IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

PAULA CORBIN JONES Plaintiff, v. WILLIAM JEFFERSON CLINTON and DANNY FERGUSON, Defendants.	:	CIVIL ACTION NO. LR-C-94-290 Judge Susan Webber Wright **(UNDER SEAL)**

MEMORANDUM IN SUPPORT OF MOTION
FOR PROTECTIVE ORDER AND MOTION TO QUASH

Jane Doe 5, by counsel, pursuant to Rules 26(c) and 45(c) of the Federal Rules of Civil Procedure and Local Rule 7.2(a) of the United States District Court for the Eastern District of Arkansas, respectfully submits the following memorandum in support of her motion for a protective order and to quash a subpoena duces tecum and deposition subpoena.

I. INTRODUCTION.

In November of 1997, two private investigators retained by plaintiff in the above-captioned action approached Jane Doe 5 at her residence. After she declined to speak with the investigators she was served with a subpoena duces tecum and deposition subpoena in connection with this lawsuit. (Copy of Subpoena attached as Exhibit A).

Plaintiff Paula Jones seeks Jane Doe 5's testimony at a deposition scheduled for January 9, 1998, as well as the production of documents. After service of the subpoena, the undersigned counsel provided plaintiff's counsel with a sworn affidavit of Jane Doe 5 which clearly states that Jane Doe 5 has no information of any relevance whatsoever to this case. (A copy of the Affidavit is attached as Exhibit B).

Specifically, Jane Doe 5 met President Clinton approximately 20 years ago through family friends and has not seen or spoken to him in more than (15) years. Jane Doe 5 knows absolutely nothing about the allegations in Paula Jones's lawsuit against President Clinton; has never met Paula Jones; was not in attendance at the May 8, 1991 Governor's Quality Conference referenced in the Complaint; and does not have any knowledge regarding the incident alleged to have occurred at that Conference. In addition, Jane Doe 5 has never been an employee of the State of Arkansas or the federal government, has never discussed state or federal employment with Mr. Clinton, has never been offered a state or federal job or other benefits in exchange for having sexual relations with President Clinton, has never been denied a state or federal job or other benefits based on a refusal to engage in sexual relations with President Clinton, has never been at a meeting with President Clinton that was procured by an Arkansas State Trooper, and has no knowledge of any alleged pattern or practice of any such conduct by President Clinton with others. During President Clinton's 1992 Presidential Campaign there were unfounded rumors concerning Jane Doe 5 and stories that Mr. Clinton had made unwelcome sexual advances toward Jane Doe 5 in the 1970s. Newspaper and tabloid reporters hounded Jane Doe 5 with these allegations at that time seeking corroboration. Jane Doe 5 denied the

allegations because they are untrue. Therefore, Jane Doe 5 does not have any relevant information nor does she have information which could possibly lead to the discovery of admissible evidence.

Jane Doe 5 through her affidavit informed plaintiff's counsel of the above information. Thus, plaintiff's intention to proceed with this discovery appears to be intended to invade Jane Doe 5's right to privacy, cause her unwarranted attorney's fees and costs, disrupt her personal life and is harassing and unreasonable. For all of these reasons, the subpoena duces tecum and deposition subpoena should be quashed and a protective order entered.

II. ARGUMENT.

A. Discovery Obtained From Third Parties May Appropriately Be Limited By the Court.

The right to conduct discovery is not without proper limits. Epstein v. MCA, Inc., 54 F.3d 1422, 1423 (9th Cir. 1995); United States v. Markwood, 48 F.3d 969, 982 (6th Cir. 1995). A party may generally obtain discovery regarding any matter, not privileged, "which is relevant to the subject matter involved in the pending action." Fed. R. Civ. P 26(b)(1). A party may not use the discovery process, however, to engage in a fishing expedition or to harass and humiliate another party to the suit or third parties. Hofer v. Mack Trucks, Inc., 981 F.2d 377, 380 (8th Cir. 1992) (holding discovery rules "should not be misapplied to allow fishing expeditions"); Upsher-Smith Laboratories, Inc. v. Mylan Laboratories, Inc., 944 F. Supp. 1411, 1444 (D. Minn. 1996) (same).

