

DISTRICT COURT, BOULDER COUNTY, COLORADO Court Address: 1777 Sixth Street P.O. Box 4249, Boulder, CO, 80306-4249	DATE FILED: August 5, 2014 4:19 PM
Plaintiff(s) FLEET RUSSELL WHITE, JR et al, v. Defendant(s) STANLEY L GARNETT	
<p style="text-align: center;">△ COURT USE ONLY △</p>	

Order: Plaintiffs Application for Order to Show Cause DENIED and Complaint DISMISSED with Prejudice

Plaintiffs, filing pro se, seek access to records of the grand jury proceeding from 1998-99 in the JonBenet Ramsey death investigation ("Ramsey Grand Jury") pursuant to the Colorado Criminal Justice Records Act ("CCJRA") Section 24-72-310 et. seq. Complaint Introduction. The Defendant has objected to Plaintiffs' request. For the reasons set forth herein, Plaintiffs' Application for Order to Show Cause is DENIED and the Complaint is DISMISSED with prejudice.

This is not Plaintiffs' first request for such records. The instant case involves the same Ramsey Grand Jury documents that were the subject of previous litigation before this court. In 2013, Charlie Brennan and others filed a case against the Defendant pursuant to the CCJRA. *Brennan v. Garnett*, 2013CV31393. Plaintiffs were aware of this action and cite it in their complaint. Complaint at ¶11. In fact, the Plaintiffs offered evidence and arguments in the prior case for consideration by the court. Reply at Exhibit 3 (letter from Plaintiffs to the Hon. John Robert Lowenbach, October 15, 2013). Plaintiffs asked the court to disclose the Ramsey Grand Jury indictment for a multitude of detailed reasons. *Id.* These included: vindication of the Plaintiffs' non-involvement in the death and resulting defamation (*id.* at 2-6), scrutiny of alleged misconduct by former Boulder District Attorney Alex Hunter (*id.* at 6), scrutiny of alleged misconduct by former Boulder District Attorney Mary Lacy (*id.* at 7-8) and evidence allegedly exonerating John and Patsy Ramsey (*id.*).

October 23, 2014, after a hearing on the matter, this court issued an order in compelling release of redacted copies of the indictments against John Bennett Ramsey and Patricia Paugh Ramsey. *Brennan v. Garnett*, 2013CV31393 (October 23, 2013 Order Directing Release of Official Action of Grand Jury).

Plaintiffs assert that the Defendant has in its custody, possession, or control previously undisclosed criminal justice records constituting official actions of the Ramsey Grand Jury. While such official actions would be subject to disclosure pursuant to §§ 24-72-302(7), 24-72-303 & 304, C.R.S., the scope of what documents constitute "official actions" was litigated in the case of *Brennan v. Garnett*, 2013CV31393. In that case, Mr. Brennan sought the same documents that are at issue here, and argued in part that any proposed indictment, signed or not, constitutes an "official action" of the grand jury and is therefore subject to public disclosure. In response, the Defendant argued that grand jury proceedings are secret, and that while the public may have a general interest in the activities of a grand jury, that interest is not sufficient to compel public disclosure in every case. See Response to Order to Show Cause 2013CV31393, Exhibit 1.

The issues raised by Plaintiffs' instant complaint have thus been previously addressed by this court in the case of *Brennan v. Garnett*, 2013CV31393. The Defendant is bound by the order in that case, which held that some, but not all, of the documents now requested be disclosed. *Id.* The Defendant has made available the documents that the court ordered could be disclosed, but are not free to violate that order, or Colorado Rule of Criminal Procedure 6.2, which requires that grand jury proceedings remain secret. Response at 2; Complaint at ¶19.

The court considered the arguments of the parties, and ordered a limited disclosure. See Order Directing Release of Official Action of Grand Jury, Response at Exhibit 2. The court held that "the only pages that are 'official actions' of the Grand Jury are those signed by the Foreman of the Grand Jury." The court in *Brennan v. Garnett* therefore allowed only those documents that were signed by the Ramsey Grand Jury to be disclosed. It denied a request to disclose the entire grand jury record, recognizing that "[s]uch an action would set a precedent that would impede other Grand Juries in performing their functions under statute and rule." *Brennan v. Garnett*, 2013CV31393 (October 23, 2013 Order Directing Release of Official Action of Grand Jury).

The issues raised by Plaintiffs' instant complaint have thus been previously addressed by this court in the case of *Brennan v. Garnett*, 2013CV31393. The Defendant is bound by the order in that case, which held that some, but not all, of the documents now requested be disclosed. *Id.* The Defendant has made available the documents that the court ordered could be disclosed, but are not free to violate that order, or Colorado Rule of Criminal Procedure 6.2, which requires that grand jury proceedings remain secret. Response at 2; Complaint at ¶19.

In the present case, Plaintiffs seemingly disagree with the prior judge's analysis, and have repeatedly requested that all of the requested documents be disclosed. See Reply Exhibit 4 (Letter from Defendant to Plaintiffs, January 17, 2014). But the People are subject to the orders of this court under penalty of contempt. Moreover, Colorado Rule of Criminal Procedure 6.2 mandates that Grand Jury proceedings remain secret. Breaches of this Rule are similarly punishable as contempt. See e.g. *Pankratz v. District Court In and For City and County of Denver*, 609 P.2d 1101 (Colo. 1980).

