

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
CHARLOTTESVILLE DIVISION

KARL MANSOOR, ) CIVIL ACTION NO. 3:00CV00047  
Plaintiff, )  
v. ) MEMORANDUM OPINION  
COUNTY OF ALBEMARLE, *et al.*, )  
Defendants. ) JUDGE JAMES H. MICHAEL, JR.

Before the court are the plaintiff's objections to the Magistrate Judge's pretrial discovery order of March 20, 2001, which denied the plaintiff's motion to reconsider the denial of his motion to quash and motion for a protective order. The court reviews the Magistrate Judge's non-dispositive pretrial orders under the deferential "clearly erroneous or contrary to law" standard of review. See 28 U.S.C.A. § 636(b)(1)(A) (West 1993 & Supp. 2000); Fed. R. Civ. P. 72(a). The plaintiff raises five objections, all of which are meritless and accordingly do not warrant extensive discussion.

First, the plaintiff objects that the Magistrate Judge erred by finding Dr. Hocking's medical records relevant for discovery purposes. Discovery is relevant if it "appears reasonably calculated to lead to the discovery of admissible evidence." Fed. R. Civ. P. 26(b)(1). The complaint alleges the plaintiff sought counseling by Dr. Hocking due to stress about the manner in which the Department was handling certain matters. What the plaintiff told Dr. Hocking could lead to the discovery of admissible evidence, *inter alia*, concerning the Department's handling of those matters; how the plaintiff reacted to such handling; what information third parties might have about the plaintiff's reactions; and whether or not the

plaintiff had “impaired judgment and related behaviors,” which the Department claims to have justified the plaintiff’s suspension. Therefore, Dr. Hocking’s records are relevant.

Second, the plaintiff objects that the Magistrate Judge erred by not addressing the state law privilege protecting communications between a psychologist and his patient. Federal Rule of Evidence 501 addresses when privileges are governed by state or federal law. Pursuant to Rule 501, federal privilege law—as established by “the principles of the common law as they may be interpreted by the courts of the United States in the light of reason and experience”—applies in civil cases based upon a federal cause of action. *Hawkins v. Stables*, 148 F.3d 379, 382 (4th Cir. 1998) (quoting Fed. R. Evid. 501). State privilege law applies in a diversity action. *See Ashcraft v. Conoco, Inc.*, 218 F.3d 282, 286 n. 5 (4th Cir. 2000). The instant case was removed based on federal question jurisdiction, but also contains pendent state law claims. In such a circumstance, courts apply the federal law of privilege. *See Hancock v. Hobbs*, 967 F.2d 462, 466 (11th Cir. 1992) (finding that, in context of discoverability of evidence, “[c]ourts have uniformly held that . . . the federal law of privilege provides the rule of decision in a civil proceeding . . . premised upon a federal question, even if the witness-testimony is relevant to a pendent state law count which may be controlled by a contrary state law of privilege”); *see also generally* S. Rep. No. 1277, 93rd Cong., 2d Sess., *reprinted in* 1974 U.S.C.C.A.N. 7051, 7059 n.16 (accompanying Rule 501) (“It is . . . intended that the Federal law of privileges should be applied with respect to pendent State law claims when they arise in a Federal question case.”). Consequently, the

federal law of privilege applies in this case.\* The Magistrate Judge therefore did not err by not addressing the state law privilege.

The plaintiff's third objection essentially restates that Dr. Hocking's reports are not relevant. This objection shall be overruled for the same reasons as the first. Fourth, the plaintiff objects that the Magistrate Judge erred by not addressing the plaintiff's request to redact references to third parties from Dr. Hocking's reports. Evidence is discoverable if it is relevant and not privileged. See Fed. R. Civ. P. 26(b)(1). References to third parties are relevant, *see supra*, and the plaintiff cited no privilege assertable by the third parties that prevents the discovery of such references. The objection accordingly shall be overruled.

Fifth, the plaintiff objects that the Magistrate Judge erred by not addressing the plaintiff's request to redact attorney-client communications. "[T]he burden of establishing the applicability of the attorney-client privilege rests on the proponent of the privilege." *Zeus Enters., Inc. v. Alphin Aircraft, Inc.*, 190 F.3d 238, 244 (4th Cir. 1999). The plaintiff has not submitted a privilege log or otherwise identified specific statements protected by the privilege. The plaintiff having failed to meet his burden, this objection shall be overruled.

ENTERED: \_\_\_\_\_  
Senior United States District Judge

\_\_\_\_\_  
Date

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\* This conclusion is supported by the existence of a competing federal psychologist-patient privilege as established by *Jaffee v. Redmond*, 518 U.S. 1 (1996). *Cf. United States v. Cartledge*, 928 F.2d 93, 95-96 (4th Cir. 1991) (federal interest in enforcing criminal statute outweighs state legislative privilege).

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The plaintiff filed timely objections to the Magistrate Judge's order of March 20, 2001. Because the Magistrate Judge's order is neither clearly erroneous nor contrary to law, and for the reasons stated in the accompanying Memorandum Opinion, it is accordingly this day

ADJUDGED, ORDERED, AND DECREED

that the plaintiff's objections, filed March 22, 2001, shall be, and they hereby are, OVERRULED.

The Clerk of the Court hereby is directed to send a certified copy of this Order and the accompanying Memorandum Opinion to all counsel of record and to Magistrate Judge Crigler.

ENTERED: \_\_\_\_\_  
Senior United States District Judge

\_\_\_\_\_  
Date