

FEB 13 1998

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF ARKANSAS  
WESTERN DIVISION

JAMES W. McCURMACK, CLERK  
By: V. J. Jones  
DEP. CLERK

PAULA JONES,

Plaintiff,

v.

WILLIAM JEFFERSON CLINTON  
and DANNY FERGUSON,

Defendants.

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CIVIL ACTION NO. LR-C-94-290

Judge Susan Webber Wright

Under Seal

**PLAINTIFF'S RESPONSE TO DEFENDANT CLINTON'S MOTION FOR  
RULE 26(c) ORDER AND IN CAMERA INSPECTION OF MEDICAL RECORDS**

Plaintiff Paula Jones files this response to "President Clinton's Motion for Rule 26(c) Order and In Camera Inspection of Medical Records." Jones subpoenaed the medical records of two physicians who have examined President Clinton as identified in his interrogatory answers. The subpoenas seek relevant information; however, Defendant Clinton is asserting a privilege from production. If such privilege is maintained, any medical evidence on this issue should be excluded at trial.

**I.**

**THE INFORMATION SOUGHT IS RELEVANT TO A MATERIAL ISSUE**

A key fact issue for trial is what happened in the hotel room on May 8, 1991 after Danny Ferguson escorted Ms. Jones to meet Defendant Clinton. As this Court is well aware, in response to Defendants' deposition questions, Ms. Jones has described Defendant Clinton's genital area, and if that description is accurate, the veracity of Ms. Jones' claim is strongly supported.

The undersigned counsel are aware that this Court has opined that this information is not relevant and not probative. However, the issue has not been presented formally to the Court and the Court, has not formally ruled that this information is not relevant and probative. Obviously, plaintiff is concerned that defendant could use medical records in rebuttal or response that plaintiff was never allowed to examine. Therefore, plaintiff has subpoenaed the medical records and is more than happy for the Court to conduct an in camera inspection of them.

The Court has previously expressed its view that testimony on this issue would not be probative because Ms. Jones's description could be based on information learned second hand. Although that may be theoretically possible, there is no evidence to support such a theory, and it is a rebuttal theory at that. Therefore, plaintiff should be given access to any medical records that can have any bearing on this issue.

## II.

### **DEFENDANT CLINTON'S INTERROGATORY ANSWER DOES NOT ELIMINATE THIS ISSUE**

Defendant Clinton's attorneys urged that the subpoenas were not well founded because Defendant Clinton has previously stated that he has had no surgery of the type described in the subpoenas. The subpoenas, however, also requested information concerning any "examination of the genitalia of Defendant Clinton." If such examination included a description of Defendant Clinton's genitalia, that description could be relevant.

### III.

#### **IF THE INFORMATION IS PRIVILEGED, ALL EVIDENCE MUST BE BARRED**

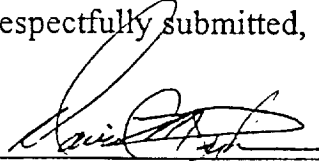
Defendant Clinton asserts that his medical records are privileged pursuant to relevant rules, including Arkansas Rule of Evidence 503. Of course, Defendant Clinton waives the privilege if he relies on the medical records or his medical condition as an element of his defense. In other words, if Defendant Clinton asserts that Ms. Jones' claim is inaccurate and relies on his medical records in any way, he has put the matter in issue. It appears that Defendant Clinton intends to steadfastly maintain his privilege; therefore, he should be precluded from introducing any medical evidence on this issue at trial.

### IV.

#### **CONCLUSION**

Plaintiff requests that Defendant Clinton, if he continues to maintain the physician-patient privilege, be excluded from submitting any medical evidence at trial. Alternatively, if such privilege is waived or is to be waived prior to trial, plaintiff requests full production of the relevant records sought immediately so that her medical experts can timely review same in preparation for trial.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

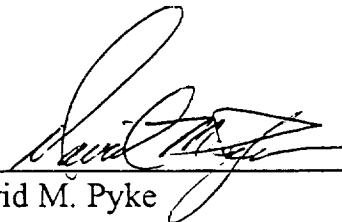
I hereby certify that on February 12, 1998, a true and correct copy of the foregoing document (including the accompanying exhibits and attachments, if any) was served on all parties by service on their counsel of record by telecopy transmittal, overnight delivery, and/or U.S. Mail at the addresses set forth below, in compliance with FED. R. CIV. P. 5.

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