

**SOUTH EUCLID MUNICIPAL COURT  
CUYAHOGA COUNTY, OHIO**

STATE OF OHIO	)	CRB 1200436
CITY OF SOUTH EUCLID	)	
	)	JUDGE GAYLE WILLIAMS-BYERS
VS.	)	
	)	
	)	
GINA LONAY	)	<b>JOURNAL ENTRY</b>
4016 Bayard Rd.	)	
South Euclid, Ohio 44121	)	

This matter came before Judge Gayle Williams-Byers pursuant to a Motion to Quash and/or Motion for a Protective Order filed by the Cuyahoga County Department of Children and Family Services and a Motion to Disqualify (defense) Counsel filed by the Prosecutor in this matter on January 29, 2013.

On February 1, 2013, the court held a hearing on the motions and provided the parties an opportunity to be heard. Further, the court began a process of in camera inspection of the records held by the Cuyahoga County Department of Children and Family Services related to the parties in this case.

As such, the court issues the following ruling on the aforementioned motions. Whereas the Cuyahoga County Department of Children and Family Services is in Possession of records related to this matter and said records may provide some salient value and insight to this case, the court hereby grants in part and denies in part the Motion to Quash as filed by the Department of CCDCFS.

Insofar as the court grants the following:  
Cuyahoga County Department of Children and Family Services (herein after referred to CCDCFS) is hereby ordered to produce all statements related to the forty (40) page activity log report contained in the records produced for in camera inspection.

CCDCFS is further ordered to provide the ODJFS 01441 intake report form to the

Prosecution and Defense Counsel, however with the names of all reporting individuals duly redacted prior to submission.

CCDCFS shall further provide the ODJFS 01400 form assessment report to the Prosecution and Defense Counsel, however these forms shall also have the names of all reporting individuals duly redacted prior to submission

CCDCFS shall further provide the ODJFS 0401 safety assessment report to the Prosecution and Defense Counsel, however these forms shall also have the names of all reporting individuals duly redacted prior to submission.

The court hereby grants the motion to quash the subpoena filed by CCDCFS as to all remaining documents produced for in camera inspection and hereby orders them to remain under seal and returned to the CCDCFS under protective custody.

Insofar as the court was presented with the additional duty of responding to the Prosecutions Motion to Disqualify (defense) Counsel for having breached the duty to timely disclose all discoverable evidence in a timely manner to the Prosecution, the court responds as follows:

Criminal Rule 16 governs the reciprocal exchange of discoverable evidence in criminal cases. In fact, under Rule 16(A), it reads:

(A) Purpose, Scope and Reciprocity. This rule is to provide all parties in a criminal case with the information necessary for a full and fair adjudication of the facts, to protect the integrity of the justice system and the rights of defendants, and to protect the well- being of witnesses, victims, and society at large. All duties and remedies are subject to a standard of due diligence, apply to the defense and the prosecution equally, and are intended to be reciprocal. Once discovery is initiated by demand of the defendant, all parties have a continuing duty to supplement their disclosures.

The uncontested facts as outlined in the oral hearing are such that the defendant in this matter enjoys the relationship of parent to the victim. This is a fact known to defense counsel. During the course of representation of the defendant, and in an effort to presumptively advance the tenants of zealous advocacy, defense counsel and the prosecution exchanged discovery requests for which there was a continuing duty to respond.

In an effort to advocate on behalf of the defendant, it also uncontroverted that

defense counsel sought additional information regarding the victim specifically related to school and medical records to advance the case of his client. This sensitive information was obtained as a result of defendant, using her parental position, signing releases for information, notwithstanding the pending case against her. Further, and perhaps more troubling was the use of cover letters by a "seasoned" defense counsel, whom in this instance held himself out as a legal representative of the victim, when in fact he represented the defendant.

Upon receipt and presumed inspection of these records, they were eventually advanced to the prosecution in anticipation of trial. Defense has acquiesced to this court that the appropriate vehicle for obtaining these records under any other circumstance, would have been a subpoena duces tecum. Such usage would have immediately placed the prosecution on notice of the defense strategy and minimally provided an opportunity to file a motion to quash the subpoena with the court, either prior to the records being received or causing them to be placed under seal once received thereby thwarting any review or redistribution thereof. There is no dispute that this did not happen.

Further, defense counsel argues that the letters indicating he represented the victim were issued in error by his secretary. Notwithstanding this account, such customary practice nonetheless places the responsibility on the attorney, and here it would be Mr. Rutsky. Whether it was an error or not, the service providers and academic institutions involved were "duped" into providing these documents and were clearly misled. An "error" that is by no stretch, minor.

The court rejects the argument of defense counsel that a cure is to merely share the evidence in a timely enough fashion that the prosecution can enjoy the evidence as well and object as it pleases. The court finds that the information culled as a result of misleading academic institutions and care providers under the guise of a mere typographical or secretarial error is insufficient to overcome what can only be considered a discovery and possible ethical violation.

The court finds that the appropriate cure and remedy is complete exclusion of use of the evidence at trial for any purpose and therefore orders such. Given the tactics taken by counsel in obtaining the evidence and the ultimate outcome and opportunity for unauthorized redistribution without appropriate safeguards put into place to protect the victim, this is the most reasonable approach.

The court however, does not find that such an act does not rise to the level of requiring removal of counsel from the case, but perhaps would be ripe for review

by the Disciplinary Counsel for other ethical violations. The requirement to report such alleged violations does not rest solely with the court, but rather is incumbent upon all those who are members of the bar and jointly share an ethical credo and Code of Responsibility. This therefore extends to the Prosecutor as well as the bench.

As the violation in this matter is related to the evidence or information gathered improperly, the court hereby **ORDERS, ADJUDGES AND DECREES** that all evidence obtained pursuant to the improper exercise of authority by Attorney Rutsky, the court hereby **ORDERS** said evidence excluded and not permissible for use at trial. Said evidence includes all records for which the court has been provided copies to examine as related to this matter as well as any additional evidence that has been provided to defense counsel following the hearing on this motion and disclosed, revealed or otherwise made available to the court, defense or the Prosecution pursuant to the aforestated releases.

The court further places Attorney Bruce Rutsky on notice that a hearing to impose sanctions shall be scheduled at the conclusion of the trial in this matter which has been set for April 5, 2013 at 9:00 a.m.

**IT IS SO ORDERED.**



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JUDGE GAYLE F. WILLIAMS-BYERS

Cc: Prosecutor Brian Fallon

Atty. Bruce Rutsky for Defendant Gina Lonay

Atty. Steven Ritz, Cuyahoga County Prosecutor's Office (CCDCFS)