

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

---

DEBBIE HOWARD, on behalf of	)	
herself and all similarly	)	
situated persons,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. <u>06-2833</u> M1/P
	)	
WILKES & MCHUGH, P.A., a	)	
Florida professional	)	
association; JAMES L. WILKES,	)	
II, a Florida citizen; and	)	
TIMOTHY C. MCHUGH, a California	)	
citizen,	)	
	)	
Defendants.	)	

---

ORDER GRANTING IN PART AND DENYING WITHOUT PREJUDICE IN PART  
MOTION FOR PROTECTIVE ORDER  
AND  
SETTING SCHEDULING CONFERENCE

Before the court, by order of reference, is the Motion for Protective Order with Respect to Settlement Agreements, Closing Statements and Contingency Fee Agreements in Defendants' Possession filed by plaintiff Debbie Howard on February 28, 2007 (D.E. 36).<sup>1</sup> Defendants Wilkes & McHugh, P.A., James L. Wilkes, II, and Timothy C. McHugh filed a response in opposition to the motion on March 15, 2007.

---

<sup>1</sup>Although proposed named plaintiff Lora L. Newson also joined in the motion, she has not yet been granted leave of court to join in this lawsuit through her amended complaint.

Wilkes & McHugh is a Florida law firm that has represented numerous plaintiffs in nursing home neglect cases filed in Tennessee. Plaintiff Howard and proposed plaintiff Newson were clients of Wilkes & McHugh in two such cases. In 1999, Howard hired Wilkes & McHugh to pursue a lawsuit against Whitehaven Manor nursing home on behalf of her deceased grandmother, Bertha Lee Baker. After the complaint was amended to add Tennessee Medical Malpractice Act ("TMMA") claims, the Baker case settled in September 2002, and the Shelby County probate court approved the distribution of proceeds. In 2004, Wilkes & McHugh represented Newson in a lawsuit against Allenbrooke Nursing and Rehabilitation Center on behalf of her grandmother, Lillie Newson, who passed away soon after the litigation began. The Newson case settled in 2006.

Howard filed the present lawsuit on December 7, 2006, alleging that Wilkes & McHugh charged contingency fees in excess of those allowed under the TMMA. On February 5, plaintiff's counsel requested the legal files from Wilkes & McHugh for the Baker and Newson nursing home cases. Wilkes & McHugh, however, refused to produce the files, raising confidentiality and attorney-client privilege concerns because Howard and Newson had not obtained a release authorization from the other beneficiaries of the Baker and Newson estates.

The parties appeared before the undersigned Magistrate Judge on February 15, 2007 for a scheduling conference, at which time the

parties stated that the pending dispositive motions could potentially affect the scope of discovery. Thus, the court reset the scheduling conference. Subsequently, plaintiff's counsel obtained signed release authorizations from the other beneficiaries of the Baker and Newson estates. On February 19, Howard again requested the case files from Wilkes & McHugh, which were not produced.

In her present motion, Howard seeks production of the following documents: (1) the entire case files for Baker and Newson, including all complaints and/or amended complaints filed in the underlying cases, any and all contingency legal fee contracts or contingency fee agreements, all settlement or "closing statements" which demonstrate the legal fees and purported litigation expenses actually charged to the clients, all invoices and back up documentation and work product related to each expense charged to the clients as outlined on the "closing statement," and all settlement and/or general release agreements executed by the clients in the underlying medical malpractice cases; (2) with respect to absent class members who have settled their underlying claims, all complaints and/or amended complaints filed in the underlying cases, any and all contingency legal fee contracts or contingency fee agreements, all settlement or "closing statements" which demonstrate the legal fees and purported litigation expenses actually charged to the clients, and all settlement and/or general

release agreements executed by the clients in the underlying medical malpractice cases; and (3) with respect to putative class members who have not actually settled or otherwise recovered on their underlying malpractice claims, all complaints and/or amended complaints filed in the underlying cases, and any and all contingency legal fee contracts or contingency fee agreements.

As an initial matter, the defendants argue that the court should not rule on this motion because the motion is premature and a ruling would in effect constitute an advisory opinion. The court disagrees. Because the parties have already participated in a Rule 26(f) conference, the parties may engage in discovery. See Fed. R. Civ. P. 26(d). Moreover, because Howard has on numerous occasions made written requests for production of the Baker and Newson case files, and given the extensive briefing by the parties on this issue, the court considers the dispute regarding the Baker and Newson files ripe for adjudication.

The court finds that the Baker and Newson case files are clearly relevant to the present case, as defendants' representation in those cases directly relate to the claims and defenses in this litigation. Moreover, although the court need not address at this time whether and from whom a release authorization is required in order to permit disclosure of attorney files for other class members, the plaintiff has provided such signed releases from all interested parties for both the Baker and Newson cases. There is

no basis for the defendants to withhold production of these two case files. The fact that Lora Newson has not yet been added as a named plaintiff does not preclude Howard from obtaining the Newson case file since the interested parties in that case have executed release authorizations. As for the files of other class members, however, the court agrees that the motion is premature, and that these disputes should be resolved after written discovery requests have been propounded, responses with appropriate objections have been served, and after briefs have been submitted addressing specific discovery objections.

Accordingly, the motion is GRANTED with respect to the Baker and Newsom case files. Given the confidential nature of the files, the court will require that disclosure of the files shall be governed by a protective order that prohibits the disclosure of this information to non-parties and prohibits the use of such information and documents outside of this lawsuit. The parties shall submit a joint proposed protective order to the court within eleven (11) days from the date of this order, or if agreement cannot be reached, the parties shall submit separate proposed protective orders for the court's review. The defendants shall produce the files within seven (7) days from the date the court enters the protective order.

The motion is DENIED without prejudice with respect to the other class members' files. Finally, the parties shall appear

before the undersigned on Thursday, July 19, 2007 at 2:00 p.m. for a scheduling conference pursuant to Fed. R. Civ. P. 16(b).

IT IS SO ORDERED.

s/ Tu M. Pham

---

TU M. PHAM

United States Magistrate Judge

June 28, 2007

---

Date