

BURGOWER & RAINWATER, LLP

Wendy S. Burgower

BOARD CERTIFIED FAMILY LAW
TEXAS BOARD OF LEGAL SPECIALIZATION
FELLOW - AMERICAN ACADEMY OF MATRIMONIAL LAWYERS
FELLOW - INTERNATIONAL ACADEMY OF MATRIMONIAL LAWYERS
Email: wendy@brfamilylaw.com

3355 W. Alabama, Suite 825
Houston, Texas 77098
713-529-3982
Fax: 713-522-5045

Charlotte D. Rainwater

BOARD CERTIFIED FAMILY LAW
TEXAS BOARD OF LEGAL SPECIALIZATION
Email: charlotte@brfamilylaw.com

Sara C. Springer

ASSOCIATE
Email: sara@brfamilylaw.com

February 17, 2010

Mr. Robert Kuehm
8441 Gulf Freeway, Suite 600
Houston, Texas 77017

VIA HAND DELIVERY NO. 25718

Mr. Walter P. Mahoney
6005 Fairmont Parkway, Suite J
Pasadena, Texas 77505

VIA HAND DELIVERY NO. 25719

RE: 2003-67714, Gawlikowski

Dear Counsel:

Enclosed please find a Motion to Quash and, in the Alternative, Motion for Protection that I filed with the Court today.

I will present this to the Court when all other pending matters are set for the Court's consideration.

I will not be producing any documents requested by the subpoena on February 19, 2010.

Sincerely,

BURGOWER & RAINWATER, L.L.P.



Wendy S. Burgower

WSB/
Enclosures

CAUSE NO. 2003-67714

IN THE INTEREST OF	§	IN THE DISTRICT COURT
	§	
BRISA NICOLE GAWLIKOWSKI	§	247 JUDICIAL DISTRICT
	§	
A CHILD	§	HARRIS COUNTY, TEXAS

MOTION TO QUASH AND, IN THE ALTERNATIVE, MOTION FOR PROTECTION

This Motion for Quash, and In the Alternative, Motion for Protection is brought by WENDY S. BURGOWER, Court Appointed Amicus Attorney, who shows in support:

I.

On or about February 12, 2010, Movant was served with a Subpoena (attached hereto and incorporated by reference as Exhibit "A", and referred to in this Motion as the "Subpoena"), by Dan Gawlikowski, wherein he requests that Movant produce and permit inspection and copying of the following records: ***"all emails sent to the Judge of the 247th Family District Court on October 22, 2009; any and all communications regarding Cause No. 2003-67714, including but not limited to emails, between you and any staff member of the 247th Family District Court from January 2009 to present."*** The deadline set forth in the Subpoena to produce the documents is February 19, 2010 at 4:00p.m. and said documents are to be delivered to the Law Office of Walter Mahoney, Jr. located at 6005 Fairmont Parkway, Suite J., Pasadena, Texas 77505.

II.

Movant requests that the Court quash the Subpoena directing Movant to produce and permit inspection and copying of documents, for the reason that this case is currently pending in the First Court of Appeals and therefore a stay is in place. Mr. Gawlikowski may not pursue any action in the trial court at this time.

III.

Movant further objects to the production of the requested documents for the following reasons:

a. The subpoena calls for Movant's work product that is protected by Section 107.007 of the TEXAS FAMILY CODE, which states: "(a) An attorney ad litem, an attorney serving in the dual role, or an amicus attorney may not: (1) be compelled to produce attorney work product developed during the appointment as an attorney...."

b. During a hearing on February 11, 2010 in this matter, Movant confirmed that she sent one single email to the Court on October 22, 2009. Movant stated the email was procedural in nature and that the communication pertained to the need for an order to be signed by the Court.

