

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION**

**EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
AND LATASHA JACKSON**

PLAINTIFFS

VS.

CIVIL ACTION NO. 3:05CV465-WHB-JCS

PRODUCTIVITY IMPROVEMENT CENTER, INC.

DEFENDANT

ORDER

This cause is before the Court upon the Plaintiff's Motion for a Protective Order Respecting Rule 35 Examination [#68], filed June 21, 2006, the Defendant PIC's response, and PIC's Motion for Emergency Consideration of EEOC's Motion for a Protective Order and to Shorten EEOC's Reply Time [#76], filed June 23, 2006.

The Defendant PIC filed a motion to compel a Rule 35 psychiatric examination on May 22, 2006. The Plaintiffs did not file a response to the motion, or otherwise object to the relief requested, and the Court granted the motion as confessed on June 15, 2006. Subsequently, the Plaintiff filed the instant motion seeking to limit the area of inquiry that can be made by Dr. Mark Webb to the Plaintiff Jackson at the examination.

PIC contends that the Plaintiffs have waived any objections to the Rule 35 examination. The Plaintiffs have not filed a reply at this time, but the Rule 35 exam is scheduled for Thursday, June 29, 2006, and a ruling must be made in order that this case may proceed without further delay.

The Court finds that the Plaintiffs have waived any limitations regarding the Rule 35 psychiatric examination to be conducted by Dr. Webb. Any objection or request for a protective order should have been asserted in response to the Defendant's motion for a Rule 35 examination. Even had the waiver not occurred, the Court would be hesitant to limit Dr. Webb as to what information he considers necessary in formulating his medical opinion regarding Ms. Jackson's psychological condition and/or damages. It is likely that Dr. Webb will consider only prior incidences of sexual abuse and trauma as relevant to his medical report. He will certainly not interrogate Ms. Jackson for harassment or other malevolent purposes, and his actual examination will be conducted in private with her. The Court assumes that only his final medical report will be produced, and not a transcript of his interview with Ms. Jackson. Any history he acquires that is not relevant to Ms. Jackson's current psychological condition should not be reported. The Court also notes that this is not a deposition, nor will Ms. Jackson's statements necessarily be admissible at trial.

IT IS, THEREFORE, ORDERED that the Plaintiff's Motion for a Protective Order Respecting Rule 35 Examination [#68], filed June 21, 2006, is **denied**, and the Defendant PIC's Motion for Emergency Consideration of EEOC's Motion for a Protective Order and to Shorten EEOC's Reply Time [#76], filed June 23, 2006, is **granted**.

SO ORDERED, this the 28th day of June, 2006.

S/ James C. Sumner
UNITED STATES MAGISTRATE JUDGE