The Defendant's interest in maintaining grand jury secrecy has been fully briefed in the case of *Brennan v. Garnett*, and is a matter of public record. It has been observed that grand jury secrecy encourages witnesses to testify freely with respect to the commission of crimes. See *Wagner v. Hilkey*, 914 P.2d 460, 462-463 (Colo. App. 1995), citing *In re P.R. v. District Court*, 637 P.2d 346 (Colo. 1981). Further, grand jury secrecy serves to check the power of the grand jury by protecting citizens against unfounded accusations of criminal misconduct that cannot be answered in an authoritative forum, and that the rule of secrecy is "as important for the protection of the innocent as for the pursuit of the guilty." *In re 2003-2004 Term of State Grand Jury*, 148 P.3d 440, 443 (Colo. App. 2006) (internal citations omitted). That rationale, which is based in Rule 6.2, would in itself be a sufficient basis for to deny Plaintiffs' request. Additionally here however, there is also a court order precluding such a disclosure amounting to claim preclusion and issue preclusion.

"Claim preclusion works to preclude relitigation of matters that have already been decided as well as matters that could have been raised in a prior proceeding but were not, *Argus Real Estate, Inc. v. E-470 Public Highway Authority*, 109 P.3d 604, 608 (Colo. 2005) Claim preclusion bars relitigation of a claim if there is:

- (1) finality of the first judgment;
- (2) identity of subject matter;
- (3) identity of claims for relief; and
- (4) identity of parties to the two actions."

Id.

Claim preclusion, also known as *res judicata*, serves the dual purpose of protecting litigants from the burden of relitigating the same issue with the same party or his or her privy and of promoting judicial economy by preventing needless litigation. *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 326, 99 S.Ct. 645, 649, 58 L.Ed.2d 552 (1979). Claim preclusion bars not only the claims actually litigated in the first proceeding, but also those that could have been litigated. *Lobato v. Taylor*, 70 P.3d 1152, 1165 (Colo. 2003); *Wall v. City of Aurora*, 172 P.3d 934, 937 (Colo. App. 2007).

Here, while not a party, the Plaintiffs had the opportunity to present evidence and argument to the judge in the *Brennan* case. Reply at Exhibit 3 (letter from Plaintiffs to the Hon. John Robert Lowenbach, October 15, 2013). Plaintiffs stated:

we wish to express our support for Plaintiffs' request that the written indictment that was prepared for and signed by the grand jury charging John and Patsy Ramsey with crimes related to the death of JonBenet, be disclosed to the public . . . If disclosure in to be made pursuant to the Court's discretion, we wish to expand on Plaintiffs' presentation of reasons for disclosure by informing the court of compelling reasons favoring disclosure including circumstances particular to our family.

Id. at 2.

Thus, although the Plaintiffs were not a named party in *Brennan v. Garnett*, 2013CV31393, the court finds that claim preclusion applies to this case as they were in privy with the *Brennan* plaintiffs regarding the disclosure request. See 50 C.J.S. Judgments § 1099 (June, 2014) ("Privy" is a broad concept. There is no generally prevailing definition of "privy" which can be automatically applied to all cases involving the doctrines of *res judicata* and collateral estoppel, and the determination of who are privies requires careful examination into the circumstances of each case as it arises. Substance over form controls the inquiry into whether privy will be found, and fundamental fairness underlies any determination of privy.") (citations omitted).

Even if claim preclusion did not apply, the court finds that issue preclusion bars relitigation of the instant matter as the issue is identical to the issue that has been actually litigated and necessarily adjudicated in a prior proceeding, namely, *Brennan v. Garnett*, 2013CV31393. Issue preclusion, also known as collateral estoppel, bars relitigation of an issue that is identical to an issue that has been actually litigated and necessarily adjudicated in a prior proceeding. *Stanton v. Schultz*, 222 P.3d 303, 307 (Colo. 2010).

The court notes that Plaintiffs have engaged in a pattern of attempting to relitigate CCJRA matters already decided by this court related to JonBenet Ramsey death investigation records. In *White v. City of Boulder*, Plaintiffs asked this court to overturn the decision entered by a previous judge in 2002. *White v. City of Boulder*, the Honorable Leal Montgomery conducted an in camera review of JonBenet Ramsey investigation materials and concluded that some records should be released, and others should not.

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In the 2014 case this court ruled in dismissing the Plaintiffs' action, "the court finds that Plaintiffs' claims are barred under the principles of res judicata and collateral estoppel." *White v. City of Boulder*, 'Order Re Defendants' Motion To Dismiss For Failure To State A Claim Based On Claim Preclusion Or Issue Preclusion, April 29, 2014). As detailed above, the same reasoning applies to the instant matter and, like the Plaintiffs' other 2014 case, it must be dismissed under C.R.C.P. 12(b).

The court further notes that it has the power to limit and control frivolous filings by pro se litigants. Specifically, "[a]n injunction may be necessary to prevent further abuse of judicial resources by a pro se litigant because a party acting in his own behalf is not subject to the disciplinary procedures that prevent abuse of the system by attorneys. *Bd. of Cnty. Comm'rs of Morgan Cnty. v. Winslow*, 706 P.2d 792, 794-95 (Colo. 1985); *Shotkin v. Kaplan*, 180 P.2d 1021, 1022 (Colo. 1947). "Forbidding a party from filing cases pro se does not infringe upon his constitutional right of access to the courts because he may still obtain access to judicial relief by employing an attorney authorized to practice in the state of Colorado." *Id.*; see *Bd. of Cnty. Comm'rs of Boulder County v. Barday*, 594 P.2d 1057, 1059 (Colo. 1979). The court will not issue such a ruling at this time but may do so if the Plaintiffs continue their attempts to relitigate matters previously decided.

Therefore, the court being fully advised in the premises, hereby DENIES Plaintiff's Application for Order to Show Cause and DISMISSES the Complaint with prejudice.

Issue Date: 8/5/2014



ANDREW HARTMAN
District Court Judge