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FAX COVER SHEET

TO: Mr. Robert Kuehm FAX NO. (713)230-2221
TO: Mr. Walter P. Mahoney FAX NO. (281)998-9430
TO: Ms. Mary Olga Lovett FAX NO. (713)374-3500

FROM: Melody J. Goodwin for Wendy S. Burgower

RE: Gawlikowski

DATE: March 31, 2010

Number of pages, including cover sheet: 7

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- URGENT
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BURGOWER & RAINWATER, LLP

Wendy S. Burgower

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March 31, 2010

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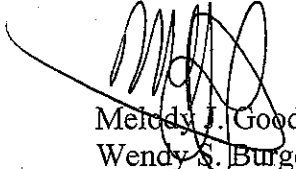
Re: Cause No. 2003-67714; *In the Interest of Brisa Nicole Gawlikowski*; In the 247th Judicial District Court of Harris County, Texas.

Dear Counsel:

I enclose for you a Motion To Quash and, In The Alternative, Motion for Protection and Request for Attorney Fees and Sanctions that has been filed with the Court today and presented to the Court tomorrow.

Sincerely,

BURGOWER & RAINWATER, L.L.P.


Melody J. Goodwin
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
AND REQUEST FOR ATTORNEY FEES AND SANCTIONS**

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 March 31, 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 appear and produce and permit inspection and copying of the following records: *"all emails sent to the Judge Bonnie Hellums on October 22, 2009 by Wendy Burgower related to Cause No. 2003-67714."* The subpoena orders that Ms. Burgower comply with the Subpoena to produce the documents on April 1, 2010 and to be a witness in the case (this case) at the Project Court, Room 20038 at 9:00 am.

II.

Movant requests that the Court quash the Subpoena directing Movant to appear as a witness and produce and permit inspection and copying of documents, for several reasons, including the fact that she is the Amicus Attorney and cannot be compelled to testify as a witness pursuant to the Texas Family Code, Section 107.007. The Statute is clear: An Amicus Attorney may not be *"...compelled to produce attorney work product developed during the appointment as an attorney; ... testify in Court except as authorized by Rule 3.08, Texas Disciplinary Rules of Professional Conduct..." (Family code 107.007(a)(1) and (a)(4).* Additionally, the 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. Movant further shows that she cannot be compelled to testify at the hearing in accordance with the Family Code as earlier stated.

e. 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.

V.

This Subpoena was filed in bad faith. The attorney of record, Walter Mahoney, is an attorney who is Board Certified in Family Law. Mr. Mahoney is aware of the statute that prohibits the filing and service of the subpoena. He is the attorney in charge of the case and should be responsible for the filings of motions and subpoenas. Furthermore, this is the second time a subpoena has been served requesting the same work product. Once again, the undersigned must respond. Attorney fees be awarded to the undersigned as well as appropriate sanctions rendered against Mr. Mahoney. The purpose of the filing is to intimidate and cause more expense to Wendy S. Burgower.

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, including attorney fees and sanctions.

Respectfully submitted,

BURGOWER & RAINWATER, L.L.P.
3355 W. Alabama, Suite 825
Houston, Texas 77098
Tel: (713) 529-3982
Fax: (713) 522-5045

BY: _____



CHARLOTTE RAINWATER
State Bar No. 24007889
Attorney for Wendy S. Burgower

NOTICE OF HEARING

The above motion is set for hearing on April 1, 2010 at 10:00 a.m. in 1201 Franklin, Project Court No. 1, Room 20038, Houston, Texas 77002.

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 March 31, 2010:

Mr. Robert Kuehm
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



CHARLOTTE D. RAINWATER
Attorney for Wendy S. Burgower

RUSH!

1075

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THE STATE OF TEXAS

90

WITNESS SUBPOENA/SUBPOENA DUCES TECUM
PURSUANT TO TEXAS RULES OF CIVIL PROCEDURE 176

CAUSE NO. 2003-67714

IN THE 247th JUDICIAL DISTRICT COURT OF
HARRIS COUNTY, TEXAS

BRANDT SIKES

vs. DANIEL GAWLIKOWSKI

Plaintiff

Defendant

PETITIONER

RESPONDENT

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

YOU ARE HEREBY COMMANDED TO SUMMON WENDY BURGOWER OR
BURGOWER + RAINWATER, LLP
Address 3355 W. ALABAMA # 825, HOUSTON, TEXAS 77098
in HARRIS County, Texas, and who is represented to reside within one hundred fifty miles of the

Courthouse of Harris County, Texas, in which the above suit is pending, or who may be found within such distance at the
time of the trial, to appear before the PROJECT COURT - ROOM # 20038, 1201 FRANKLIN, HOUSTON, TEXAS Judicial District Court in and for Harris County, in Houston, Texas, on the
1 day of APRIL, 20 10, at 9:00 A.M., to 77098

testify as a witness on behalf of the Plaintiff/Defendant in the above styled Civil Action, to attend from day to day until
lawfully discharged.

SAID ABOVE NAMED WITNESS IS FURTHER COMMANDED to produce at said time and place above set
forth the following books, papers, documents, or other tangible things, to wit: ALL EMAILS SENT TO
JUDGE BONNIE HELLMUS ON OCTOBER 22, 2009 BY
WENDY BURGOWER RELATED TO CAUSE NO. 2003-67714.

DO NOT FAIL to return this writ to said Court, with return thereon, showing the manner of execution.

ISSUED this the 29 day of March, A.D., 20 10.

Delivered this 31 day of MARCH, 20 10
JACK F. ABERCIA, Constable
Precinct #1, Harris County
By D. Schilke 1075
DEPUTY

LOREN JACKSON, District Clerk
Harris County, Texas
201 Caroline, Houston, Texas 77002

By: [Signature]
Deputy District Clerk

Issued At Request Of RESPONDENT Plaintiff/Defendant: DANIEL GAWLIKOWSKI
Phone Number: 713-256-6488
Address: 2619 BROADMEAD DR.
HOUSTON, TEXAS 77025

OFFICER'S RETURN ON BACK

Page 1 of 2

TRANSMISSION VERIFICATION REPORT

TIME : 03/31/2010 16:56
NAME : BURGOWER RAINWATER
FAX : 7135225045
TEL : 7135293982
SER.# : BROE6J472015

DATE, TIME	03/31 16:55
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DURATION	00:00:25
PAGE(S)	00
RESULT	NG
MODE	STANDARD ECM

NG: POOR LINE CONDITION

TRANSMISSION VERIFICATION REPORT

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FAX : 7135225045
TEL : 7135293982
SER.# : BROE6J472015

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MODE	STANDARD ECM

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FAX : 7135225045
TEL : 7135293982
SER. # : BROE6J472015

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DURATION	00:00:00
PAGE(S)	00
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MODE	STANDARD

BUSY: BUSY/NO RESPONSE

BROADCAST REPORT

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 NAME : BURGOWER RAINWATER
 FAX : 7135225045
 TEL : 7135293982
 SER.# : BROE6J472015

PAGE(S)

07

DATE	TIME	FAX NO./NAME	DURATION	PAGE(S)	RESULT	COMMENT
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03/31	16:55	7132302221	25	00	NG	ECM

BUSY: BUSY/NO RESPONSE
 NG : POOR LINE CONDITION
 CV : COVERPAGE