

BEFORE THE ALABAMA COURT OF THE JUDICIARY

**FILED**

JUL 29 2022

ALABAMA COURT OF THE JUDICIARY  
Nathan P. Wilson  
Secretary

In re

STATE OF ALABAMA JUDICIAL INQUIRY  
COMMISSION

v.

THE HONORABLE TRACIE A. TODD

CIRCUIT JUDGE, BIRMINGHAM  
DIVISION,

CRIMINAL DIVISION, JEFFERSON  
COUNTY, ALABAMA

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**OBJECTION TO COMMISSION'S MOTION TO QUASH  
SUBPOENA DUCES TECUM DIRECTED TO DR. RICH  
HOBSON**

Judge Tracie A. Todd, by and through counsel, hereby objects to the Commission's Motion to Quash the subpoena duces tecum directing Dr. Rich Hobson, a nonparty, to produce documents that are relevant to and necessary for trial preparation in this case. In opposition to the motion to quash, Judge Todd, through counsel, provides the following on information and belief.

1. Dr. Hopson is not required to personally appear himself. All that is required is production of computer-generated documents pursuant to the subpoena duces tecum. The Administrative Office of Courts ("AOC") employs a team of information technology specialists who are trained and have the necessary tools to input established formulas that produce data reports in a matter of minutes. The request is not burdensome. Three business days is ample time for the AOC to produce the requested information. If the AOC cannot do so, it can and will advise Judge Todd and the Court. It has not done so. To the extent that the AOC seeks additional time, the AOC could provide the information up until August 11, 2022.

2. Judge Todd's subpoena duces tecum sets forth the items to be produced "by category, and described each item and category with reasonable particularity." It is clear. Production is obvious.

3. This request is part of Judge Todd's investigation. It is not "discovery," as it is not requested from the Commission. It is requested from a nonparty. Therefore, the discovery deadline does not control. But even accepting the Commission's contention that the information may be provided to Judge Todd after the discovery deadline, production is appropriate, under Alabama Rule Civil Procedure 45.

4. "The court may allow a shorter or longer time. Such notice may be served without leave of court upon the expiration of forty-five (45) days after service of the summons and complaint or other mode of service under Rule 4-Rule 4.4 upon any defendant, except that leave is not required within the forty-five-(45-) day period if a defendant has previously

sought discovery.” *Ex parte Esteban*, No. 2200685, 2021 WL 3700086, at \*2 (Ala. Civ. App. Aug. 20, 2021).

5. The information is “relevant and material to the issues in this cause” and the documents and other materials are “not otherwise reasonably available to [Judge Todd].” *Id.*

6. Any error in service of subpoena on Dr. Hobson by Judge Todd is not prejudicial where Dr. Hobson had been notified of the August 15, 2022 trial date by other duplicate subpoenas served by the Commission. *Madison v. Weldon*, 446 So. 2d 21 (Ala. 1984). *See* Ala. R. Civ. P. 45.

7. Rule 26(b)(1), Ala. R. Civ. P., allows “[p]arties [to] obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action” and which is “reasonably calculated to lead to the discovery of admissible evidence.” “A trial judge, who has broad discretion in this area, should nevertheless incline toward permitting the broadest discovery and utilize his discretion to issue protective orders to protect the interests of parties opposing

discovery.” *Ex parte AMI West Alabama Gen. Hosp.*, 582 So. 2d 484, 486 (Ala. 1991). It is better to get discovery correct in the first place in the trial court than to turn to a writ of mandamus to correct orders improperly restricting discovery.

*Id.* A party subject to discovery can prevent the disclosure of confidential matters not subject to discovery by securing a protective order pursuant to Rule 26(c), Ala. R. Civ. P.

*Ex parte Dumas*, 778 So. 2d 798, 801 (Ala. 2000).

8. Judge Todd should be permitted to use subpoena power to obtain information from the non-party because there is a likelihood that the information sought will aid in the pursuit of her defense.

9. All of the records Judge Todd has requested can only be compiled by the Administrative Office of Courts and is based on information supplied to AOC by its employees. These documents reflect the differing practices of various judges and staff and will likely show a pattern of Alacourt interface conducted primarily by judicial assistants. Because the

Commission has made Judge Todd's Alacourt login central to its case, evidence showing that judges have different methods and practices for directing staff to input orders and other information and should be allowed production of the requested documents to show that a login report is not indicative of the Commission's allegations against Judge Todd.

10. The Commission's procedural arguments fail when put against the implicit admission that the records are relevant, material, and favorable to Judge Todd. Alabama Rule of Civil Procedure 26 & 45. *See Ex parte Pomerantz*, 590 So. 2d 903, 905-06 (Ala. 1991).

11. The requested records are not privileged. Neither the Commission nor the AOC is claiming that the information sought is privileged. *Ex parte Mobile Gas Serv. Corp.*, 123 So. 3d 499, 515 (Ala. 2013). Indeed, **the AOC has not even moved to quash**. For that reason alone, this Court should deny the motion to quash.

12. The Commission moves to quash records sought to be obtained from a nonparty. “Ordinarily, a party does not have standing to challenge a subpoena issued to a nonparty unless the party claims some personal right or privilege in the information sought by the subpoena.” *Ex parte Action Auto Sales, Inc.*, 250 So. 3d 536, 540 n.1 (Ala. 2017) (citing *United States v. Idema*, 118 F. App’x. 740, 744 (4th Cir. 2005)). As to the Alacourt records pertaining to Jefferson County judges, the Commission’s motion is without merit.

13. As for the request for Alacourt records of Ms. Garrett, the Commission here appears to potentially have standing but its arguments stand on the same shaky footing as the Commission’s arguments with regard to the deposition of Ms. Garrett. Judge Todd will adopt and incorporate her arguments made in connection with the pending motion to quash the deposition of Ms. Garrett, including that privilege is limited to defamation actions.

14. This Court should deny the motion to quash.

Respectfully submitted this 29th day of July, 2022.

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

I hereby certify that we have on this 29th day of July, 2022 electronically filed the foregoing with the Court of the Judiciary, and

that I have further served a copy by sending the same via email, and properly addressed as follows:

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