

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

WILLIAM M. WINDSOR,)	
)	
Plaintiff,)	
)	CIVIL ACTION NO.
v.)	
)	1:11-cv-01923-TWT
JAMES N. HATTEN, Anniva Sanders, J. White,)	
B. Gutting, Margaret Callier, B. Grutby,)	EXPEDITED
Douglas J. Mincher, Jessica Birnbaum,)	TREATMENT
Judge William S. Duffey, Judge Orinda D.)	REQUESTED
Evans, Judge Julie E. Carnes, John Ley,)	
Judge Joel F. Dubina, Judge Ed Carnes,)	
Judge Rosemary Barkett, Judge Frank M.)	
Hull, Jane Doe 1, Jane Doe 2, Jane Doe 3,)	
Jane Doe 4, Jane Doe 5, John Doe 1,)	
John Doe 2, and Does 8 to 1000, and)	
The United States of America,)	
)	
Defendants.)	

**DEFENDANTS' MEMORANDUM OF POINTS AND AUTHORITIES IN
SUPPORT OF MOTION FOR A PROTECTIVE ORDER**

Pursuant to Federal Rule of Civil Procedure 26(c), the United States, which has been substituted for certain identified federal defendants, by and through the United States Attorney for the Northern District of Georgia, respectfully moves this Court for a protective order and, in support, show as follows:

This is the fifth separate lawsuit caused by William Windsor's continued attempts to collaterally attack a final judgment of this Court in a sixth case. In those five other cases, Windsor has filed hundreds, if not thousands, of frivolous pleadings, wasting the Court's time and the parties' time. He should not be permitted to continue his abuses and this Court should enter a protective order to ensure, to the extent possible, that this case does not result in further waste. The United States seeks an order that would stay discovery, including any required conference pursuant to Federal Rule of Civil Procedure 26 or the Local Rules, and would state that defendants need not respond to any filing by Windsor absent further Court order. Already in this matter, Windsor has served voluminous discovery and multiple subpoenas. The purported response dates are as early as June 27, 2011, so expedited consideration of this Motion is requested.¹

¹ Pursuant to L.R.37.1(A)(1), the Federal Defendants have conferred with Windsor, requesting that he withdraw the discovery he has served and agree to comply with Federal Rule of Civil Procedure 26(d)(1). Windsor refused to agree to withdraw his discovery requests and subpoenas.

BACKGROUND

Unfortunately, a relatively detailed background of the litigation caused by Windsor is necessary to put this request in proper context. As stated above, in addition to this matter, Windsor has spawned numerous cases:

- *Maid of the Mist Corporation, et al. v. Alcatraz Media, LLC, et al.*, No. 1:06-cv-0714-ODE (N.D. Ga.)

- *Maid of the Mist Corporation, et al. v. Alcatraz Media, LLC, et al.*, No. 1:09-cv-1543-WSD (N.D. Ga.)

- *William M. Windsor v. United States, et al.*, No. 1:09-CV-2027-WSD (N.D. Ga.)

- *William M. Windsor v. Judge Orinda D. Evans, et al.*, No. 1:10-CV-197-RJL (D.D.C.)

- *William M. Windsor v. Judge William S. Duffey, et al.*, No. 1:11-cv-1922-TWT (N.D. Ga.) (originally filed in Fulton County Superior Court, No. 2011cv200857)

Each of these cases is a result of Windsor seeking to attack collaterally the decisions of Judge Evans in Civ. No. 1:06-cv-0714-ODE. In that matter, on August 8, 2007, the Court granted summary judgment against Windsor, and found

Windsor and the other defendants liable for attorney's fees and expenses. [06-0714 Doc. 251].

Windsor and the other defendants appealed to the United States Court of Appeals for the Eleventh Circuit. On September 19, 2008, the Court of Appeals affirmed the District Court's granting of summary judgment and the Court's issuance of a permanent injunction against Windsor and the other defendants. [06-0714 Doc. 344]. The Court of Appeals vacated and remanded to the District Court for determination of the amount to award for attorney's fees and expenses. *Id.*

On October 28, 2008, the District Court issued an Order making the Court of Appeals' Mandate the judgment of the District Court. [06-0714 Doc. 346]. On December 9, 2008, the District Court signed a Consent Final Order and Judgment disbursing the negotiated sum of \$395,000.00 as attorney's fees and expenses. [06-0714 Doc. 354]. Windsor expressly agreed to the terms and entry of the Consent Final Order and Judgment, which stated that "[t]he case is hereby closed all issues having been decided. . . . No appeal shall be taken from this Judgment, and the parties waive all rights to appeal." *Id.*

In April and May, 2009, Windsor filed motions for recusal [06-0714 Dkt. 361], to reopen [06-0714 Dkt. 362], for sanctions under Fed. R. Civ. P. 37

and the Court's inherent powers [06-0714 Dkt. 363], for sanctions under Fed. R. Civ. P. 11 [06-0714 Dkt. 364], and for discovery [06-0714 Dkt. 374]. On May 22, 2009, the Court denied those motions. [06-0714 Dkt. 390]. On or about June 15, 2009, Windsor filed a Notice of Appeal as to that Order. [06-0714 Dkt. 418]. The Court of Appeals for the Eleventh Circuit dismissed that appeal as frivolous, thereby affirming the District Court's decisions. [06-0714 Dkt. 545]. The District Court also entered an Order against Windsor ordering that

Windsor, and any parties acting in concert with him or at his behest, are PERMANENTLY ENJOINED from filing any motion, pleading, or other paper in Civil Action No. 1:06-CV-0714-ODE. Additionally, Windsor is ORDERED not to file in any court any new lawsuit involving claims arising from the same factual predicate or nucleus of operative facts as the instant case.