At that same hearing, the Court confirmed, on the record, that Movant had not improperly communicated with the Court on October 22, 2009 or at any time during the time Movant has served as the Amicus Attorney. Movant believes she had the authority to send the email at issue under the current Amicus statutes and case law. Section 107.001 of the TEXAS FAMILY CODE defines "Amicus Attorney" as "an attorney appointed by the court in a suit, other than a suit filed by a governmental entity, whose role is to provide legal services necessary to assist the court in protecting a child's best interests rather than to provide legal services to the child." Additionally, the First Court of Appeals stated in *O'Connor v. O'Connor*, 245 S.W.3d 511, 515 (Tex. App. –Houston [1st Dist.] 2007, no pet.), that "the trial court is, in effect, the amicus attorney's client for a limited purpose." Furthermore, Section 107.003(1)(g) of the TEXAS FAMILY CODE states that an amicus attorney appointed to assist the court shall "take any action consistent with the child's interest that the attorney considers necessary to expedite the proceedings." Movant believes that sending the email to the Court was absolutely imperative in fulfilling her role as the Amicus Attorney and that the action was consistent with the child's interest and necessary to expedite the proceedings. Therefore, Movant will produce the email under seal to the Court for the Court's review. If the Court feels Daniel Gawlikowski or any other party or attorney is entitled to inspect said email, then the Court may disseminate the email in the manner the Court so desires.

c. Movant believes her email communication to the Court was not only appropriate, but necessary. However, Movant refuses to set a precedent that Movant will produce documents from her file to the parties or the attorneys in this case upon their request or demand.

d. The discovery request is unreasonably frivolous, oppressive, or harassing in that during that same hearing on February 11, 2010 it is on the record that Daniel Gawlikowski has filed several grievances against Movant, at least one of which is still pending. Daniel Gawlikowski's attorney of record, Walter P. Mahoney, stated in correspondence to Movant and the other attorneys of record in this case on February 12, 2010 that his serving the subpoena was to obtain "[the] information for the purpose of the Appeal," but Movant sincerely believes the subpoena is merely another tactic to obtain material for Daniel Gawlikowski's pending grievances against Movant. There is no issue in the alleged appeal that would in any way use or need any communications between the Amicus and others.

IV.

In the alternative and without waiving the forgoing, Movant requests this Court to issue an order of protection and find that no subpoena demanding documents may be issued to the amicus, and in the event any documents be tendered from the Amicus's file that said documents be sealed and filed with this Court and only opened by the Court upon a proper showing of just cause and after a full hearing on the matter.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Movant requests that the Court quash the above-described subpoena, and for such other and further relief that may be awarded at law or in equity.

Respectfully submitted,

BURGOWER & RAINWATER, L.L.P.

3355 W. Alabama, Suite 825

Houston, Texas 77098

Tel: (713) 529-3982

Fax: (713) 522-5045

BY: 

WENDY S. BURGOWER

State Bar No. 03383600

AMICUS ATTORNEY FOR BRISA NICOLE
GAWLIKOWSKI

NOTICE OF HEARING

The above motion is set for hearing on _____ at ____m. in _____.
SIGNED on _____.

JUDGE OR CLERK

CERTIFICATE OF SERVICE

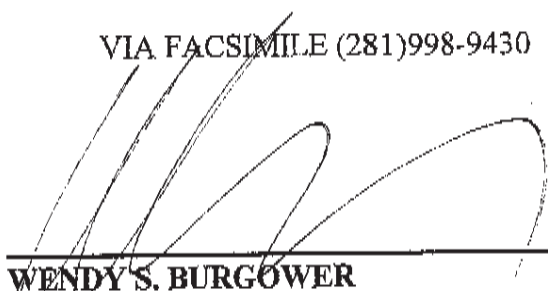
I certify that a true copy of the above was served on each of the following attorney's of record in accordance with the Texas Rules of Civil Procedure on February 17, 2010:

Mr. Robert Kuehn
8441 Gulf Freeway, Suite 600
Houston, Texas 77017
Attorney for Brandi Sikes

