

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

NAM DANG, by and through his Power of
Attorney, VINA DANG,

Plaintiff,

vs.

CASE NO.: 6:14-cv-37-Orl-31TBS

DONALD F. ESLINGER, in his official capacity
as the SHERIFF OF SEMINOLE COUNTY;
OLUGBENGA OGUNSANWO, M.D.;
SANDRA WILT, LPN; BRENDA PRESTON-
MAYLE, RN; ALECIA SCOTT, LPN;
SHARYLE ROBERTS, LPN; and MARTHA
DENSMORE, RN,

Defendants.

**DEFENDANT SHERIFF'S MOTION FOR PROTECTIVE ORDER
WITH RESPECT TO PLAINTIFF'S RULE 34 REQUEST TO ENTER
JAIL AND INSPECT, PHOTOGRAPH AND VIDEO-RECORD**

COMES NOW Defendant Sheriff Donald F. Eslinger, by and through undersigned counsel, and pursuant to Federal Rule of Civil Procedure 26(c) requests this Honorable Court to enter a protective order with respect to Plaintiff's Rule 34 request to enter the Seminole County Jail and to photograph, video-record and inspect the medical and mental health unit where Mr. Dang was housed, and to inspect the [video] surveillance equipment used to observe inmates at the jail.¹ The grounds for the motion are as follows:

1. Defendant Sheriff seeks protective relief because the request to inspect, photograph and video-record impacts legitimate security and operational issues at the jail.
2. Maintaining internal security is of the utmost concern in a jail or prison setting.

¹ A copy of said request and of Defendant Sheriff's response to same are attached hereto.

3. Aside from generalized concern about jail security, the three areas of the jail that the request involves – medical unit, mental health housing unit (“D-Pod”), and inmate/jail video surveillance – each present an area of heightened concern with regard to jail security and inmate privacy because of the nature of the inmates and the jail operations that are conducted in those units.

4. The requested intrusion into the medical unit and the mental health unit by lawyers, photographers, videographers or other agents of plaintiff’s counsel for purposes of inspection and photography will interfere with the daily work of the jail medical unit and the mental health housing unit, and the requested intrusion also implicates issues of inmate privacy that are entitled to protection under various health confidentiality laws, as well as in a general sense.

5. To temporarily vacate inmates from the medical housing unit and the mental health unit for purposes of the requested inspection would be a significant undertaking for jail staff in order to maintain jail security and inmate privacy during the requested inspection.

6. The operation and placement of the jail video surveillance system is sensitive security information, and this includes placement and range of video cameras, and furthermore is protected by Florida law.

WHEREFORE, Defendant Sheriff Eslinger, by and through undersigned counsel, respectfully requests this Honorable Court to enter an order pursuant to Federal Rule of Civil Procedure 26(c), to protect Defendant Sheriff from the requested photography, video-recording, and inspection of (a) the medical unit where Mr. Dang was housed; (b) of the mental health unit where Mr. Dang was housed (“D-Pod”); and (c) of the [video] surveillance equipment used to observe inmates housed in D-Pod and the medical unit at the Seminole County Jail. Specifically, Defendant Sheriff requests the Court to examine the Rule 34 request at issue, and deny the

requested inspection, photography and video-recording; or, in the alternative, to order a discovery method other than the one selected by Plaintiff; or any such other relief authorized by Rule 26(c) that would preserve the legitimate security and operational concerns of Defendant Sheriff, including an order with regard to confidentiality and limiting dissemination of any such information obtained.

MEMORANDUM OF LAW

With respect to inspection of the jail [video] surveillance system (and beyond the self-evident concern for security and confidentiality regarding jail surveillance systems), Florida statutory law shields “information” relating to security systems owned by a political subdivision of the state, including records, information, photographs, audio and visual presentations, and schematic diagrams relating directly to or revealing such systems or information. Such “information” is exempt from the state public records law, and “other laws and rules requiring public access or disclosure.”² The legislative history acknowledges that security plans are a vital part of public safety.³ It is respectfully suggested that this sound policy of protection from disclosure should be given great weight by this Court in entertaining the requested inspection of the jail surveillance system. Furthermore, note that Plaintiff established in a Rule 30(b)(6) deposition of an agency representative that no video of Mr. Dang exists, so there is no cause for any such inspection of the jail video surveillance system.⁴

As to the request to inspect, photograph and video-record the mental health unit (“D-Pod”) and the medical unit where Mr. Dang was housed, Defendant Sheriff has a protectable

² Section 281.301 and Section 119.071(3), Florida Statutes.

