

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

THE GIL RAMIREZ GROUP, L.L.C. and §
GIL RAMIREZ, JR., §

Plaintiffs, §

v. §

CIVIL ACTION NO. 4:10-CV-04872

HOUSTON INDEPENDENT SCHOOL §
DISTRICT, LAWRENCE MARSHALL, §
EVA JACKSON and RHJ-JOC, INC., §

Defendants. §

**NONPARTY LARRY R. VESELKA’S
MOTION FOR PROTECTIVE RELIEF AND TO QUASH**

Nonparty Larry R. Veselka (“Attorney”), pursuant to Fed. R. Civ. P. 26(c) and Fed. R. Civ. P. 45(c)(3), files this motion for protective relief and to quash the Notice of Intention to Take Deposition by Written Questions and for Documents and the related subpoena issued on the Custodian of Records for Attorney Larry Veselka by the Plaintiffs in this case (Exhibit 1). Attorney is entitled to the protective relief requested because:

- Attorney is not the proper subject of such a subpoena;
- the firm Smyser Kaplan & Veselka, L.L.P. (“Firm”) was engaged on these matters by the client Houston Community College System (“Client”), not Attorney;
- the Client’s engagement of Firm requires the Firm to conduct the engagement in a manner preserving the Client’s privileges and confidentiality;
- the subpoena seeks production of information protected by attorney-client and law enforcement investigative and other privileges as well as work product protection;

- it would be unduly burdensome and totally unnecessary for Attorney to respond when the Plaintiffs have served a subpoena on the Client, which is the proper party to determine which, if any, of the Firm's files and work product are subject to protection.

Attorney is a partner in the Firm. The Firm was engaged by the Client to perform specified legal services, most notably in assisting Client with confidential legal inquiries and to "...review and make recommendations regarding compliance and procurement issues involving former and current members of the HCC Board of Trustees and HCC vendors." The engagement letter explicitly requires that "...all work product generated as a result of this engagement shall remain **CONFIDENTIAL**."

FACTS

As part of the engagement, the Client authorized the Firm to prepare materials in response to the request of the Harris County District Attorney's Office ("HCDAO") to assist the HCDAO in its investigation of whether to undertake any criminal prosecution. Any information requested in the subpoena that is not the Firm's work product or communications with either HCDAO or the Client would be public records and available through the Open Records Act from the Client. The subpoena could best be described as a fishing expedition deep into privileged waters, and this Court should quash the subpoena and protect this privileged information accordingly.

OBJECTIONS

1. Attorney objects to the subpoena because it calls for discovery from the Custodian of Records for "Attorney Larry Veselka", while in fact the documents or materials requested in Exhibit A of the September 13, 2011 subpoena are the property of the Firm.

2. Attorney objects to the subpoena and the Firm would object if any attempt were made to seek the data from the Firm via Attorney because the subpoena requests documents and information fully protected by the principles of attorney-client privilege, law enforcement investigative privilege, other privileges under the Texas Education Code or Government Code as well as work product protection. Any materials and documents requested by the subpoena not available from the Client directly were produced in furtherance of the Firm's legal services for the Client. As such, this information is outside the proper scope of discovery. *See* Fed. R. Civ. P. 26(b) and 45(c)(3). Indeed, it is a "bedrock principle" that "the attorney-client privilege is the client's and his alone." *U.S. v. Juarez*, 573 F.2d 267, 276 (5th Cir. 1978).

3. To the extent that the Firm possesses any non-privileged information responsive to the subpoena, the Plaintiffs in this matter could and have made requests to the Client. Attorney and Firm understand that Plaintiffs have served an identical subpoena on the Client.

4. To the extent that the Client has waived any applicable privileges for any subset of the subject documents or materials through public disclosure, only the Client, and not the Attorney or the Firm, would know which material is publicly available. Accordingly, it would be unduly burdensome and an unnecessary exercise for Attorney or the Firm to need to respond.

5. Because the Attorney and the Firm are contractually and professionally obligated to preserve the Client's privileges, protections, and objections in the Client's motion to quash, Attorney and Firm seek protection from having to answer the Deposition on Written Questions or respond to the Subpoena.

CONCLUSION

For the foregoing reasons, Attorney Veselka and the Firm Smyser Kaplan & Veselka, L.L.P. pray this Court to quash this subpoena and ask that they be protected from responding further to the Deposition on Written Questions and accompanying Subpoena.

Respectfully submitted,



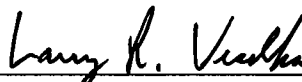
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CERTIFICATE OF SERVICE

I hereby certify that on September 29, 2011, I electronically filed the foregoing MOTION FOR PROTECTIVE RELIEF AND TO QUASH with the Clerk of the Court by using the CM/ECF which will send an electronic notice to the following attorney:

Chad W. Dunn
Brazil & Dunn
4201 FM 1960 West, Suite 530
Houston, Texas 77068

ATTORNEY FOR PLAINTIFFS



Larry R. Veselka *with permission by John J. Myers*