

ORIGINAL

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COURT OF CLAIMS
OF OHIO

2014 AUG -8 PM 3:06

IN THE COURT OF CLAIMS OF OHIO

LUEDELLA DICKENS, ADMR.,

Plaintiff,

v.

THE OHIO STATE UNIVERSITY
MEDICAL CENTER,

Defendant.

Case No. 2013-00204

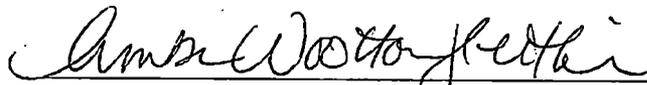
Judge Dale A. Crawford

DEFENDANT'S MOTION FOR SUBPOENA SIGNED BY JUDGE

Defendant, The Ohio State University Medical Center, respectfully requests a subpoena signed by the Judge in order for Defendant to obtain the military records of the decedent's son. The grounds for this request are set forth in the attached Memorandum in Support.

Respectfully submitted,

MICHAEL DEWINE
Ohio Attorney General



JEFFREY L. MALOON (0007003)
AMBER WOOTTON HERTLEIN (0083858)
Assistant Attorneys General
Court of Claims Defense Section
150 East Gay Street
18th Floor
Columbus, Ohio 43215
T: 614.466.7447 | F: 614.644.9185
Jeffrey.Maloon@OhioAttorneyGeneral.gov
Amber.Hertlein@OhioAttorneyGeneral.gov
Counsel for Defendant

ON COMPUTER

MEMORANDUM IN SUPPORT

This medical negligence/wrongful death case was filed on behalf of the Estate of Ella F. Whitehead. The complaint alleges that Ms. Whitehead's next of kin have suffered damages, including loss of society and mental anguish, as a result of her death. Ms. Whitehead was a mother to one son, Shawn T. Whitehead, who served in the military for over twenty years. Shawn Whitehead, by his own account, retired from the military as a direct result of his mother's death.

Defendant has requested copies of Shawn Whitehead's military records from the National Archives. *See* Affidavit of Jeffery Duvall, ¶2. Further communication with the National Archives' employee revealed that the records could not be released without (1) a subpoena signed by a judge; or (2) a court order signed by a judge. *Id.* at ¶¶3-5. Therefore, Defendant respectfully moves this Court for a subpoena signed by a judge or, in the alternative, an order from this Court permitting Defendant to obtain the requested records.

Respectfully submitted,

MICHAEL DEWINE
Ohio Attorney General


JEFFREY L. MALOON (0007003)
AMBER WOOTTON HERTLEIN (0083858)
Assistant Attorneys General
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Jeffrey.Maloon@OhioAttorneyGeneral.gov
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Counsel for Defendant

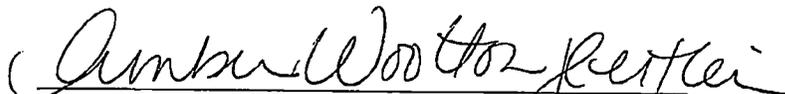
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing document was served via regular U.S. Mail, postage prepaid, this 7 day of August, 2014, upon the following:

Mark E. Defossez, Esquire
The Donahey Law Firm
495 South High Street
Suite 300
Columbus, Ohio 43215

and

Andrew W. Cecil, Esquire
Cecil & Geiser, L.L.P.
495 South High Street
Suite 400
Columbus, Ohio 43215
Attorneys for Plaintiff


AMBER WOOTTON HERTLEIN (0083858)
Assistant Attorney General

IN THE COURT OF CLAIMS OF OHIO

LUEDELLA DICKENS, ADMR.

Plaintiff

vs.

