

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

John Oxendine, P.C.

Plaintiff,

vs.

Civil Action No.:2017CV294699

Georgia Government Transparency

& Campaign Finance Commission

Defendant.

PETITION TO QUASH SUBPOENA

COMES NOW, John Oxendine, P.C. pursuant to O.C.G.A. § 7-1-360(c), and files this
Petition to Quash Subpoena.

Parties

1. Plaintiff, John Oxendine, P.C., is a law firm and a professional corporation organized and operating under the laws of the state of Georgia.
2. Defendant, Georgia Government Transparency and Campaign Finance Commission, is an agency regulatory agency of the state of Georgia created pursuant to O.C.G.A. § 21-5-4.
3. Defendant is an agency whose jurisdiction is limited to that specifically granted to it pursuant to Chapter 5 of Article 21 of the O.C.G.A.

Venue

4. On July 28, 2017, Defendant served an administrative subpoena upon BB&T, which is a financial institution operating in the state of Georgia.
5. This case is being brought pursuant to O.C.G.A. § 7-1-360(c).
6. BB&T's registered agent for service of process in Georgia is located in Fulton County; accordingly, jurisdiction and venue are proper in this Court.
7. Defendant also resides in Fulton County.
9. Venue is proper in this Court.

Background

10. Over eight years ago, in May 2009, an individual filed a complaint with Defendant against, and Defendant begin administrative case against "John Oxendine" in his individual capacity as a political candidate for the Governor's race of 2010.
11. To this date Defendant has never moved forward with a hearing in this case.
12. On June 20, 2017, after eight years of legal harassment by Defendant, Defendant decided to bring a new case against John Oxendine.
13. John Oxendine is a licensed attorney in the state of Georgia who practices at the law firm of John Oxendine, P.C., the Plaintiff in this case. Plaintiff, John Oxendine, P.C. may sometimes herein be referred to as "Law Firm" so as to draw a distinction between John Oxendine, individually.
14. On July 28, 2017, Defendant served an administrative subpoena upon BB&T demanding production of "... all committee records, documents, and materials on file pertaining to ... the firm known as John Oxendine, P.C."

15. Paragraph 3 of the subpoena demands "[a]ny and all banking records, to include bank statements, deposit and withdraw slips, check registers, images of checks made and cashed, records of wire transfers to and from, and all other banking records transactions related to accounts under the control of for the benefit of John Oxendine P.C. . . . from the period January 1, 2013 to March 31, 2016."

16. Paragraph 4 of the subpoena demands "[a]ny and all banking records, to include bank statements, deposit and withdraw slips, check registers, images of checks made and cashed, records of wire transfers to and from, and all other banking records transactions related to the Interest on Lawyers Trust Account (IOLTA) account(s) under the control of for the benefit of John Oxendine P.C. . . . from the period January 1, 2013 to March 31, 2016."

Unique Nature of the Law Firm of John Oxendine, P.C.

17. When a law firm engages in litigation on behalf of its client, the identity of its client often becomes a matter of public record. Whereas many law firms engage in a substantial amount of litigation, John Oxendine, P.C. engages in very little litigation; therefore, the identity of its clients is rarely a matter of public record.

18. The majority of clients that retain the Law Firm of John Oxendine, P.C. are regulated entities in the insurance and/or healthcare arena. These clients retain its services for confidential advice and/or representation, and they often do not want the fact that they have hired a well-known regulatory and healthcare Law Firm as a matter of public record.

19. Simply by making public the fact that a regulated insurance or healthcare client has retained the Law Firm, it will then become public that the particular client has an actual, or potential, regulatory or healthcare issue. Most clients insist on keeping this information private

and confidential. Defendant's subpoena to BB&T would destroy this confidentiality and privacy, and make this information public by unmasking the identity of these law clients.

20. Defendant's subpoena to BB&T would not only unmask the identity of the Law Firm's client list, it would also divulge detailed information regarding the exact amounts of money paid to the Law Firm. Most clients wish to keep such information private and confidential, and all clients have a *legal right* to keep this information private and confidential.

Right of Privacy

21. As a Georgia citizen, the Law Firm has a right to privacy guaranteed by the Georgia constitutional provision which declares that no person shall be deprived of liberty except by due process of law. *Pavesich v. New England Life Ins. Co.*, 122 Ga. 190, 197 (1905).

22. This right of privacy is considered a fundamental constitutional right and is "recognized as having a value so essential to individual liberty in our society that [its] infringement merits careful scrutiny by the courts." *Amble v. State*, 259 Ga. 406, 408 (1989).

23. As an agent of the state of Georgia, Defendant is prohibited from infringing on the rights to privacy that are protected by the Fourteenth Amendment to the US Constitution.

24. The various clients of the Law Firm have the same state and federal right of privacy protections.

25. Since Defendant is a state agency with limited jurisdiction, it has no jurisdiction whatsoever over the Law Firm.

26. Since Defendant is a state agency with limited jurisdiction, it has no jurisdiction whatsoever over the Law Firm's individual clients.