³ Fla. Att’y Gen. Op. 2004-28 (2004), 2004 WL 1398434 at *2.

⁴ Deposition of Lt. William Rex at pg. 182: Q. In preparation for the deposition today, have you been asked to go back and review to see if there is any video that depicts Nam Dang while he was in the facility in January and February 2012? A. Yes. Q. And did you do that? A. Yes. Q. And did you find any? A. No.

interest because of the inherent and obvious issues of jail security and operation that such inspection and documentation as requested implicate, as well as issues of inmate privacy and health confidentiality.

However, if the Court decides, for example, that plaintiff is entitled to some sort of still photography of the units where Mr. Dang was housed (it is hard to see why video-recording of the jail is necessary to obtain relevant evidence), then photographs could be taken by jail or Sheriff's staff, and provided under a confidentiality/non-disclosure order.⁵

Otherwise, Defendant Sheriff relies on the general principles underlying Rule 26(c) protective orders, *see e.g.* § 2036 Grounds for Protective Orders, Wright and Miller, 8A Fed. Prac. & Proc. Civ. § 2036 (3d ed.):

It is impossible to set out in a rule all of the circumstances that may require limitations on discovery or the kinds of limitations that may be needed. The rules, instead, permit the broadest scope of discovery and leave it to the enlightened discretion of the district court to decide what restrictions may be necessary in a particular case.

Defendant Sheriff respectfully suggests that the concerns regarding security and jail operational integrity as voiced by this motion for protective order are concrete and genuine, and are entitled to complete or substantial protection from the pending Rule 34 discovery request. Defendant Sheriff requests the Court to enter an Order, as authorized by Rule 26(c) that the discovery not be had; or placing extensive terms and conditions, and specification of the method of the requested discovery; limiting the scope of the requested discovery, including limitation as

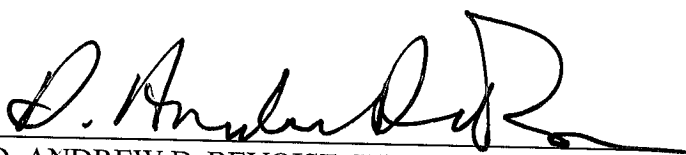
⁵ This was the solution crafted in Napier v. County of Washtenaw, 2013 WL 1395870 *11 (E.D. Mich. 2013), a § 1983 jail excessive force case. Per Plaintiff counsel request to photograph a "holding cell", photographs were taken by the Jail agent, apparently in the presence of plaintiff's counsel. Defendant Jail refused to produce them to plaintiff's counsel without a protective order. The district court agreed with the Defendant Jail's concern with public dissemination of the photographs and the impact of that on maintaining institutional security; and the court further agreed that it served no purpose or public service to provide photographs of the inside of the jail to the public, and that maintaining internal security is of the utmost concern in a jail or prison setting.

to persons present at same; and to provide extensive confidentiality protection as to any ordered and provided discovery. Furthermore, this motion presents an issue that might benefit from argument and presentation at a hearing.

Undersigned defense counsel advises the Court that he and Plaintiff's counsel have conferred about the Rule 34 request and the objections to same, and have discussed resolution of this situation; and defense counsel acknowledges that Plaintiff's counsel has indicated potential agreement to a confidentiality agreement/order; nevertheless, because of the great sensitivity and concern by Defendant Sheriff and the jail as to the requested discovery, this Motion is necessary to protect the interests of the Defendant Sheriff and the jail; and thus the intervention and supervision of the Court is requested.