[06-0714 Dkt. 723]. The Court of Appeals summarily affirmed this Order. [06-0714 Dkt. 950]. In doing so, it found that the injunction was based on Windsor's

litigious behavior that undermined the integrity of the judgments and orders in this case. Although the case is closed, Windsor has repeatedly filed unsubstantiated, duplicative pleadings, many after the district court issued an order denying them. Moreover, his pleadings are long and repetitive, and the volume of his filings poses a burden to clerical and judicial operations and is an impediment to the administration of justice. Windsor's filings also have been costly and burdensome to Maid, who has repeatedly defended itself against unfounded accusations concerning a case in which it prevailed and which has been closed for over two years.

[06-0714 Dkt. 950 at 6].

In connection with his collateral attacks on Judge Evans' decisions, on or about May 20, 2009, Windsor attempted to serve a subpoena on Judge Orinda D. Evans supposedly in an effort to obtain her testimony to support his motion for recusal. The United States filed a motion to quash the subpoena. [*See* Civ. No. 1:09-cv-1543-WSD, Dkt. 1]. On June 30, 2009, the District Court granted the motion to quash. [09-1543 Dkt. 32]. Windsor appealed that order as well, [09-1543 Dkt. 44], and the Court of Appeals dismissed the appeal as frivolous as briefed, affirming the District Court's decision. [09-1543 Dkt. 52].

Windsor next filed a complaint against Judge Evans and the United States (as well as multiple other parties). [*See* Civ. No. 1:09-cv-2027-WSD, Dkt. 1]. The complaint was 499 pages long. *Id.* Ultimately, Windsor filed multiple amended complaints, culminating in the Third Amended and Restated Verified Independent Action in Equity to Remedy Fraud Upon the Court, Independent Equitable Action for Relief from a Final Judgment, Complaint for Declaratory Judgment, Injunctive Relief, and other Relief. [09-2027 Dkt. 110]. The Third Amended Complaint asserted 23 claims for relief, against 16 defendants (and Does 1 to 100), including Judge Evans and the United States. *Id.* The District Court

granted the government's motion to dismiss. [09-2027 Dkt. 161]. The Court of Appeals affirmed the District Court, dismissing Windsor's appeal as frivolous. [09-2027 Dkt. 238].

Along with the complaint, Windsor filed a motion for temporary restraining order and interlocutory injunction against Judge Evans. The District Court denied Windsor's motion, [09-2027 Dkt. 31, 32], and the Court of Appeals affirmed that denial. [09-2027 Dkt. 106].

The District Court also issued an Order requiring that Windsor obtain leave of Court before filing any papers in the matter. [09-2027 Dkt. 22, modified at 09-2027 Dkt. 161].

Windsor filed yet another complaint seeking to attack Judge Evans' decisions in the original matter, this one in the District Court for the District of Columbia. [No. 1:10-CV-197-RJL (D.D.C. filed Feb. 4, 2010)]. This Complaint was over 500 pages long and included as defendants, among others:

Judge Orinda D. Evans, Judge William S. Duffey, Jr., Judge Julie E. Carnes, Judge Joel F. Dubina, Administrative Offices of the United States Courts, United States of America, United States Department of Justice, Eric H. Holder, Sally Quillian Yates, Gentry Shellnutt [sic], Committee on the Judiciary of the U.S. House of Representatives, Congressman John Conyers, United States Senate Committee on the Judiciary, Senator Patrick J. Leahy, United States District Court for

the Northern District of Georgia, United States Court of Appeals for the Eleventh Circuit, Judicial Council of the Eleventh Circuit, Sigmund R. Adams, Federal Bureau of Investigation, Special Agent Gregory Jones, and Does 1 to 1000.

[10-197 Dkt. 1]. Less than two weeks after it was filed, the District Court dismissed this Complaint. [10-197 Dkt. 9]. The Court of Appeals for the District of Columbia affirmed the dismissal of the Complaint. [D.C. Cir. No. 10-5071, Dec. 28, 2010].

Finally, Windsor filed a complaint in Fulton County Superior Court, styled *William Windsor v. Judge William S. Duffey, et al.*, No. 2011CV200857. As with this case, that case was removed to this Court on June 13, 2011. In that case, Windsor attempts to collaterally attack an Order entered by Judge Duffey. While the matter was in state court, Windsor filed a motion for a temporary restraining order.

