

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

JANET JENKINS, et al.,

Plaintiffs,

v.

No. 2:12-cv-184

KENNETH L. MILLER, et al.,

Defendants.

**PROTECTIVE ORDER RE PLAINTIFFS' MEDICAL, MENTAL HEALTH,
FINANCIAL, AND OTHER PERSONAL RECORDS, AND INFORMATION
PERTAINING TO THE MINOR PLAINTIFF ISABELLA MILLER-JENKINS**

Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, and good cause appearing that Plaintiffs' medical, mental health, financial, and other personal records, and information pertaining to the minor Plaintiff Isabella Miller-Jenkins be kept confidential,

IT IS HEREBY ORDERED:

Scope of Confidential Information

1. Plaintiffs' medical, mental health, financial, and other personal records, and information pertaining to the minor Plaintiff Isabella Miller-Jenkins (collectively, "Confidential Information") shall be kept confidential.

Procedures for Designating Confidential Information

2. The parties shall in good faith designate documents and electronically stored information ("ESI") (collectively,

"Discovery Material") containing Confidential Information as confidential by stamping the word "CONFIDENTIAL" onto each page of the document or by including the word "CONFIDENTIAL" in the file name or in the media through which the ESI is produced. Stamping the cover page of a multi-page document does not designate all pages of the document as confidential.

3. The parties shall produce discovery responses, such as interrogatory answers, containing Confidential Information in a separate document with the word "CONFIDENTIAL" stamped onto each page.

4. The parties shall designate deposition and other pre-trial testimony as containing Confidential Information within 30 days of receipt of the written transcript from the court reporter by written notice to all parties identifying each line number containing Confidential Information. Only those portions of the transcript designated as containing Confidential Information shall be deemed Confidential Information.

5. Discovery Material already produced may be designated as containing Confidential Information by written notice to all parties. The Discovery Material shall be fully subject to this order from the date of such notice. Upon such notice, the parties shall confer to mark and treat the Discovery Material as containing Confidential Information. The parties receiving such notice shall make a reasonable, good-faith effort to:

- a. Immediately treat any analyses, memoranda, notes, or other such materials generated based upon the Discovery Material as themselves containing Confidential Information; and
- b. Immediately redact, return, or destroy the Discovery Material as is appropriate under the provisions of this order; and
- c. Prevent disclosure of the Discovery Material in accordance with the terms of this order.

Procedures for Challenging Confidential-Information Designations

6. At any time after receiving Confidential Discovery Material, any party who believes the Discovery Material does not contain Confidential Information and should not be treated as such shall provide written notice to all parties with the specific basis for the challenge.

7. Plaintiffs shall have 14 days to move the Court for a protective order governing the challenged Discovery Material. Consistent with Rule 26 of the Federal Rules of Civil Procedure, Plaintiffs shall have the burden of establishing the need for a protective order. The parties shall continue to abide by the restrictions imposed by this order until Plaintiffs' motion is decided. If Plaintiffs do not timely move for a protective order, the challenged Discovery Material shall no longer be subject to the restrictions of this order.

Disclosure and Use of Confidential Information

8. Disclosure of Confidential Information shall be limited to:

- a. the parties;
- b. counsel of record in this action and their staff;
- c. experts and consultants retained for this action and their staff;
- d. court reporters;
- e. denoted stenographers;
- f. videographers; and
- g. the Court (including an appellate court reviewing this action) and its staff.

9. Before receiving any Confidential Information, all persons listed in paragraph 8(c) of this order shall sign and serve on all parties a declaration stating the following:

- a. The declarant's name, current employer, current employer's address, and current occupation or job description;
- b. The declarant has read this order;
- c. The declarant understands and agrees to be bound by the terms of this order;
- d. The declarant will hold in confidence, will not disclose to anyone not listed in paragraph 8 of this order, and will use only for purposes of

this action any Confidential Information disclosed to the declarant;

- e. The declarant will return all Confidential Information that comes into the declarant's possession, and any documents or things the declarant has prepared related thereto, to counsel for the party by whom the declarant is employed or retained upon request by that counsel; and
- f. The declarant submits to the jurisdiction of this Court for the purpose of enforcement of this order.

10. Confidential Information shall be used only for purposes of this action, including appeals, and for no other purposes.

11. Confidential Information shall not be filed on the public docket in this or any other action. If feasible, Confidential Information shall be appropriately redacted before public filing. Unredacted versions shall be filed under seal.

12. To the extent practicable, Confidential Information shall be properly redacted from documents before use in a deposition. All persons who are not listed in paragraph 8 of this order shall be excluded from attendance at the deposition during the time Confidential Information is used or discussed.

13. If a party seeks to discuss or disclose Confidential Information during any hearing or trial before the Court, including through argument or presentation of evidence, counsel for the parties shall confer and agree to procedures necessary to protect the Confidential Information from improper disclosure during the hearing or trial, subject to the Court's approval.

14. Nothing in this order shall prevent any party from using or disclosing its own Discovery Material, and publicly available documents and ESI, in any manner it sees fit.

15. Nothing in this order, and no action taken pursuant to it, shall prejudice the right of any party to contest the alleged relevancy, admissibility, or discoverability of any Discovery Material.

16. Nothing in this order shall prevent or otherwise restrict counsel of record from rendering advice to their client and, in the course thereof, relying generally on examination of the Discovery Material, provided, however, that in rendering such advice and otherwise communicating with such client, counsel shall not make any specific disclosure of any Confidential Information except as permitted by this order.

17. Within 60 days of termination of this lawsuit, including termination of any appeal from the final judgment of this Court, all Confidential Information shall be destroyed and notice provided to all parties, except counsel of record are

permitted to keep copies of Confidential Information, including work product based on Confidential Information, in their litigation files.

18. The provisions of this order shall survive any settlement, judgment, or other disposition or conclusion of this action, and all appeals therefrom.

DATED at Burlington, in the District of Vermont, this 18th day of November, 2019.

/s/ William K. Sessions III
William K. Sessions III
District Court Judge