OHIO STATE UNIVERSITY
MEDICAL CENTER

Defendant

Case No. 2013-00204

Judge Dale A. Crawford

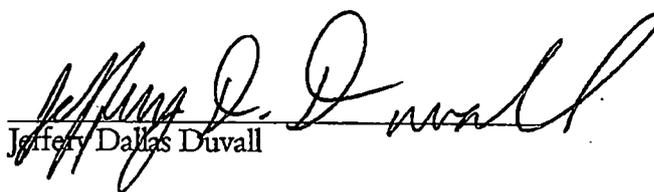
AFFIDAVIT OF JEFFERY DALLAS DUVALL

I, Jeffery Duvall, having been duly sworn and pursuant to the penalties of perjury, state as follows:

1. I am of the age of majority and can testify to the following facts from personal knowledge.
2. On or about May 13, 2014, I filled out National Personnel Records Center Standard Form 180 (Rev. 5/12), Request Pertaining to Military Records, requesting Mr. Shawn T. Whitehead's military records ("my request"), which I have done in other investigations. I then mailed document to National Personnel Records Center, 1 Archives Drive, St. Louis, MO 63138-1002 unitizing regular mail. Exhibit 1 is a true and accurate copy of this form.
3. On or about July 08, 2014, I sent an e-mail to The National Archives and Records Administration inquiring as to the status of my request regarding Mr. Whitehead. I received a confirmation e-mail on the same date but still have not received a response. Exhibit 2 is a true and accurate copy of this email exchange.
4. On or about July 22, 2014, I telephoned the National Personnel Records Center and left a voice mail inquiring about the status of my request. On or about July 23, 2014,

I received a phone call from Mr. Brian Butts, a supervisor at the National Personnel Records Center. Mr. Butts' telephone number is (314) 801-0507 and his fax number is (314) 801-0749. Mr. Butts stated he received my request; however, he could not honor it without a subpoena. He additionally stated he had checked into the database and he in fact possesses Mr. Whitehead's service record and he would get the information out as soon as he received the subpoena. I then prepared a subpoena signed by Ms. Amber Wootton Hertlein, Assistant Attorney General, Ohio Attorney General's Office, Court of Claims Defense Section and faxed the document to Mr. Butts and sent the original certified mail, certified mail number 9171999991703038988905. Exhibit 3 is a true and accurate copy of this subpoena.

5. On or about July 24, 2014, I spoke with Mr. Butts via telephone and he stated he received the subpoena; however, the subpoena had to be signed by a judge. I reviewed the National Archives and records administration website www.archives.gov and found a link regarding court order requirements. Exhibit 4 is a true and accurate copy of the court order requirements.
6. On or about July 25, 2014, a subpoena was prepared and sent to the Court of Claims of Ohio for Judge Crawford's signature. Exhibit 5 is a true and accurate copy of this subpoena.
7. On or about August 5, 2014 I was informed that a motion for a subpoena signed by a judge was needed in the Court of Claims, and that I would need to submit an affidavit as to the circumstances surrounding the subpoena for Mr. Whitehead's military records.
8. FURTHER AFFLIANT SAYETH NAUGHT.


Jeffrey Dallas Duvall

Sworn to before me and signed in my presence, a Notary Public in and for said State
and County, on this 7th day of August, 2014.



MICHELE ATHEY
Notary Public, State of Ohio
My Commission Expires
~~December 2, 2012~~
12-10-17


NOTARY PUBLIC

EXHIBIT 1

REQUEST PERTAINING TO MILITARY RECORDS

* Requests from veterans or deceased veteran's next-of-kin may be submitted online by using eVetRecs at <http://www.archives.gov/veterans/military-service-records/>**

(To ensure the best possible service, please thoroughly review the accompanying instructions before filling out this form. Please print clearly or type.)

SECTION I - INFORMATION NEEDED TO LOCATE RECORDS (Furnish as much as possible.)