27. Defendant has not made any allegation of wrongdoing against the Law Firm.

28. Defendant has not made any allegation of wrongdoing against the Law Firm's clients.
29. The Law Firm is not a party to Defendant's pending administrative action.
30. The Law Firm's clients are not parties to Defendant's pending administrative action.
31. Defendant is attempting to gather confidential information about clients of the Law Firm.
32. In addition to confidential information about clients of the Law Firm, Defendant is attempting to gather private business records of the Law Firm. For example, Defendant is requesting information such as:
- a. Employee payroll information;
 - b. The amount money that is paid in taxes;
 - c. The gross, net and taxable income of the Law Firm;
 - d. Details about stock dividends paid out;
 - e. Both the identity and amount of money paid to investigators, experts, consultants, actuaries, accountants, financial consultants, etc. on behalf of various law clients; and
 - f. The names of various vendors of the Law Firm, and how much money is paid to each vendor;
 - g. The amount of money that is paid for rent, travel expenses, entertainment expenses, client development expenses, equipment rental, internet service, cell phone service, and a host of other business expenses.
33. The information being demanded by Defendant is an unwarranted and intrusive invasion of the privacy of the Law Firm with no substantive basis to justify Defendant's demands.

34. The information being demanded by Defendant is an unwarranted and intrusive invasion of the privacy of the clients of the Law Firm with no substantive basis to justify Defendant's demands.

35. Defendant's subpoena is intended to embarrass, harass, and/or intimidate John Oxendine, as an attorney and/or the law firm of John Oxendine, P.C.

36. Defendant's subpoena is so broad and overreaching subpoena, that it will interfere with and/or disrupt the lawful business operations of John Oxendine as an attorney, and/or the law firm of John Oxendine, P.C.

37. In addition to the fact that Defendant is demanding that the Law Firm breach both its duty of Confidentiality and Attorney-Client Privilege to its clients, Defendant is also demanding that the Law Firm violate the personal privacy of its various clients as well.

Duty and Right of Confidentiality

38. State Bar of Georgia Rule 1.6 declares that the Law Firm, as well as its individual attorneys, owe an affirmative duty of confidentiality to its clients.

39. Note 5 of Rule 1.6 reads in part that "Rule 1.6 applies not merely to matters communicated in confidence by the client but also *to all information gained in the professional relationship, whatever the source.*" Emphasis added.

40. Knowing that the Law Firm cannot disclose the information being subpoenaed, Defendant is trying to get around the rules of confidentiality by sending its subpoena to the Law Firm's financial institution.

41. Allowing Defendant to obtain information about a client that has no involvement whatsoever with Defendant's investigation would set a precedent to destroy the concept of Attorney-Client Confidentiality.

Attorney-Client Privilege

42. O.C.G.A. § 25-5-501(2) codifies the common law principle of Attorney-Client Privilege.

43. In order for an attorney or a Law Firm to function in a modern society it must involve the use of banking or other financial institutions.

44. It has long been recognized in the state of Georgia that the Attorney-Client Privilege "includes, by necessity, the network of agents and employees of both the attorney and client, acting under the direction of their respective principals, to facilitate the legal representation." *Neuman v. State*, 297 Ga. 501, 773 S.E.2d 716 (Ga., 2015).

45. BB&T is one of these necessary agents to facilitate legal representation by the Law Firm of its clients; therefore, the Attorney-Client Privilege applies to Law Firm financial records regarding its clients.

46. The right of the Attorney-Client Privilege belongs to that of the individual client, and not that of the attorney, or the Law Firm; therefore, this right may only be waived by the individual clients themselves.

Petition to Quash Defendant's Subpoena To BB&T

47. Plaintiff hereby restates and incorporates paragraphs 1 through 46, above as if stated in this paragraph.

48. Defendant's subpoena seeks information that is beyond the limited jurisdiction of the Defendant.
49. Defendant is already in possession of copies of all financial documents from the Law Firm that may be relevant to its administrative case regarding another party.
50. The subpoena is oppressive in that the information being sought contains personal information which is privileged and protected under both state and federal privacy laws.
51. The subpoena, is an attempt to embarrass, harass, intimidate, and wrongfully interfere with the business activities of John Oxendine as an attorney, and the law firm of John Oxendine, P.C.
52. The subpoena is intended to be, harmful to the law firm of John Oxendine, P.C.
53. The subpoena will violate and destroy Attorney-Client Confidentiality.
54. The subpoena will violate and destroy the Attorney-Client Privilege.
55. The subpoena is unreasonable and oppressive, and should be quashed pursuant to O.C.G.A. § 24-13-23(b)(1).
56. Georgia law requires that Defendant carry the burden of proving that the financial documents of the Law Firm that it is demanding are relevant to its administrative case regarding another party. Defendant has not met this legal burden. *Gregg v. State*, 771 S.E.2d 486 (Ga. Ct. App. 2015).
57. Plaintiff is entitled to an Order Quashing Defendant's Subpoena to BB&T.

Request for Oral Hearing

58. Plaintiff, John Oxendine, P.C. respectfully requests an oral hearing regarding its Petition to Quash Defendant's Subpoena to BB&T.

59. Plaintiff, John Oxendine, P.C. respectfully requests an oral hearing regarding its Petition for a Protective Order.

Prayers for Relief

Plaintiff, John Oxendine, P.C. respectfully prays that this Court will:

- a. Quash Defendant's Subpoena to BB&T;
- b. Issue a Protective Order from the same or similar conduct by Defendant;
- c. Award Plaintiff reasonable attorney's fees and expenses; and
- d. Provide such other relief which may be appropriate either at law or in equity.

Respectfully submitted this 29th day of August, 2017.

John Oxendine, P.C.

John Oxendine

John W. Oxendine

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