

Attorney claims Thompson's privacy violated

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By Clint Confehr

Tennessee has violated the privacy rights of a death row inmate, according to his lawyers, who've asked the state Supreme Court to issue a protective order.

In a separate but related statement to the court, Nashville-based attorney Michael Passino has provided more medical information to substantiate claims that Gregory Thompson isn't fit to be executed so he shouldn't be killed.

Thompson, 43, is the death row inmate scheduled for execution Feb. 7 for the stabbing death of Brenda Blanton Lane nearly 21 years ago. Lane was a Shelbyville resident who was abducted by Thompson and his girlfriend, who wanted her car so they could go to Georgia.

Lane was an employee of the United Methodist Publishing House in Nashville, a former reporter for the *Shelbyville Times-Gazette*, and the niece of then-police chief Jesse Blanton. She was abducted in a parking lot across from the police station and killed in Coffee County.

In his request for a protective order, Passino says Thompson's medical records, recordings of his telephone calls, a visitor's log and other documents have been obtained by Jennifer L. Smith, senior counsel for the Tennessee Attorney General's office team dealing with death penalty cases.

Some of the records are public documents, Passino notes. However, he claims that the U.S. Health Insurance Portability and Accountability Act of 1996 protects Thompson.

"Thompson has a right to privacy in his medical and mental health records," the lawyer wrote to the Supreme Court. "The mere filing of a lawsuit or becoming embroiled in a legal action where mental status is at issue does not constitute a waiver of HIPAA rights or privacy protections."

Passino complains about the way Smith obtained Thompson's records, alleging it's been done without court approval.

However, Passino's request to the state Supreme Court also includes mention of a subpoena issued by Coffee County Circuit Court.

Passino also says that when he sought to obtain copies of the recordings of Thompson's phone calls, he was denied and was told that they were confidential. Furthermore, he claims, the state Attorney General's office hasn't maintained a history of exchanging information discovered during the course of litigation.

Passino learned what Smith had been doing when he received Thompson's prison records. He found two memos by Smith from early 2004.

"There was also a blind subpoena authored by District Attorney General Mickey Layne and issued by the Coffee County Circuit Court," Passino wrote.

Apparently, the Coffee County district attorney got a subpoena for Smith and it "purports to compel the

Tennessee Department of Corrections ... to release ... Thompson's medical information to the ... attorney general," Passino said.

The subpoena was sent by fax to Debra Inglis, an assistant attorney general assigned to the TDOC, Passino said. As the TDOC attorney, Inglis apparently forwarded the subpoena for use in obtaining records for Smith.

In a January 2004 memo, Smith apparently directed a prison warden to provide visitor logs and recordings of Thompson's phone calls, the inmate's lawyer states.

Logs are public records, but Passino complains that Smith is using a section of the Open Records Act to keep telephone recordings secret.

Exceptions to the open records act include aspects of ongoing investigations. In Smith's March memo to the warden, Passino says, she directed the warden to provide weekly copies of records and sought Thompson's discipline, education, medical and psychological/psychiatric records.

No state official notified Thompson's attorneys about the subpoena or took any steps to protect Thompson's privacy rights, Passino said.

"There is no indication that the subpoena procured by ... Layne on behalf of ... Smith was reviewed by any judicial authority," Passino states.

"It appears that a person, probably not ... Layne, wrote 'DA's office Mickey Layne [with a phone number written]' on the subpoena, [then] had the Coffee County Circuit Court Clerk sign the subpoena and then faxed a copy of this subpoena to the Criminal Justice Division of the Attorney General's Office in Nashville, which then faxed it to the TDOC."

Sending the subpoena to the TDOC lawyer -- an employee of the attorney general -- instead of to Riverbend Maximum Security Institution, where Thompson is held, resulted in a failure by TDOC to be sure confidential records were not disclosed, Passino states. "This conduct raises the specter of the government's unchecked and unlimited ability to obtain confidential information, not just about Mr. Thompson, but about any Tennessee citizen," the defense attorney said in documents filed Nov. 18.

Smith circumvented established procedure, Passino said, to get medical records on Thompson.

Meanwhile, Passino says, Smith has been arguing that information such as what she's compiled is irrelevant to the contention that Thompson is not competent to be executed.

"An order of this court is required to curb this abusive use of power and to protect Mr. Thompson's privacy rights," Passino wrote to the Supreme Court.

Thompson's lawyer wants the court to require the attorney general to lawfully seek information which would be subject to court review and to require the attorney general to share what that office found about Thompson.

All proceedings should be postponed until Thompson's lawyers have had time to review the records, Passino said.

As for additional medical information provided by Passino regarding Thompson's mental state, there are

