



## I. ADDITIONAL BACKGROUND FACTS

On November 28, counsel for Wilma Vicedomine wrote to counsel for Howard K. Stern, setting forth each of the reasons that a deposition in December would be improper.<sup>1</sup> Stern's counsel sent a terse reply that same day, stating that he "insists" that her deposition proceed on December 5.<sup>2</sup>

Accordingly, Vicedomine filed her motion to quash the deposition.

After Vicedomine's counsel had delivered the motion for filing, on November 29, Stern's counsel copied them on a letter he wrote to counsel for O'Quinn that day, claiming to have been "surprised" to learn that Vicedomine was an investigator for O'Quinn.<sup>3</sup>

The prior day, however, Stern had served a subpoena on Don Clark here in Houston, whom he undoubtedly knew was O'Quinn's investigator.<sup>4</sup>

Moreover, in the same letter he now states that he has "sworn testimony" – not produced to O'Quinn or Vicedomine or this Court – regarding Vicedomine's investigation in the litigation. Specifically, he claims to have obtained "significant" information about Vicedomine's activities in his recent deposition of Rita Cosby, the author of the best-selling book "Blonde Ambition."

Presumably, Stern is now accusing Vicedomine of being the subject of Stern's allegations, in his recently-amended Complaint, that "at least one investigator ... working as an agent or employee of Defendants, was the alleged source of false accusations about Stern in Blonde Ambition."<sup>5</sup>

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<sup>1</sup> Exhibit "G."

<sup>2</sup> Exhibit "H."

<sup>3</sup> Exhibit "I."

<sup>4</sup> Exhibit "J."

<sup>5</sup> First Amended Complaint, ¶72.

Stern's counsel further states in that letter that, if counsel for O'Quinn gives him certain stipulations of fact regarding the merits of Stern's claims, he will limit the deposition to "jurisdictional facts." As of this filing, Vicedomine is not aware of any such stipulation.

For the Court's reference, attached as Exhibit "K" is a draft, forwarded by counsel for O'Quinn, of the motion for protection which they plan to file with the Florida court. We understand that it is being revised in light of yesterday's letter from Stern's counsel and the new subpoena to Clark, but the revised version will be filed today. Also attached, as Exhibit "L," is an Affidavit of Neil McCabe regarding Ms. Vicedomine's capacity.

## II. ARGUMENT

Stern's November 29 letter provides yet another reason to quash Ms. Vicedomine's deposition: he is alleging that Ms. Vicedomine is personally liable for the alleged public perception that he is a murderer, pimp, pusher and child abuser. Like any other potential defendant, she is entitled to fair notice of the claims against her before she should be required to give her deposition, and a fair amount of time to prepare her defense.

The letter certainly does not change any of the analysis set forth in Ms. Vicedomine's original motion to quash. A deposition in December is still an extreme burden on her, even without Stern's threats. Her investigation is still protected from discovery by the attorney-client communications and attorney work-product privileges, until Stern *demonstrates* (as opposed to simply claiming) a particularized need. The Florida court has still not determined its jurisdiction. And Stern still refuses to provide any witness statements, to which Vicedomine is entitled "as a matter of right."

Moreover, the general prohibition against depositions of opposing counsel and his staff cannot be overcome, as Stern suggests, by merely claiming that the facts discovered by an

attorney's investigator, and her conversations with third-parties during the course of her investigations, are not subject to privilege. If knowledge of facts was the threshold standard for taking such depositions, *all* attorneys and their investigators would be subject to deposition in every case, because it is their job to learn facts and talk to witnesses. An extraordinary showing is required for deposing attorneys and their investigators, rather than conducting one's own investigation, because:

Taking the deposition of opposing counsel not only disrupts the adversarial system and lowers the standards of the profession, but it also adds to the already burdensome time and costs of litigation. It is not hard to imagine additional pretrial delays to resolve work-product and attorney-client objections, as well as delays to resolve collateral issues raised by the attorney's testimony. Finally, the practice of deposing opposing counsel detracts from the quality of client representation. Counsel should be free to devote his or her time and efforts to preparing the client's case without fear of being interrogated by his or her opponent. Moreover, the "chilling effect" that such practice will have on the truthful communications from the client to the attorney is obvious.

*Shelton v. American Motors Corp.*, 805 F.2d 1323, 1327 (8<sup>th</sup> Cir. 1986).

Any offer to limit the deposition to "jurisdictional facts" will not allay any of these concerns. Moreover, Stern has made *no* effort to obtain those "jurisdictional" facts by less intrusive means. Specifically, we understand that the O'Quinn firm has no objection to producing expense records of any trips Vicedomine made to Florida, and stipulating that she did in fact travel on those dates on its behalf. Stern is not entitled to discover any further information, through depositions of O'Quinn's staff, about why she went there, what she did, who she talked to, or what mental impressions she obtained from her investigation.

Finally, there is no merit to Stern's suggestion that he is entitled to depose Vicedomine about any activities she might have undertaken "independent" of her role as an investigator for

O'Quinn and his firm. Stern's lawsuit is against O'Quinn and his firm. If Ms. Vicedomine undertook any acts "independent" of her capacity as O'Quinn's investigator, those acts would be (by definition) irrelevant to the liability of O'Quinn and his law firm.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was served upon the following counsel of record electronically through the US District Court's CM/ECF system and/or, as indicated below, via electronic transmission and facsimile, on the 30<sup>th</sup> day of November 2007:

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