court, after conducting an in camera review of the files, should permit the DHR/DFACS and Merz Consulting to produce a redacted copy of the original record, deleting all references to any child abuse and neglect allegations, investigations, and any other such references.

In addition, DHR/DFACS and Merz Consulting, Inc. respectfully request that the Court vacate the subpoenas for the production of evidence to appear pursuant to O.C.G.A. Section 9-11-26(c), because, during such appearance, DHR/DFACS and Merz Consulting will be required to divulge information about which they know due only to employment with DHR/DFACS and

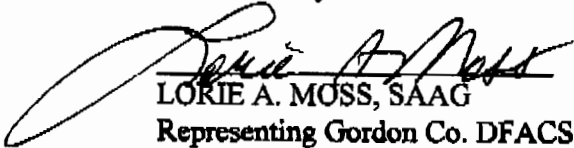
**Merz Consulting and which is confidential under the authorities cited above.**

**Respectfully submitted,**

**THURBERT E. BAKER**                      033887  
Attorney General

**SHALEN S. NELSON**                      636575  
Senior Assist. Attorney General

**CHARISSA RUEL**                          619003  
Assistant Atty. General

 526580  
**LORIE A. MOSS, SAAG**  
Representing Gordon Co. DFACS  
State Bar No. 526580

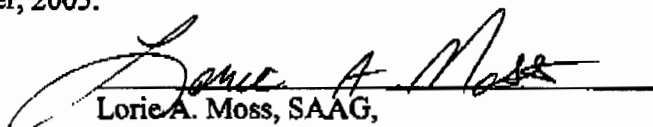
P.O. Box 1535  
Calhoun, GA 30703  
706-625-5619 - phone/fax  
706-233-6920 - pager  
770-608-9689 - cell

**CERTIFICATE OF SERVICE**

I, Lorie A. Moss, Attorney representing Gordon County DFACS, have this day served upon Michelle Drake, Attorney, with the Office of the Capital Public Defender, a copy of said motion and brief by the following:

**Hand delivery.**

**This the 12th day of December, 2005.**

  
Lorie A. Moss, SAAG,  
Representing Gordon Co. DFACS  
State Bar No. 526580

**P.O. Box 1535  
Calhoun, GA 30703**