

FRANKLIN, ss  
COMMONWEALTH OF MASSACHUSETTS  
SUPERIOR COURT  
CIV. NO. 05-017

CAROL RUSSELL  
Plaintiff

v.

E. OSTERMAN GAS SERVICE, INC, et al.  
Defendants

**ORDER ON DEFENDANT OSTERMAN'S  
MOTION TO COMPEL PSYCHIATRIC EXAMINATION**

No one disputes that the defendant is entitled to have the plaintiff undergo a psychiatric examination conducted by its expert Martin J. Kelly, M.D.<sup>1</sup> The dispute concerns the scope, time and place of the examination.

After review of the documents submitted by the parties, it is ORDERED:

- (1) the plaintiff will submit to a one-day psychiatric examination by Dr. Kelly;
- (2) the examination will be scheduled at a mutually convenient date on or before August 25, 2006 at Dr. Kelly's office in Chestnut Hill, Massachusetts;
- (3) the examination will take place during the hours of 10:00 a.m. to 3:00 p.m.;
- (4) unless directed by Dr. Kelly, there will be no other person present during the examination, and the defendant is not required to record (either audio or video-tape) the examination<sup>2</sup>;

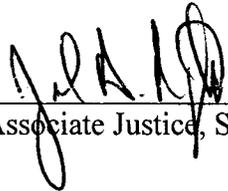
<sup>1</sup>This action is based on a propane gas explosion that allegedly caused significant physical injuries, including severe burn injuries to the plaintiff. The plaintiff is also alleging emotional distress, including post-traumatic stress, anxiety and depression.

<sup>2</sup>“Videotaping a psychiatric exam arguably provides a chilling effect on the examinee, or may otherwise cause the plaintiff to behave like he is giving a performance rather than undergoing an examination.” *Commonwealth v. Stockwell*, 426 Mass. 17, 20 (1997). See 90 Mass. L Rev. 2, 7-8 (2006).

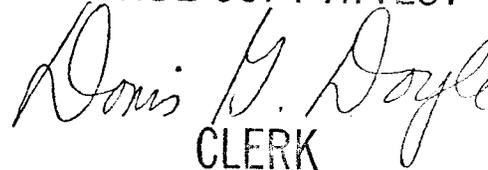
- (5) the procedures for the examination shall be governed by the professional judgment of Dr. Kelly and may include any psychological or related testing as deemed appropriate by Dr. Kelly;
- (6) the defendant will reimburse the plaintiff for all reasonable travel expenses and any lost wages for attending the examination;
- (7) the examination shall be subject to all the requirements of Mass. R. Civ. P. 35.

*SO ORDERED*

7/7/06  
Date

  
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Associate Justice, Superior Court

Entered: July 10, 2006

A TRUE COPY ATTEST  
  
CLERK