1. NAME USED DURING SERVICE (last, first, and middle) Whitehead, Shaun T.					4. PLACE OF BIRTH Unknown	
5. SERVICE, PAST AND PRESENT (For an effective records search, it is important that all service be shown below.)						
	BRANCH OF SERVICE	DATE ENTERED	DATE RELEASED	OFFICER	ENLISTED	SERVICE NUMBER (If unknown, write "unknown")
a. ACTIVE COMPONENT	U.S. Army	Unknown	Unknown		x	Unknown
b. RESERVE COMPONENT						
c. NATIONAL GUARD						
6. IS THIS PERSON DECEASED? If "YES" enter the date of death. <input checked="" type="checkbox"/> NO <input type="checkbox"/> YES				7. IS (WAS) THIS PERSON RETIRED FROM MILITARY SERVICE? <input type="checkbox"/> NO <input checked="" type="checkbox"/> YES		

SECTION II - INFORMATION AND/OR DOCUMENTS REQUESTED

1. CHECK THE ITEM(S) YOU ARE REQUESTING:

- DD Form 214 or equivalent.** When was the DD Form(s) 214 issued? YEAR(S): Unknown
If more than one period of service was performed, even in the same branch, there may be more than one DD214.
This form contains information normally needed to verify military service. A copy may be sent to the veteran, the deceased veteran's next of kin, or other persons or organizations if authorized in Section III, below. **An UNDELETED DD214 is ordinarily required to determine eligibility for benefits.** Sensitive items, such as, the character of separation, authority for separation, reason for separation, reenlistment eligibility code, separation (SPD/SPN) code, and dates of time lost are usually shown.
An undeleted copy will be sent unless you specify a deleted copy. Indicate here if you want a deleted copy of the DD Form 214.
The following items are deleted: authority for separation, reason for separation, reenlistment eligibility code, separation (SPD/SPN) code, and for separations after June 30, 1979, character of separation and dates of time lost.
- All Documents in Official Military Personnel File (OMPF)**
- Medical Records** (Includes Service Treatment Records, Health (outpatient) and dental records.) If hospitalized (inpatient), the facility name and date for each admission must be provided: _____
- Other (Specify):** _____

2. **PURPOSE:** (An explanation of the purpose of the request is strictly voluntary; however, such information may help to provide the best possible response and may result in a faster reply. Information provided will in no way be used to make a decision to deny the request.) Check appropriate box:

- Benefits Employment VA Loan Programs Medical Genealogy Correction Personal
- Other, explain: Investigation concerning a civil lawsuit.

SECTION III - RETURN ADDRESS AND SIGNATURE

1. **REQUESTER IS:** (Signature Required in # 3 below of veteran, next of kin, legal guardian, authorized government agent or "other" authorized representative. If "other" authorized representative, provide copy of authorization letter.) No signature required for Archival records.

- Military service member or veteran identified in Section I, above
- Next of kin of deceased veteran: _____ (Relationship)
- Legal guardian (Must submit copy of court appointment.)
- Other (specify) Ohio Attorney General

MUST HAVE PROOF OF DEATH - See item 2a on instruction sheet.

2. **SEND INFORMATION/DOCUMENTS TO:**
(Please print or type. See item 4 on accompanying instructions.)

Investigator Jeffery Duvall
 Name
 150 E. Gay St. 18th Floor
 Street
 Columbus OH 43215
 City State Zip Code

3. **AUTHORIZATION SIGNATURE WHEN REQUIRED** (See items 2a or 3a on accompanying instructions.) I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the information in this Section III is true and correct. No signature required for Archival records.

Jeffery D. Duvall 13 May 14
 Signature Required - Do not print Date
 (614) 728-5470 (866) 789-5470
 Daytime phone Fax Number
 Jeffery.duvall@ohioattorneygeneral.gov
 Email address

This form is available at <http://www.archives.gov/research/order/standard-form-180.pdf> on the National Archives and Records Administration (NARA) web site.

EXHIBIT 2

Jeffery D. Duvall

From: Jeffery D. Duvall
Sent: Tuesday, July 08, 2014 10:16 AM
To: Amber Wootton Hertlein; Jeffrey Maloon
Subject: FW: NARA Inquire Form Submission Confirmation

Wanted to let you know I still have not received military records for Mr. Shaun T. Whitehead so I send a status records via National Archives website. Thank you.