Certificate of Rule 3.01(g) Conference

Undersigned defense counsel certifies that he has conferred with plaintiff's counsel Melissa H. Powers, Esq. regarding the requested discovery and the issues presented by this motion, and that counsel do not agree on the resolution of the motion.



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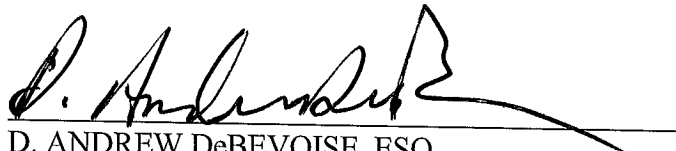
Facsimile: 407/673-5059

Attorneys for Defendant Sheriff Eslinger,

Sandra Wilt, LPN and Brenda Preston-Mayle, RN

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of December, 2014, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of this electronic filing to the following: **Steven R. Maher, Esquire** (*smaher@maherlawfirm.com*), **Daniel W. Cotter, Esquire** (*dcotter@cotterlaw.com*), **Melissa H. Powers, Esquire** (*mhpowers@maherlawfirm.com*), The Maher Law Firm, P.A., 631 West Morse Boulevard, Suite 200, Winter Park, Florida 32789; **Matthew P. Farmer, Esquire** (*mattfarmer1@aol.com*), Farmer & Fitzgerald, P.A., 102 W. Whiting Street, Suite 501, Tampa, Florida 33602; **John M. Green, Jr., Esquire** (*jmgjr@mac.com*) and **Linda L. Winchenbach, Esquire** (*lwinchenbach@me.com*), John M. Greene, Jr., P.A., 125 N.E. 1st Avenue, Suite 2, Ocala, Florida 34770; and **Bruce R. Bogan, Esquire** (*bbogan@hilyardlawfirm.com*) and **Melissa J. Sydow, Esquire** (*msydow@hilyardlawfirm.com*), Hilyard, Bogan & Palmer, P.A., 105 E. Robinson Street, Suite 201, Orlando, Florida 32801.



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ALECIA SCOTT, LPN; CHARILY ROBERTS, LPN,
and MARTHA DINSMORE, RN,

Defendants.

**NOTICE OF ENTRY UPON LAND FOR INSPECTION
AND OTHER PURPOSES**

COMES NOW the Plaintiffs. NAM DANG, by and through his Power of Attorney, VINA DANG, and their undersigned counsel and pursuant to Rule 34(a)(2) of the Federal Rules of Civil Procedure, hereby gives notice that on Tuesday, December 2, 2014, at approximately 10:00 A.M., counsel for the Plaintiff, a photographer and videographer associated with counsel for the Plaintiff will enter upon the premises of the John E. Polk Correctional Facility for the purposes of inspecting, photographing, and videotaping D-Pod and the Medical Unit where Mr. Dang was housed in January and February, 2012 as well as inspecting the surveillance equipment used to watch or otherwise observe detainees housed in D-Pod and the Medical Unit at John E. Polk Correctional Facility.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of November, 2014, I electronically served the foregoing to the following: Trial Counsel for Plaintiff, Matthew P. Farmer, Esquire, Farmer & Fitzgerald, P.A., 102 West Whiting Street, Suite 501, Tampa, FL 33602; Counsel for

Received
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DeBovoise & Poulton

Defendants, Sheriff Donald F. Eslinger, Wilt and Preston-Mayle, D. Andrew DeBevoise, Esquire, DeBevoise & Poulton, P.A., 1035 South Semoran Boulevard, Suite 1010, Winter Park, FL 32792; Counsel for Defendants Scott, Roberts and Densmore, John M. Green, Jr., Esquire and Linda L. Winchenbach, Esquire, John M. Green, P.A., 125 N.E. First Avenue, Suite 2, Ocala, FL 34470; and Counsel for Defendant, Olugbenga Ogunsanwo, M.D., Bruce R. Bogan, Esq. and Melissa J. Sydown, Esq., Hilyard, Bogan & Palmer, P.A., P.O. Box 4973, Orlando, FL 32802-4973.