VIA FACSIMILE (713)230-2221

Mr. Walter P. Mahoney
6005 Fairmont Parkway, Suite J
Pasadena, Texas 77505
Attorney for Daniel Gawlikowski

VIA FACSIMILE (281)998-9430



WENDY S. BURGOWER
AMICUS ATTORNEY FOR BRISA NICOLE
GAWLIKOWSKI

Cause No. 2003-67714

IN THE INTEREST OF

X

IN THE DISTRICT COURT OF

X

BRISA NICOLE GAWLIKOWSKI

X

HARRIS COUNTY, TEXAS

X

A MINOR CHILD

X

247TH JUDICIAL DISTRICT

SUBPOENA

ISSUED IN THE NAME OF THE STATE OF TEXAS

TO ANY SHERIFF OR CONSTABLE OF THE STATE OF TEXAS OR OTHER PERSON
AUTHORIZED TO SERVE SUBPOENAS AS PROVIDED IN RULE 176 T.R.C.P.

Witness subpoena pursuant to Rule 176 T.R.C.P. in Cause No. 2003-67714

**YOU ARE HEREBY COMMANDED TO PRODUCE: WENDY BURGOWER, 3355 West
Alabama, Suite 825, Houston, Texas 77098.**

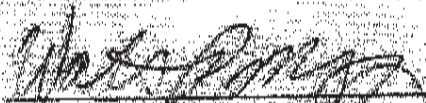
You, WENDY BURGOWER, 3355 West Alabama, Suite 825, Houston, Texas 77098,
are hereby commanded to produce and permit inspection and copying of the following records:
*all emails sent to the Judge of the 247th Family District Court on October 22, 2009; any and
all communications regarding Cause No. 2003-67714, including but not limited to emails,
between you and any staff member of the 247th Family District Court from January 2009 to
Present.*

You are hereby commanded to produce and deliver the above-mentioned documents to the Law Office of Walter Mahoney, Jr. located at 6005 Fairmont Parkway, Suite J, Pasadena, Texas, 77505 by 4:00 p.m. on Friday, February 19, 2010.

This subpoena is issued at the instance of Daniel Gawlikowski, Counter-Petitioner, in the above-referenced case, by and through his attorney of record, Walter P. Mahoney, Jr.

FAILURE OF ANY PERSON WITHOUT ADEQUATE EXCUSE TO OBEY A SUBPOENA SERVED ON THAT PERSON MAY BE DEEMED A CONTEMPT OF THE COURT FROM WHICH THE SUBPOENA IS ISSUED OR A DISTRICT COURT IN THE COUNTY IN WHICH THE SUBPOENA IS SERVED, AND MAY BE PUNISHED BY FINE OR CONFINEMENT, OR BOTH.

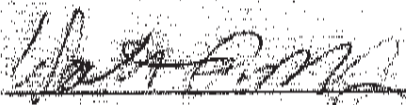
This subpoena is issued on February 12, 2010 by: Walter P. Mahoney, Jr.



Walter P. Mahoney, Jr.
Attorney for Daniel Gawlikowski
6005 Fairmont Parkway, Suite J
Pasadena, Texas 77505
(281) 998-9450
(281) 998-9430 FAX
Texas Bar Card 12844600

Certificate of Service

I certify that a true copy of the above was served on each attorney of record or party by email and in accordance with the Texas Rules of Civil Procedure on Feb 12th, 2010.



Proof of Service

I, _____, accept service of the attached subpoena and will appear at the time and place directed in the subpoena.

Date: _____

(Signature of witness)

I, _____, am over the age of eighteen years. I am not a party in the above-entitled and -numbered cause of action. On _____ I served a subpoena, of which this is a true and correct copy, on _____ by personally handing the subpoena to the named individual or in accordance with rule 176.5(a) of the Texas Rules of Civil Procedure. I also tendered to the witness the witness fees required by law at the time the subpoena was delivered.

Date: _____