

well as a third entity that CPNET indicated might have records, STAR/TYC. None of the three entities would explain the missing records or produce them.

DISCUSSION

The counseling records produced detailed interviews of both the alleged victim and the alleged initial “outcry witness”, her sister, Whitney Maggard. As set forth in Defendant’s motion for a taint hearing filed earlier, such interviews are vital evidence in this case and are exactly the kind of impeachment material that is the subject of Constitutional requirements of confrontation under the State and federal law. According to Ms. Rusac, CPS has advised her that such records “belong to CPS” and that she normally refuses to release them, so she directed counsel to CPS for the records. CPS, however, expressly denies possession of any such records. [See attached email].

So we have an apparently exceptional situation in this case in that CPS does not possess records it normally possesses [because it apparently refers such alleged victims to counseling in the first place, CPS convention apparently is to maintain that the records “belong” to CPS, at least according to Ms. Rusac]. Further, STAR/TYC - according to Ms. Rusac, where the alleged victim first obtained counseling before the counselor, Beth Gilmer, moved to CPNET - denies possession of any such records when approached by Mr. Ball this week. As a result, it would appear the likely possessor of the missing records would have to be CPNET, but Mr. Ball advises that he is unable to elicit cooperation from CPNET in this regard notwithstanding an in-person request and multiple phone calls.

Accordingly, it appears an evidentiary hearing is required to inquire into the true custodian[s] of the complete records described in the Order, and, unfortunately, to compel their production.

WHEREFORE, PREMISES CONSIDERED, the Defendant respectfully prays that this Honorable Court will grant this, the Defendant's Motion for Hearing on Compliance with Order on Counseling Records Production and set the matter for hearing from the witnesses with personal information about the records, determine what records exist, where they are, and compel immediate production of all such extant records, and compel the continuing production of such records directly to the Defendant’s counsel as they are generated, and such other relief as the Court finds just, fair and equitable.

Respectfully submitted,

By:

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ORDER SETTING HEARING

On review of the motion herein, the Court finds that evidentiary hearing should be conducted and that witnesses attend, and that hearing is set for the _____ day of _____, at _____:_____0 ____M. at the Lamar County Courthouse.

ENTERED this _____ day of _____, 2013.

JUDGE OF THE DISTRICT COURT

CERTIFICATE OF SERVICE

The undersigned certifies that on January 31, 2013 a true and exact copy of the foregoing was delivered to the office of the Lamar County District Attorney.

G. Donald Haslam, Jr.