

Legal Letters by Andrew Agatston Legal List 2.3.12

A CAC's Trusty "Eight-Iron" to Respond to Records Requests

Pareja v. State

Georgia Court of Appeals

295 Ga. App. 871

(Decided February 10, 2010)

Background: We have written about this very important Georgia case before. It involved a defendant accused of molesting the 5-year-old daughter of his and his wife's friend.

At trial, a psychologist in private practice testified about the disclosures the girl made during the course of counseling. The psychologist, a mandated reporter, reported her suspicions of child sexual abuse to child protective services, called the Department of Family and Children Services in Georgia. The CPS case manager actually interviewed the Defendant, who told her that he wiped the child "to clean her" after she complained that she was "itchy."

But it is the CAC's involvement in the case, and the Court of Appeal's discussion of its records, that is critically important for CACs in Georgia, and very likely in your state.

As we start a new year, this case is worth revisiting to remember an important tool.

I know everyone on this list has all kinds of time to play golf. I'm not a golfer, but I want to offer an anecdote about a former world-class golfer named Curtis Strange.

I believe that Curtis Strange was No. 1 in the world at one time. He wasn't the best driver, he didn't hit the best irons, and he wasn't the best putter. But he was ridiculously consistent, and so he was always near the top of the finishers of most tournaments.

So a reporter interviewed him about his success, and the very fact that he wasn't the most talented in any one discipline needed for golfers to be successful.

His answer was his 8 iron.

His 8 iron, for him, was automatic. He could do anything he wanted to the golf ball with an 8 iron, and he could put the golf ball wherever he wanted to put it. His 8 iron was his "go-to" club for success. In fact, he would hit other shots so that they fell within his 8 iron range. Once in 8 iron range, he was home free.

The rule in *Pareja v. State* is a Georgia CAC's 8 iron. For you Legal Eagles in other states, the attorney of your choice will be able to research, and it is hoped, find the *Pareja v. State* equivalent in your state.

So while we've talked about *Pareja* before, I think for the first Legal Letter of 2012, we are going to go back to basics.

To understand the importance of *Pareja*, it is important to acknowledge that the main way your CAC will be initiated into a litigation as a third party, whether civil or criminal, is through requests and demands for the information housed at your Center. (Remember, a "third party" means someone or some entity who is not one of the Plaintiffs or Defendants in civil cases, or who is not a Defendant in a criminal case.)

Receiving a subpoena for documents in a criminal case has the tendency to worry the recipient of it, or at least cause some unease.

Get out your 8 iron!

In *Pareja*, the Defendant appealed his conviction, in part on the fact that his defense attorney failed to subpoena the child's case file from the CAC. The argument on appeal was that this was ineffective assistance of counsel, because his lawyer could have obtained information from it that could have assisted in the defense.

The Georgia Court of Appeals weighed in, and in doing so, set the ground rules for subpoenas that are served upon Georgia CACs in any litigation, whether civil or criminal.

The 8 iron was taken out of the golf bag right away, as the Court wrote:

“First, we note that the (Children’s Advocacy) Center’s file was confidential and not subject to direct subpoena by Pareja.”

Boom. That case, from 2010, changed the way I have responded for the CACs I do work for every single time. Generally speaking, I won’t even file a Motion to Quash the subpoena. Instead, I send a simple letter to the attorney, and explain to him or her (politely and professionally) that the subpoena is insufficient to obtain the CAC records directly from the CAC. A subpoena served directly from a lawyer to a CAC for a CAC’s confidential records is simply not the right tool in the lawyer’s tool bag to get the records.

Then I cite the language from the Court of Appeals in Pareja:

“The proper procedure for obtaining access to such records in cases such as the one at bar is to petition the trial court to subpoena the records and conduct an in camera inspection as to whether the records are necessary for determination of an issue before the court and are otherwise admissible under the rules of evidence”

Formula: Lawyer who wants CAC confidential records requests the **Court** to issue an order or a subpoena to the CAC that instructs the CAC to send the confidential records directly to the **Court** for the Court’s inspection.

In almost two years of doing this since the Pareja case was issued, I have never received any push back from an attorney. In fact, to a “T,” the attorneys have not heard about Pareja, have not considered the confidential nature of CAC records, and seek some kind of guidance as to how to proceed forward to properly and legally obtain the records.

It is my 8 iron. Comfortable. Dependable.

But you know, even Curtis Strange must have hit a bad 8 iron shot, at least once or twice, don't you think?

Legal Eagle Rule No. 1. Don't get complacent. Know the rules of the road, which will be known once you obtain competent and qualified legal counsel of your choice.

Before I hit this Pareja 8 iron, I need to make sure that; in fact, the attorney is subpoenaing *confidential* information. If the information being subpoenaed is not confidential, then my letter has all the value of 2-cent stamp.

What makes the records *confidential* in Georgia, is that they relate to allegations of child sexual or physical abuse. That triggers the confidentiality rules of a particular Georgia statute (a/k/a law) that specifically states that such records are confidential. If that statute is not triggered by a subpoena request, than I can't object to the release of records on that ground.

As we move into 2012, I suggest that you and your CAC (or you and your organization if outside the CAC realm) take an inventory of the areas in which you and your organization are brought into the legal world. There are only so many creatures out there that will draw you in, and all of them (subpoenas, requests for production documents, authorizations, etc.) have rules and response mechanisms.

There should be no mystery as to how to respond, and as a new year begins, I urge your CAC to obtain counsel and her 8 iron to help you.

Best regards.

Andrew H. Agatston

Andrew H. Agatston, P.C.

145 Church Street, Suite 230

Marietta, Georgia 30060

(770) 795-7770

ahalaw@bellsouth.net

www.AgatstonLaw.com

Twitter: @AndrewAgatston