-----Original Message-----

From: auto-confirm@nara.gov [mailto:auto-confirm@nara.gov]
Sent: Tuesday, July 08, 2014 10:13 AM
To: Jeffery D. Duvall
Subject: NARA Inquire Form Submission Confirmation

Dear Jeffery Duvall,

Thank you for contacting the National Archives and Records Administration.

This message confirms that your inquiry (or inquiries) was received by the National Archives on Tuesday, 7/8/2014 at 10:13 am EST.

We look forward to serving your needs as soon as possible.

Please do not reply to this email message. This message was automatically generated by the Inquire Form on our web site (<http://www.archives.gov>). If you wish to contact us again, please use our Inquire Form at <http://www.archives.gov/contact/inquire-form.html>

Please note that under certain circumstances, we may respond to different portions of your inquiry with separate replies.

For more information on how we respond to customer inquiries, please visit the National Archives web site at <http://www.archives.gov/contact/how-will-nara-respond.html>

Thank you for your submission.

HERE IS THE INFORMATION YOU SUBMITTED TO NARA:

DATE SUBMITTED: Tuesday, 7/8/2014 at 10:13 am EST

YOUR NAME: Jeffery Duvall

E-MAIL ADDRESS: jeffery.duvall@ohioattorneygeneral.gov

YOUR MAILING ADDRESS:

150 East Gay St.

18th Floor

Columbus, OH
43215
United States

PHONE: 614-728-5470
FAX: 866-789-6982

YOU ASKED A QUESTION:

QUESTION TOPIC:

Tuesday, 7/8/2014 at 10:13 am EST

QUESTION TEXT:

I am inquiring into a request I made for military records dated 13 May 2014 on Standard Form 180. The records are for:

Mr. Shaun T. Whitehead

Branch of Service: U.S. Army

Enlisted

Believed to be a retiree.

Person is not deceased.

Records requested was all documents in Official Military Personnel File (OMPF).

DD-214 or equivalent.

This is a request from the Ohio Attorney General's office regarding a lawsuit. Thank you in advance for all your help and assistance in this matter.

YOU SENT A COMMENT, SUGGESTION, COMPLIMENT, OR COMPLAINT:

MESSAGE TOPIC:

Tuesday, 7/8/2014 at 10:13 am EST

MESSAGE TEXT:

N/A

EXHIBIT 3

IN THE COURT OF CLAIMS OF OHIO
65 South Front Street, 3rd Floor
Columbus, Ohio 43215

SUBPOENA

Luedella Dickens, ADMR
Plaintiff

v.

Ohio State University Medical Center
Defendant

Case No. 2013-00204

Judge Dale A. Crawford

TO: National Personnel Records Center
ATTN: Mr. Brian Butts
1 Archives Drive
St. Louis, MO 63138

YOU ARE HEREBY COMMANDED TO:

- _____ Attend and give testimony at a (trial) (hearing) on the date, time and at the place specified below.
- _____ Attend and give testimony at a deposition in the county where the deponent resides or is employed or transacts business in person, or at such other convenient place as is fixed by an order of court.
- _____ Produce documents, electronically stored information, or tangible things at a (trial) (hearing) (deposition) on the date, time and at the place specified below.
- Produce and certify records, on the date, time and place specified below, of any designated documents that are in your possession, custody or control.**
- _____ Produce and permit inspection and copying, testing or sampling, on the date and at the time and place specified below, of any tangible things that are in your possession, custody or control.
- _____ Permit entry upon the following described land or other property, for the purposes described in civil 34(A)(3), on the date and at the time and place specified below. *Description of land or other premises:* _____

DATE: August 7, 2014 TIME 10:00 A.M.

