

IN THE ALABAMA COURT OF THE JUDICIARY

IN THE MATTER OF:	)	
ANITA KELLY	)	Court of the Judiciary
Circuit Judge,	)	Case No.: 50
15 <sup>th</sup> Judicial Circuit	)	



**MOTION TO EXTEND TIME AND ALLOW OUT-OF-TIME FILING  
OF RESPONSE TO NON-PARTY ALABAMA DEPARTMENT OF HUMAN  
RESOURCES' MOTION TO QUASH AS TO REQUEST NO. 28**

Judge Anita Kelly respectfully moves for an order extending the time for her to file, allowing her to file out-of-time, or otherwise deeming timely filed her already-filed response to non-party Alabama Department of Human Resources' motion to quash the subpoena duces tecum issued to it and Montgomery County Department of Human Resources by Judge Kelly, as to item number 28.<sup>1</sup> In support of her request, Judge Kelly shows the following:

1. On November 21, 2017, in response to a civil subpoena duces tecum served on behalf of Judge Kelly, Alabama Department of Human Resources (ADHR) filed a "Motion to Quash by Non-Party Alabama Department of Human Resources for Protective Order and Compensation."

2. On December 1, 2017, the Court entered an order directing DHR and Judge Kelly to, among other things, "work together to attempt to resolve the issues raised in DHR's motion"; and "file with the Court by 4:00 p.m. on Friday, December 8, 2017, a joint list of any discovery issues or pending discovery items that they have been unable to resolve." Order entered December 1, 2017, at 1-2.

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<sup>1</sup> Judge Anita Kelly's Response in Opposition to "Motion to Quash by Non-Party Alabama Department of Human Resources for Protective Order and Compensation" [sic] as to Request No. 28 (Identification and Location of Former Employees), filed December 21, 2017 at 9:47 p.m.

3. On December 8, 2017, Judge Kelly and ADHR filed their joint response to the Court's December 1, 2017 Order, identifying request number 28 of Judge Kelly's subpoena duces tecum as an item still in dispute and requiring judicial resolution. In that joint response, Judge Kelly requested an opportunity to respond to the motion to quash as to request number 28 before the Court resolved the dispute over that item.

4. By order entered December 12, 2017, the Court directed Judge Kelly to file any response to the motion to quash as to request number 28 by noon on Friday, December 15, 2017; and directed ADHR to file any reply by 5:00 p.m. that same date.

5. On December 14, 2017, following the pretrial hearing, at which the Court orally granted Judge Kelly's motion to continue the trial (later memorialized in an Order entered December 18), the Court issued a revised briefing schedule regarding the motion to quash, directing Judge Kelly to file her response by 4:00 p.m. on December 21, 2017, with ADHR to file any reply by 4:00 p.m. on December 28, 2017.

6. Undersigned counsel for Judge Kelly did electronically file a response to ADHR's motion to quash as to request number 28 on December 21, but not until 9:47 p.m.

7. Counsel's filing of Judge Kelly's response approximately six (6) hours after the designated deadline occurred in spite of counsel's good faith, diligent efforts, including researching and drafting the response for various chunks of time over the past week (and for much of December 20 and 21). The filing was a matter of hours late in part because of several new obstacles that arose beginning late Friday afternoon, December 15 (and which are not yet resolved as of this filing) concerning the sale of the home in Nashville, Tennessee owned by counsel's daughter (who now lives outside the United States but is scheduled to close the sale in Nashville on December 29 during a short holiday visit to Alabama), a transaction that has

occupied a lot of counsel's time over the past month; and in part because counsel underestimated the time it would take to draft the response, and set aside everything else to focus on the response a little later than he should have.

8. Counsel respectfully suggests that ADHR will not be unfairly prejudiced by an order extending the time for filing, accepting the late filing of, and/or *nunc pro tunc* deeming timely-filed Judge Kelly's response to the motion to quash (e-filed yesterday evening). On the other hand, counsel also respectfully suggests that Judge Kelly would be significantly and unfairly hindered in her trial preparation (with respect to DHR-related issues) if denied discovery relating to former Montgomery County DHR employees because of her undersigned counsel's late (by a matter of hours) filing of the response to DHR's motion to quash.

9. Counsel for Judge Kelly would have no objection to a short extension of DHR's time to file their reply in support of the motion to quash if the Court deems it appropriate to balance out the effect of accepting the late filing of Judge Kelly's response.

WHEREFORE, PREMISES CONSIDERED, Judge Kelly requests that this motion be granted, and that the Court enter an order extending the time for filing, accepting the late filing of, and/or *nunc pro tunc* deeming timely-filed Judge Kelly's response to non-party ADHR's motion to quash as to request number 28 as of the time that response was filed in this matter.

Respectfully submitted this 22<sup>nd</sup> day of December, 2017.

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**Certificate of Service**

I hereby certify that a copy of the foregoing has been FILED electronically with the Court of the Judiciary and a copy of the same emailed and/or hand delivered to the person(s) shown below on this 22<sup>nd</sup> day of December, 2017, as follows:

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