

VERMONT SUPERIOR COURT  
Washington Unit  
65 State Street  
Montpelier VT 05602  
802-828-2091  
www.vermontjudiciary.org



CIVIL DIVISION  
Case No. 21-CV-00405

**Debra French v. Lisa Hathaway**

**ENTRY REGARDING MOTION**

Title: Plaintiff's Motion to Compel Production of Defense Expert's Complete File or Preclude Defense Expert from Testifying at Trial; Defendant's Motion for Protective Order (Motions: 2; 5)

Filer: Nicholas J. Seldon; Susan J. Flynn

Filed Date: May 24, 2022; October 06, 2022

The motions are **GRANTED** in part and **DENIED** in part.

Plaintiff has requested the entire file of the neuropsychologist, Dr. Postal, whom the Defendant hired to perform an independent neuropsychological examination of the Plaintiff in this case, and whom the Defendant has disclosed as an expert witness who will testify at trial. Dr. Postal is willing to produce her entire file, but she believes that it would be unethical for her to produce her raw test data to anyone other than a licensed neuropsychologist because of concerns about inadvertent or intentional disclosure of such data to the public. Her concerns appear to be supported by the code of ethics of the American Psychological Association. Disclosure of such data to a licensed neuropsychologist hired by the Plaintiff would obviate Dr. Postal's concern, because that neuropsychologist would be bound by the same code of ethics as she is. Therefore, Dr. Postal proposes to send her raw test data to the Plaintiff's consulting neuropsychologist.

Plaintiff objects to that procedure. Plaintiff's counsel has in fact retained a consulting neuropsychologist to assist him in this case, but Plaintiff's counsel objects to having to disclose the identity of his consulting neuropsychologist to counsel for the Defendant. Plaintiff's counsel further argues that Dr. Postal's entire file, including her raw test data, is clearly discoverable, so he should not have to retain a consulting neuropsychologist in order to obtain it.

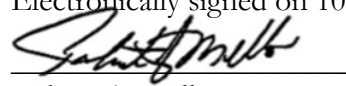
While the materials in question are discoverable, Dr. Postal's ethical concern is reasonable inasmuch as it is consistent with the code of ethics adopted by the American Psychological Association. In addition, the raw data would be useless to Plaintiff's counsel without the assistance of a consulting neuropsychologist to interpret the data for him. Moreover, Plaintiff's counsel has in fact retained such a consulting expert. Further, Dr. Postal has stated that, if so ordered, she will not disclose the identity of Plaintiff's consulting expert to

counsel for the Defendant or to anyone else, and counsel for the Defendant has advised the Court that she has no objection to such an order.

Based upon the foregoing considerations and the applicable discovery rules, the Court orders as follows: (1) If she has not done so already, Dr. Postal shall turn over to Plaintiff's counsel her entire file on this matter, except for her raw test data; (2) Plaintiff's counsel shall have his consulting neuropsychologist contact Dr. Postal to request her raw test data; (3) Dr. Postal shall turn over her raw test data to Plaintiff's consulting neuropsychologist, without disclosing the identity of that person to anyone, including counsel for the Defendant.

**SO ORDERED**

Electronically signed on 10/17/2022 9:08 AM, pursuant to V.R.E.F. 9(d)

A handwritten signature in black ink, appearing to read "Robert A. Mello", is written over a horizontal line.

Robert A. Mello  
Superior Judge