PLACE: Ohio Attorney General's Office, 150 E. Gay St. 18th Floor, Columbus, OH 43215

DESCRIPTION OF ITEMS TO BE PRODUCED: Complete military records for Mr. Shaun T. Whitehead, U.S. Army (retired) previously requested on Standard Form 180 dated 13 May 2014.
IN LIEU OF APPEARANCE. Please mail CERTIFIED COPIES to Jeffery Duvall, Investigator, Court of Claims Defense Section, 150 E. Gay St., 18th floor, Columbus, OH 43215.

THE STATE OF OHIO

Franklin County, ss

To the Sheriff of Certified Mail County, Ohio Greetings:

YOU ARE HEREBY COMMANDED TO SUBPOENA THE ABOVE NAMED PERSON.

WITNESS MY HAND AND SEAL OF SAID COURT THIS 23RD DAY OF July, 2014.

CLERK OF THE COURT OF CLAIMS OF OHIO.

BY: Amber Wooten-Hertlein
SIGNATURE OF [Deputy Clerk/Attorney for (Plaintiff) (Defendant)]

REQUESTING PARTY INFORMATION:

NAME: Amber Wooten-Hertlein, Assistant Attorney General, 150 E. Gay St. 18th FL., Columbus, OH 43215.
[(Attorney for (Plaintiff) (Defendant))]

ATTORNEY CODE: 0083858 TELEPHONE NUMBER: (614) 387-4256

NOTE: READ ALL INFORMATION ON THE REVERSE SIDE OF THIS SUBPOENA.

Civil Rule 45 (C) Protection of persons subject to subpoenas.

- (1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena.
(2) (a) A person commanded to produce under divisions (A)(1)(b)(ii), (iii), (iv), or (v) of this rule need not appear in person at the place of production or inspection unless commanded to attend and give testimony at a deposition, hearing or trial.
(b) Subject to division (D)(2) of this rule, a person commanded to produce under divisions (A)(1)(b)(ii),(iii),(iv), or (v) of this rule may, within fourteen days after service of the subpoena or before the time specified for compliance if such time is less than fourteen days after service, serve upon the party or attorney designated in the subpoena written objections to production.
(3) On timely motion, the court from which the subpoena was issued shall quash or modify the subpoena, or order appearance or production only under specified conditions, if the subpoena does any of the following:
(a) Fails to allow reasonable time to comply;
(b) Requires disclosure of privileged or otherwise protected matter and no exception or waiver applies;
(c) Requires disclosure of a fact known or opinion held by an expert not retained or specially employed by any party in anticipation of litigation or preparation for trial as described by Civ. R. 26(B)(4), if the fact or opinion does not describe specific events or occurrences in dispute and results from study by that expert that was not made at the request of any party;
(d) Subjects a person to undue burden.
(4) Before filing a motion pursuant to division (C)(3)(d) of this rule, a person resisting discovery under this rule shall attempt to resolve any claim of undue burden through discussions with the issuing attorney.
(5) If a motion is made under division (C)(3)(c) or (C)(3)(d) of this rule, the court shall quash or modify the subpoena unless the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated.

Civil Rule 45 (D) Duties in responding to subpoena.

- (1) A person responding to a subpoena to produce documents shall, at the person's option, produce them as they are kept in the usual course of business or organized and labeled to correspond with the categories in the subpoena.
(2) If a request does not specify the form or forms for producing electronically stored information, a person responding to a subpoena may produce the information in a form or forms in which the information is ordinarily maintained if that form is reasonably useable, or in any form that is reasonably useable.
(3) A person need not provide discovery of electronically stored information when the production imposes undue burden or expense.
(4) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.
(5) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it.

Civil Rule 45 (E) Sanctions.

Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. A subpoenaed person or that person's attorney who frivolously resists discovery under this rule may be required by the court to pay the reasonable expenses, including reasonable attorney's fees, of the party seeking the discovery.

Civil Rule 45 (F) Privileges

Nothing in this rule shall be construed to authorize a party to obtain information protected by any privilege recognized by law, or to authorize any person to disclose such information.