Discovery is properly limited where the information sought has no bearing on the merits of a case. Epstein, 54 F.3d at 1423 (court erred in granting motion to compel

regarding discovery of information that would have no bearing on the merits); Jones v. Commander, Department of the Army, 147 F.R.D. 248, 251 (D. Kan. 1993) (alleged incidents of sexual conduct which are remote in time or too attenuated from plaintiff's situation are not relevant); see Longmire v. Alabama State University, 151 F.R.D. 414, 418 (M.D. Ala. 1992) (alleged sexual harassment at defendant's prior university employer was irrelevant); Mitchell v. Hutchings, 116 F.R.D. 481, 484 (D. Utah 1987) (holding that alleged sexual conduct that is remote in time or place to plaintiff's working environment is irrelevant).

Likewise, the initiation of a lawsuit does not grant the plaintiff the unfettered right to examine anyone they choose or seek documents on any subject. Some threshold showing of relevance must be made before a litigant will be permitted such latitude. See Hofer v. Mack Trucks, Inc., 981 F.2d at 380; Wacker v. Gehl Co., 157 F.R.D. 58, 59 (W.D. Mo. 1994) (entering protective order where party requesting discovery made no threshold showing of relevance). Discovery from a non-party witness requires an even "stronger showing of relevance than for simple party discovery." Biovita, Ltd. v. Biopure Corp., 138 F.R.D. 13 (D. Mass. 1991) (to obtain discovery from non-party, need for discovery must be shown); Stamy v. Packer, 138 F.R.D. 412, 419 (D. N.J. 1990) (limiting discovery from non-parties due to "highly private matters involved"). No such showing can be made in this instance.

B. The Court Should Enter A Protective Order And Quash The Subpoena Served Upon Jane Doe 5.

As set forth above, Jane Doe 5 has absolutely no information whatsoever that even arguably bears on the allegations made by Ms. Jones in her lawsuit against the President.

Jane Doe 5 has not even seen or spoken to Mr. Clinton since approximately 1982 -- 15 years ago -- knows nothing of the sexual harassment allegations appearing in the Complaint, was never a state or federal employee, never discussed with Mr. Clinton, and was never offered or denied state of federal employment or other benefits, and has no information regarding unwelcome sexual advances made by Mr. Clinton. Accordingly, there is no conceivable relevance to the discovery sought from Jane Doe 5 by plaintiff in this proceeding.

Jane Doe 5 is not a party to this lawsuit. Where, as here, there is no nexus between the information sought and the allegations being advanced, the Court is obligated to limit the scope of discovery to protect the rights of third parties. See Herbert v. Lando, 441 U.S. 153, 177 (1979) (trial courts are to apply "firmly" the relevancy requirement of Rule 26, and to restrict discovery where "justice requires (protection)... from annoyance, embarrassment, oppression or undue burden or expense"; see also Longmire v. Alabama State University, 151 F.R.D. 414, 418 (M.D. Ala. 1995) (in a sexual harassment trial it is appropriate under Rule 26 to "place limits on inquiries into sensitive areas such as sexual activity in order to control the case.") Accordingly, this Court should protect Jane Doe 5 from plaintiff's inappropriate use of discovery and quash the subpoena duces tecum and the deposition subpoena.

III. CONCLUSION.

For all the above reasons, we respectfully request that the Court quash the deposition subpoena and subpoena duces tecum served on Jane Doe 5 and enter an

appropriate protective order.

Respectfully submitted,

By:_____

Bill Walters
AR Bar No 71075
WALTERS LAW FIRM, P.A.
P.O. BOX 280
GREENWOOD, AR 72936
PHONE # (501)996-2122

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 1998, a true and correct copy of the foregoing Memorandum in Support of Motion for Protective Order and Motion to Quash was served via facsimile and first class United States Mail postage prepaid to:

Bill W. Bristow, Esq.
216 East Washington
Jonesboro, Arkansas 72401

Donovan Campbell, Jr., Esq.
Rader, Campbell, Fisher & Pyke
Stemmons Place, Suite 1080
Dallas, Texas 75207

Kathlyn Graves, Esq.
Wright, Lindsey & Jennings
200 West Capitol Avenue, Suite 2200
Little Rock, Arkansas 72201-3699

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Bill Walters

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