

IN THE ALABAMA COURT OF THE JUDICIARY

IN THE MATTER OF: *
*
TRACIE TODD *
CIRCUIT COURT JUDGE *
BIRMINGHAM DIVISION *
CRIMINAL DIVISION *
JEFFERSON COUNTY, AL *

CASE NO. 61 **FILED**

JUL 28 2022

ALABAMA COURT OF THE JUDICIARY
Nathan P. Wilson
Secretary

**JUDICIAL INQUIRY COMMISSION’S OBEJCTION AND
MOTION TO QUASH SUBPOENA DUCES TECUM FOR
ADMINISTRATIVE OFFICE OF COURTS**

COMES NOW, the Judicial Inquiry Commission (hereinafter, “the Commission”), via the undersigned attorneys, John A. Selden, Elizabeth C. Bern, Jacob D. Jackson, and Jenny Garrett, and hereby moves this Honorable Court, pursuant to Rule 45(c)(3)(A), Alabama Rules of Civil Procedure, to quash the subpoena addressed to Dr. Rich Hobson, Director of the Administrative Office of Courts (hereinafter, “AOC”), by counsel for Judge Tracie A. Todd (hereinafter, “Judge Todd”). In support thereof, the Commission states the following:

1. Ala. R. Civ. P. 45(c)(3)(A)(i) provides that a court shall quash a subpoena if it “fails to allow reasonable time for compliance.”
2. Ala. R. Civ. P. 45(a)(3)(A) requires that a party seeking issuance of a subpoena duces tecum, such as the one filed by Judge Todd

yesterday on July 27, 2022, shall give notice of the party's intent to serve such subpoena fifteen (15) days before the subpoena shall issue. The purpose of this notice period is to allow parties and the recipient of the subpoena to file any appropriate objections to the subpoena before it is issued. With the fifteen-day notice period that is required prior to issuance, the earliest the subpoena could be issued is August 11, 2022, which is ten days after the discovery deadline of August 1, 2022,¹ and only five days before trial begins on August 15, 2022.

3. The Commission notes that Judge Todd has also served a "Notice of Deposition" that, rather than commanding Dr. Hobson's appearance at a deposition, commands him only to produce certified copies of the specified documents. Thus, it would appear, in this instance, that Judge Todd is requesting only for AOC to produce the specified documents and does not actually intend to take the deposition of Dr. Hobson. Nonetheless, while Rule 45(a)(1) does allow for a subpoena for documents to be joined with a subpoena to appear at a deposition, doing so would not excuse Judge Todd from complying with the notice

¹ The parties filed a joint motion on July 8, 2022, agreeing to extend the deadline for conducting depositions to August 2, 2022, which this Court granted on July 11, 2022.

requirements laid out in Rule 45(a)(3)(A) for subpoenas duces tecum.

4. Additionally, Ala. R. Civ. P. 45(a)(3)(C) requires that the subpoena allow for “a reasonable time to comply of no less than fifteen (15) days after service.”

5. Judge Todd filed the “Notice of Subpoena” yesterday on July 27, 2022, and specified the date of compliance on the proposed subpoena to AOC as August 2, 2022. This is only six days, less than half of the minimum time required under Rule 45. Not to mention, two of those six days are during the weekend.

6. Accounting for the fifteen-day notice period, which would expire on August 11, 2022, and the minimum fifteen-day period for compliance, the earliest date that AOC would be required to comply under Rule 45 is August 26, 2022, ten days after the conclusion of the scheduled trial date. This is far beyond the date of August 2, 2022, that is specified in Judge Todd’s subpoena.

7. Given that discovery is to be completed by August 1, 2022, and trial is set for August 15–16, 2022, it is unlikely that AOC would be able to reasonably comply with the subpoena before the set trial date.

8. Moreover, the Commission filed its Complaint on March 16,

2022, and Judge Todd secured the assistance of counsel on April 11, 2022, and May 10, 2022. Judge Todd has had ample time to engage in such discovery.

9. Judge Todd’s subpoena requests a multitude of information—two years of Alacourt activity for fifteen different individuals. Requiring AOC to comply with a subpoena within such a short time frame would subject them to an immense, undue burden. AOC should not be forced to bear such a burden, nor should the Commission be forced to review such vast material less than two weeks prior to trial, even if AOC could gather the information in such abbreviated time. The trial of this matter should not be continued as a result of Judge Todd’s delay in conducting discovery.

10. Furthermore, the Commission objects to Item 2 of Judge Todd’s proposed subpoena duces tecum to AOC, which asks for, “A complete and certified copy of logins for the email address jenny.garrett@jic.alabama.gov.”

11. Foremost, such request is too ambiguous to require compliance by AOC, particularly considering that AOC does not have access to Ms. Garrett’s email account. It is unclear whether the subpoena

is requesting information associated with Ms. Garrett's logins to Alacourt, similar to Item 1, or information associated with Ms. Garrett's "jic.alabama.gov" email account.

12. Moreover, such information is outside the scope of discovery in Rule 26(b), as it is not relevant to the subject matter involved in this case nor does it relate to any claim or defense of either party. Nor is it reasonably calculated to lead to the discovery of admissible evidence as the time period for which the information is requested, "April 1, 2019, to April 6, 2021," is long before the period during which the events alleged in the Complaint occurred.

13. Additionally, to the extent that Judge Todd is requesting information related to the identity of those persons who sent emails to or received emails from Ms. Garrett or the contents of Ms. Garrett's email, such information is protected by the attorney-client privilege, attorney work-product doctrine, and/or the stringent confidentiality accorded such information. See Ala. Const. art. VI, § 156(b); Rule 5, Ala. R. P. Jud. Inq. Comm'n.

14. Because Judge Todd did not comply with the notice provisions of Rule 45(a)(3)(A), because it is unlikely that AOC will be able to

reasonably comply with the subpoena before the trial date of August 15–16, 2022, and certainly not before the discovery deadline of August 1, 2022, without undue burden, and because Item 2 of Judge Todd’s subpoena duces tecum to AOC, which is too ambiguous for compliance, requests information that is outside the scope of discovery and, to the extent that it requests information related to the recipients, senders, and/or contents of Ms. Garrett’s emails, which is confidential and/or protected by the attorney-client privilege and/or work-product doctrine, the Commission objects to the issuance of the subpoena under Rule 45(a)(3)(B) and moves this Court to quash the same under Rule 45(c)(3)(A)(i), (iii), and (iv).

WHEREFORE, premises considered, the Commission objects to and respectfully requests that this Court quash the subpoena duces tecum to AOC.

Respectfully submitted this the 28th day July, 2022.

/s/ John A. Selden

John A. Selden

/s/ Elizabeth C. Bern

Elizabeth C. Bern

/s/ Jacob D. Jackson

Jacob D. Jackson

/s/ Jenny Garrett

Jenny Garrett

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CERTIFICATE OF SERVICE

I hereby certify that I have, on this 28th day of July, 2022, electronically filed the foregoing with the Court of the Judiciary, and that I have further served a copy upon the following via email as follows:

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