***** RETURN OF SERVICE *****

I RECEIVED THIS SUBPOENA ON _____, AND SERVED THE PARTY NAMED ON THE REVERSE HEREOF BY _____ ON _____

I WAS UNABLE TO COMPLETE SERVICE FOR THE FOLLOWING REASON:

Sheriff's Fees
Service _____
Mileage _____
Copy _____
Total _____

(Signature of Serving Party)
Circle One: Deputy Sheriff Attorney
Process Server Deputy Clerk
Other

EXHIBIT 4

Court Order Requirements

Access to the specific military personnel and/or medical records on file at the National Personnel Records Center, St. Louis, Missouri, or Valmeyer, Illinois, may be gained pursuant "to the order of a court of competent jurisdiction." Valid court orders should be addressed to this center. Subpoenas qualify as orders of a court of competent jurisdiction only if they have been signed by a judge. To be valid, court orders must also be signed by a judge. Authority for these requirements is 5 U.S.C. 552a(b) (11), as interpreted by *Doe vs. DiGenova*, 779 F. 2d 74 (D.C. Cir. 1985), and *Stiles vs. Atlanta Gas and Light Company*, 453 F. Supp. 798 (N.D. Ga.1978).

Please furnish the address of the clerk of the court so that photocopies may be furnished in the form of a certificate under seal to the clerk of the court issuing the order. Or, the photocopies may be sent to a recipient other than the clerk of the court as long as the order of the court names another recipient and gives the appropriate address. Under applicable Federal law, photocopies so certified shall be admitted into evidence as original records 44 U.S.C. Sec. 2116(b). It is also helpful to furnish the names and addresses of the attorneys involved.

The court order must describe the records and information desired in sufficient detail to identify them with accuracy. A minimum of detail would include as many of the following as possible: complete name, service number, social security number, date of birth, branch of service, and dates of military service (active, reserve, or retired). If clinical treatment (inpatient) records are needed, include also the dates, places, and type(s) of treatment given.

The court order should be addressed and mailed to:

Director
National Personnel Records Center, (NARA)
(Military Personnel Records)
1 Archives Drive
St. Louis, MO 63138-1002

EXHIBIT 5

IN THE COURT OF CLAIMS OF OHIO
65 South Front Street, 3rd Floor
Columbus, Ohio 43215

SUBPOENA

Luedella Dickens, ADMR
Plaintiff

v.

Ohio State University Medical Center
Defendant

Case No. 2013-00204

Judge Dale A. Crawford

TO: National Personnel Records Center
ATTN: Mr. Brian Butts
1 Archives Drive
St. Louis, MO 63138

YOU ARE HEREBY COMMANDED TO:

- Attend and give testimony at a (trial) (hearing) on the date, time and at the place specified below.
- Attend and give testimony at a deposition in the county where the deponent resides or is employed or transacts business in person, or at such other convenient place as is fixed by an order of court.
- Produce documents, electronically stored information, or tangible things at a (trial) (hearing) (deposition) on the date, time and at the place specified below.
- Produce and certify records, on the date, time and place specified below, of any designated documents that are in your possession, custody or control.
- Produce and permit inspection and copying, testing or sampling, on the date and at the time and place specified below, of any tangible things that are in your possession, custody or control.
- Permit entry upon the following described land or other property, for the purposes described in civil 34(A)(3), on the date and at the time and place specified below. *Description of land or other premises:* _____

DATE: August 7, 2014 TIME 10:00 A.M.

PLACE: Ohio Attorney General's Office, 150 E. Gay St. 18th Floor, Columbus, OH 43215

DESCRIPTION OF ITEMS TO BE PRODUCED: Complete military records for Mr. Shaun T. Whitehead, Army (retired) previously requested on Standard Form 180 dated 13 May 2014.
IN LIEU OF APPEARANCE, Please mail CERTIFIED COPIES to Jeffery Duvall, Investigator, Court of Claims Defense Section, 150 E. Gay St., 18th floor, Columbus, OH 43215.

