
District Court, _____ County, Colorado
_____ Street
City, State Zip-code

IN Re the Matter of:
Petitioner: _____

v.

Respondent: _____

Case Number: 09 DR XXX

_____, Ph.D.
XXXX Blank Blvd., #YYY
City, State Zip-code

Phone Number: ___-___-____

Division X Courtroom Y

E-mail:

Court Appointed Psychological Evaluator

Motion to Quash Subpoena duces tecum

Comes now the Court's appointed psychologist in the above referenced case, Dr. _____, requesting that the Court please accept and so order the current motion to quash Respondent's Subpoena duces tecum.

As per the Subpoena duces tecum (Subpoena) from Respondent's Attorney, _____. Counsel has ordered me "to appear and give/ bring with / produce copies of any and all Records and underlying test data and reports (this specifically includes computer generated analysis) regarding the psychological testing that" I administered to the Petitioner, _____, pursuant to the Court's order dated Month Day, 20__.

As per the Subpoena, I am ordered "to bring copies of all such records on Month, Day, 20__ at Time to Division X (Courtroom Y) of the Blank County District Court".

Responsive to Counsel's Subpoena, on 8-14-09 and again on 8-19-09, I told Counsel by phone that I have a professional duty to protect test materials and data and other records from use by unqualified people, but would readily give to his designated psychologist, the records Counsel has requested. On 8-19-09, I sent the same response to Counsel by email.

Counsel has refused my offers to submit the requested records to his designated psychologist, and has demanded that I submit the records directly to him.

I therefore submit the current motion to quash for the above reason, as argued below, which I have already explained to Counsel during our 8-14-09 and 8-19-09 phone calls, but to no avail.

- 1.) The current (2002) Ethical Principles of Psychologists and Code of Conduct of the American Psychological Association (APA Ethical Code, available via <http://www.apa.org/ethics/code2002.html>) requires psychologist “to make reasonable efforts to maintain the integrity of and security of tests and other assessment techniques consistent with law, contractual obligations, and in a manner that permits compliance with this code” (Standard 9.11, Maintaining Test Security).
- 2.) The APA Ethical Code proscribes psychologists from distributing test data and other assessment records to people untrained to use them, “to protect a client / patient or others from substantial harm, or misuse, or misinterpretation of the data or the test...” (Standard 9.04a).
- 3.) Noted authorities on ethical principles of psychologists have stated that “Psychologists may ask the Court for a protective order to prevent the inappropriate disclosure of confidential information or suggest that the information be submitted to another psychologist for qualified review” (C.B. Fisher, 2003, January/February, Test data standard most notable change in new APA ethics code, *The National Psychologist*, 12, 12-13, on page 12 – as cited on page 106 at lines 16 through 21, in *Ethical Practice in Forensic Psychology: A Systematic Model for Decision Making*, by Bush, Connell, & Denny, APA Books, copyright 2006).
- 4.) The importance of maximizing test security in the context of requests for test data or material has been emphasized by the National Academy of Neuropsychology (another professional association of psychologists independent of APA – see <http://www.nanonline.org/NAN/ResearchPublications/PositionPapers.aspx>).
- 5.) The Specialty Guidelines for Forensic Psychologists (SGFP, see <http://www.apa.org/links/currentforensicguidelines.pdf>) and the Standards for Educational and Psychological Testing (SEPT; not available online, developed jointly by: American Educational Research Association, American Psychological Association, and the National Council on Measurement in Education, published in 1999) “acknowledge the importance of maintaining test security and ensuring that only those qualified to interpret raw test scores be afforded the opportunity to do so, for the purpose of preventing harm”.
- 6.) The rationale for test security protection as a public policy issue to prevent harm was upheld in *Detroit Edison v. NLRB*, 440, U. S. 301 (1979), where-in the United States Supreme Court ruled that test security pre-empted the release of test results in the form of data and records to someone other than a qualified professional.

7.) Failure to protect test security from unqualified users harms the integrity of tests because the tests can become invalidated through their placement in the public domain, thus depriving the public of effective test instruments. For example, the Law School Admission Test (LSAT) would be invalid if the answers to the LSAT were released and placed in the public domain.

8.) Similarly, psychological tests cannot be made public without invalidating the tests, just as examinations are invalid if the questions are published in advance.

9.) It is not in the interests of non-psychologists to become familiar with test protocols and test items because they may eventually need to be tested, for example, if early dementia is suspected or if they develop a brain tumor, or have other possible needs that may arise for future testing such as a disciplinary proceeding before Colorado's Attorney Regulation Counsel. When people have previously seen the tests, they themselves cannot be tested in a valid way.

10.) SEPT standard 11.15 addressing the potential for misinterpretation of test data states that "Test users should be alert to potential misinterpretation of test scores and to possible unintended consequences of test use; users should take steps to minimize or avoid foreseeable misinterpretation and unintended negative consequences".

11.) SEPT standard 11.8 states that test users have the responsibility to respect test copyrights.

12.) When purchasing psychological tests, psychologists agree to uphold copyright laws.

13.) Not to expose test materials to unauthorized non-qualified users, is part of my contractual obligation with the publishers, Psychological Assessment Resources (PAR) and Pearson Assessments, of all tests used in the present case,.

14.) The position argued here-in is not in any way unusual or intended to be adversarial. The materials under consideration can and will be released to a qualified professional designated by Counsel, to satisfy the Respondent's lawful need for examining the basis of my evaluation of the Petitioner.

15.) Should the Court decline the current motion to quash, it is requested that the Court issue a protective order with the following parameters.

- a.) Dr. _____'s file must first be subject to in-camera review.
- b.) Following in-camera review, the Court will distribute the requested file only to Registered Attorneys representing each party in the current litigation, subject to the following order.
- c.) The attorneys must be ordered not to disseminate the requested file to anyone else, not to keep copies of it, and to return it after my reported evaluation of the Petitioner has been examined and cross-examined.

Respectfully submitted, this _____ day of _____, 20____ by _____
_____, Ph.D.,

So ordered on this _____ day of _____, 20____,

by the Honorable _____

(Court's signature)

The current motion is filed in _____ District Court on _____,
with copies of the current Motion to Quash sent via E-mail to Attorneys,
_____ and _____, who respectively represent each of the
parties in the current litigation.