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/s/ Melissa H. Powers

MELISSA H. POWERS
Florida Bar No.: 132284

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SHARYLE ROBERTS, LPN; and MARTHA
DENSMORE, RN,

Defendants.

**DEFENDANT SHERIFF'S RESPONSE TO PLAINTIFF'S RULE 34 REQUEST TO
PERMIT ENTRY INTO JAIL TO INSPECT, PHOTOGRAPH AND VIDEO-RECORD**

COMES NOW the Defendant, DONALD F. ESLINGER, in his official capacity as Sheriff of Seminole County, Florida, by and through undersigned counsel, and as required by Federal Rule of Civil Procedure 34(b)(2)(B) responds as follows to the "Notice of Entry Upon Land For Inspection and Other Purposes" served by Plaintiff on November 11th, 2014:

1. First, Defendant Sheriff makes a procedural objection: the Rule 34 request is procedurally defective in that the Request does not give Defendant Sheriff thirty days in which to respond to the Request as permitted by Rule 34 (b)(2)(A). The inspection and photography is proposed to occur on December 2nd, which is 13 days before the allowed 30 days to even respond to the Request runs (with three days for e-service added).

2. Second, Rule 34 does not contemplate a procedure of simply providing "notice" of showing up at the premises for photography/videography/inspection on a particular date and

time. Rather the Rule speaks in terms of a "Request", proposing a reasonable time, place and manner for the inspection, with reasonable particularity; and then the party to whom the request is directed must respond in writing, either stating that the inspection will be permitted, or state an objection to the request.

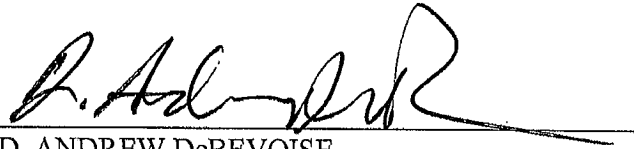
3. Third, in terms of substantive objections: Defendant Sheriff objects on the basis that the requested photography and videorecording of D-Pod and the Medical Unit, and the requested inspection of the video surveillance/monitoring system used to observe inmates in D-Pod and the Medical Unit, implicate significant jail security and operational procedures and matters that are confidential and that should be protected from discovery for the security, safety of inmates and correctional staff at the jail. Additionally, the proposed inspection may implicate inmate privacy issues and concerns. There may be other specific grounds and reasons for objection that come to light, and this response will be amended accordingly as necessary.

4. These objections are made to protect the record under the circumstances. Counsel for Defendant Sheriff will continue to work with Plaintiff's counsel in an effort to resolve the concerns and interests on both sides of the case. Also, and for the record, a motion for protective order may be necessary in order implementing one of the forms of relief permitted by Rule 26(c)(1). Local Rule 3.01(g) requires a good faith conference in an effort to resolve the issues prior to filing any such motion.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of November, 2014, I served the foregoing via electronic mail to the following: **Steven R. Maher, Esquire** (*smaher@maherlawfirm.com*), **Daniel W. Cotter, Esquire** (*dcotter@cotterlaw.com*), **Melissa H. Powers, Esquire**

(*mhpowers@maherlawfirm.com*), The Maher Law Firm, P.A., 631 West Morse Boulevard, Suite 200, Winter Park, Florida 32789; **Matthew P. Farmer, Esquire** (*mattfarmer1@aol.com*), Farmer & Fitzgerald, P.A., 102 W. Whiting Street, Suite 501, Tampa, Florida 33602; **John M. Green, Jr., Esquire** (*jmgir@mac.com*) and **Linda L. Winchenbach, Esquire** (*lwinchenbach@me.com*), John M. Greene, Jr., P.A., 125 N.E. 1st Avenue, Suite 2, Ocala, Florida 34770; and **Bruce R. Bogan, Esquire** (*bbogan@hilyardlawfirm.com*) and **Melissa J. Sydow, Esquire** (*msydow@hilyardlawfirm.com*), Hilyard, Bogan & Palmer, P.A., 105 E. Robinson Street, Suite 201, Orlando, Florida 32801.



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