THE STATE OF OHIO

Franklin County, ss

To the Sheriff of Certified Mail County, Ohio Greetings:

YOU ARE HEREBY COMMANDED TO SUBPOENA THE ABOVE NAMED PERSON.

WITNESS MY HAND AND SEAL OF SAID COURT THIS _____ DAY OF July, 2014.

CLERK OF THE COURT OF CLAIMS OF OHIO.

BY: _____
SIGNATURE OF Judge Dale A. Crawford

REQUESTING PARTY INFORMATION:

NAME: Amber Wooten-Hertlein, Assistant Attorney General, 150 E. Gay St. 18th FL., Columbus, OH 43215.
[(Attorney for (Plaintiff) (Defendant))]

ATTORNEY CODE: 0083858 TELEPHONE NUMBER: (614) 387-4256

NOTE: READ ALL INFORMATION ON THE REVERSE SIDE OF THIS SUBPOENA.

Civil Rule 45 (C) Protection of persons subject to subpoenas.

- (1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena.
(2) (a) A person commanded to produce under divisions (A)(1)(b)(ii), (iii), (iv), or (v) of this rule need not appear in person at the place of production or inspection unless commanded to attend and give testimony at a deposition, hearing or trial.
(b) Subject to division (D)(2) of this rule, a person commanded to produce under divisions (A)(1)(b)(ii),(iii),(iv), or (v) of this rule may, within fourteen days after service of the subpoena or before the time specified for compliance if such time is less than fourteen days after service, serve upon the party or attorney designated in the subpoena written objections to production.
(3) On timely motion, the court from which the subpoena was issued shall quash or modify the subpoena, or order appearance or production only under specified conditions, if the subpoena does any of the following:
(a) Fails to allow reasonable time to comply;
(b) Requires disclosure of privileged or otherwise protected matter and no exception or waiver applies;
(c) Requires disclosure of a fact known or opinion held by an expert not retained or specially employed by any party in anticipation of litigation or preparation for trial as described by Civ. R. 26(B)(4), if the fact or opinion does not describe specific events or occurrences in dispute and results from study by that expert that was not made at the request of any party;
(d) Subjects a person to undue burden.
(4) Before filing a motion pursuant to division (C)(3)(d) of this rule, a person resisting discovery under this rule shall attempt to resolve any claim of undue burden through discussions with the issuing attorney.
(5) If a motion is made under division (C)(3)(c) or (C)(3)(d) of this rule, the court shall quash or modify the subpoena unless the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated.

Civil Rule 45 (D) Duties in responding to subpoena.

- (1) A person responding to a subpoena to produce documents shall, at the person's option, produce them as they are kept in the usual course of business or organized and labeled to correspond with the categories in the subpoena.
(2) If a request does not specify the form or forms for producing electronically stored information, a person responding to a subpoena may produce the information in a form or forms in which the information is ordinarily maintained if that form is reasonably useable, or in any form that is reasonably useable.
(3) A person need not provide discovery of electronically stored information when the production imposes undue burden or expense.
(4) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.
(5) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it.

Civil Rule 45 (E) Sanctions.

Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. A subpoenaed person or that person's attorney who frivolously resists discovery under this rule may be required by the court to pay the reasonable expenses, including reasonable attorney's fees, of the party seeking the discovery.

Civil Rule 45 (F) Privileges

Nothing in this rule shall be construed to authorize a party to obtain information protected by any privilege recognized by law, or to authorize any person to disclose such information.

**** RETURN OF SERVICE****

I RECEIVED THIS SUBPOENA ON _____, AND SERVED THE PARTY NAMED ON THE REVERSE HEREOF

BY _____ ON _____

I WAS UNABLE TO COMPLETE SERVICE FOR THE FOLLOWING REASON:

Sheriff's Fees
Service _____
Mileage _____
Copy _____
Total _____

(Signature of Serving Party)
Circle One: Deputy Sheriff Attorney
Process Server Deputy Clerk
Other