

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 07-cv-02053-PAB-MEH

PHILLIP CUTTING, JR., as next friend and parent of minor Phillip Cutting, III,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

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**ORDER ON PLAINTIFF'S MOTION FOR PROTECTIVE ORDER**

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Plaintiff filed a Motion for Protective Order [docket #201] concerning Defendant's subpoena in Maine served on the mother of Phillip Cutting, Jr., Nevena Cutting, requesting a blood sample. Around the same time, Plaintiff filed a motion in the District of Maine to quash the subpoena. This Court held a hearing on the Motion for Protective Order and expressed the strong belief that the District of Maine should, in the first instance, determine the matter of a subpoena issued in Maine. *E.g., In re Sealed Case*, 141 F.3d 337, 341 (D.C. Cir.1998) (only the issuing court has the power to act on its subpoenas); *In re Digital Equipment Corp.*, 949 F.2d 228 (8<sup>th</sup> Cir. 1991) (court in district where underlying action was pending did not have jurisdiction to rule on objections to deposition subpoenas obtained in another district). Therefore, the Court denied the Motion for Protective Order without prejudice, deferring to the District of Maine. However, Plaintiff has informed this Court that the District of Maine has deferred to this Court. Plaintiff and Defendant are entitled to a decision on this issue.

The Court considers Plaintiff's Motion for Protective Order as having been renewed by their Notice dated May 11, 2009. Prior to the Court's Order denying the Motion for Protective Order as

premature, that Motion was fully briefed. The Court has considered the arguments contained in those briefs. The Court believes the conclusion reached in its prior opinion, that the blood testing of Nevena Cutting as sought by Defendant may not be compelled either by Rule 35 or the inherent authority of the Court, applies equally to a Rule 45 subpoena. (Docket #145 at 2-3.) For the reasons stated in the Court's previous Order, the Court grants the Motion for Protective Order preventing the taking of a blood sample from Nevena Cutting. (*Id.*)

Accordingly, it is hereby ORDERED that Plaintiff's Motion for Protective Order [filed March 23, 2009; docket #201 and renewed May 11, 2009; docket #223] is **granted**.

Dated at Denver, Colorado, this 11th day of May, 2009.

BY THE COURT:

s/ Michael E. Hegarty  
Michael E. Hegarty  
United States Magistrate Judge