The present case was filed in Fulton County Superior Court, on May 19, 2011, where it was No. 2011CV200971. On June 13, the United States removed the case to this Court. Between filing and removal, Windsor sought to initiate discovery. He served, or attempted to serve, at least the following: six subpoena duces tecum, to both parties and non-parties, two requests to produce documents

(with at least 213 separate requests), four sets of interrogatories (including at least 42 interrogatories to Defendant Hatten), and three sets of requests for admissions (with approximately 1,990 requests).

ARGUMENT

Federal Rule of Civil Procedure 26(c) specifically provides that a party may file a motion for a protective order “to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense[.]” Fed. R. Civ. P. 26(c). The district court may issue a protective order if “good cause” is shown, and such an order “is not subjected to heightened scrutiny.” *In re Alexander Grant & Co. Litig.*, 820 F.2d 352, 355 (11th Cir. 1987).

Multiple courts have already found that Windsor’s litigation is frivolous. [See 06-0714 Dkt. 545; 06-0714 Dkt. 950; 09-1543 Dkt. 52; 09-2027 Dkt. 238]. This case arises out of the same issues that gave rise to those cases and it too is frivolous. In addition, multiple courts have imposed filing restrictions on Windsor. [See 06-0714 Dkt. 723, *aff’d* 06-0714 Dkt. 950; 09-2027 Dkt. 22, modified at 09-2027 Dkt. 161]. Indeed, the Eleventh Circuit Court of Appeals found that Windsor’s “pleadings are long and repetitive, and the volume of his filings poses a burden to clerical and judicial operations and is an impediment to

the administration of justice. Windsor's filings also have been costly and burdensome to [the parties to the litigation.]" [06-0714 Dkt. 950 at 6]. Already in this case, Windsor has served multiple subpoenas, for documents and testimony, interrogatories, and requests for admissions. Because the litigation is frivolous and any discovery would be an undue burden, this Court should quash all outstanding subpoenas and issue a protective order providing that Windsor shall not serve any discovery on any party or non-party and that no party or non-party need respond to any discovery already served by Windsor, absent further Court order. Similarly, the Court should not require the parties to expend resources on the Rule 26(f) conference contemplated by the Rules until after it has decided the motions to dismiss that will be filed.

In addition, although discovery may be served at such an early date in state court proceedings, the Federal Rules of Civil Procedure and the Local Rules of the Court do not permit discovery to commence until 30 days "after the appearance of the first defendant by answer to the complaint, unless the parties mutually consent to begin earlier." L.R. 26.2(A).² Additionally, no discovery is permitted prior to

² Pursuant to Rule 81(c)(1), the Federal Rules of Civil Procedure apply to a civil action after it has been removed from state court.

the mandatory Rule 26(f) conference. Fed. R. Civ. P. 26(d)(1). Thus, even where permitted by state court procedure, after removal, “the parties are prohibited from seeking discovery from one another until a Rule 26(f) conference has been conducted.” *Jennings v. City of Lafollette*, 2010 WL 4704462, *1 (E.D. Tenn. Aug. 24, 2010); *see also Riley v. Walgreen Co.*, 233 F.R.D. 496, 498-99 (S.D. Tex. 2005). Thus, at a minimum, the protective order should stay all discovery until 30 days after filing of answers, if any, after the Court decides the motions to dismiss that will be filed.

Finally, given that Windsor has demonstrated in multiple cases and various Courts that he is prone to filing voluminous amounts of frivolous material, the United States requests that this Court Order that they need not respond to any filing by Windsor, absent further Order of the Court. Both Judge Evans and Judge Duffey of this Court have issued Orders restricting Windsor’s filings because of his abuse of the judicial system and his waste of judicial resources. [06-0714 Dkt. 723, *aff’d* 06-0714 Dkt. 950; 09-2027 Dkt. 22, modified at 09-2027 Dkt. 161]. A similar Order would be appropriate here.

Respectfully submitted, this 13th day of June, 2011.

SALLY QUILLIAN YATES
UNITED STATES ATTORNEY

/s/Christopher J. Huber

Christopher J. Huber
Assistant U.S. Attorney
Georgia Bar No. 545627
600 U.S. Courthouse
75 Spring Street, SW
Atlanta, Georgia 30303
(404) 581-6303 (telephone)
(404) 581-6150 (facsimile)

CERTIFICATE OF COMPLIANCE

I certify that the documents to which this certificate is attached have been prepared with one of the font and point selections approved by the Court in LR 5.1B (Times New Roman, 14 pt.) for documents prepared by computer.

This 13th day of June, 2011.

/s/Christopher J. Huber

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing Motion for a Protective Order, the Memorandum in Support and Proposed Order on the plaintiff by causing true and correct copies thereof to be placed in the U.S. Mail, with proper postage affixed, and addressed as follows:

William M. Windsor
P.O. Box 681236
Marietta, Georgia 30068

In addition, a copy was served on:

Carl H. Anderson, Jr.
4000 Sun Trust Plaza
303 Peachtree Street NE
Atlanta, Georgia 30308-3243

This 13th day of June, 2011.

/s/Christopher J. Huber