Obtaining Psychiatric / Psychological Records of Alleged Sex Offense Victims

Statements made by the alleged victim during counseling or treatment following a sexual abuse disclosure can be discoverable under certain circumstances.

Under Georgia law, the procedure for obtaining statements made by an alleged victim during counseling begins with the filing of a pretrial motion requesting that the court conduct a hearing to determine the necessity of disclosing such statements to the defense. In the motion, the defense should request (1) the names of any individuals who provided psychiatric or psychological counseling or treatment to the alleged victim and (2) the issuance of subpoenas requiring these individuals to personally appear at the pre-trial hearing so the court can consider both their findings regarding the alleged victim and any statements made by the victim during counseling regarding the issues at trial. In the alternative, the defense should request that the court conduct an *in camera* inspection of the therapist's testimony or the alleged victim's counseling records.

In light of the privileged nature of communications between a patient and those providing psychiatric or psychological counseling, the Georgia Supreme Court has set a high bar for a defendant to meet in order to gain access to these records. In *Bobo v. State*, 256 Ga. 357, 349 S.E. 2d 690 (1986), the court held "the Defendant must make a showing of necessity, that is, that the evidence in question is *critical to his defense* and that *substantially similar evidence is otherwise unavailable* to him." The court also stated that the privilege established by O.C.G.A. § 24-9-21(5) prohibits the defendant from conducting a "fishing expedition" to discover information regarding the victim's statements.

The defense will only be granted access to this information if it can establish that the communications are necessary to (1) impeach the victim's credibility; (2) rebut the allegations of abuse; or (3) are otherwise necessary for the determination of an issue before the court or are otherwise admissible under the rules of evidence. *See* O.C.G.A. § 49-5-41 (a)(2); *Ray v. Department of Human Resources*, 155 Ga. App. 81, 270 S.E.2d 303 (1980).

In the event that the court rules that there are no such statements, in order to be able to challenge this ruling on appeal, the defense attorney must request that the records be filed under seal with the court so that they will later be available for review by the appellate court.