

ORIGINAL

IN THE OHIO COURT OF CLAIMS

FILED
COURT OF CLAIMS
OF OHIO

2015 AUG 17 PM 3:07

RICKY JACKSON

Plaintiff

v.

STATE OF OHIO

Defendant

Case No. 2015-00127

Judge Patrick M. McGrath

DEFENDANT'S NOTICE OF
AMENDED CERTIFICATE OF
SERVICE

On August 17, 2015, defense counsel's legal secretary notified them that she received notice that the attached motion was served upon the incorrect email address. Therefore, pursuant to this notice, Defendant is hereby serving the attached motion upon the correct email address for Mr. Jackson's counsel.

Respectfully submitted,

MICHAEL DEWINE
Ohio Attorney General



PETER E. DEMARCO (0002684)
Principal Assistant Attorney General

AMY S. BROWN (0079650)
Senior Assistant Attorney General

Ohio Attorney General's Office
Court of Claims Defense Section
150 East Gay Street, Floor 18
Columbus, OH 43215

(614) 466-7447 Office

Peter.DeMarco@OhioAttorneyGeneral.gov

Amy.Brown@ohioattorneygeneral.gov

COUNSEL FOR DEFENDANT

CERTIFICATE OF SERVICE

On August 17, 2015, we sent a copy of this document via email to Plaintiff's Counsel:

Michele Berry (mberrylaw2007@gmail.com).



PETER E. DEMARCO (0002684)

AMY S. BROWN (0079650)

Assistant Attorneys General

ORIGINAL
IN THE OHIO COURT OF CLAIMS

FILED
COURT OF CLAIMS
OF OHIO

2015 AUG 13 PM 3:17

RICKY JACKSON

Plaintiff

v.

STATE OF OHIO

Defendant

Case No. 2015-00127

Judge Patrick M. McGrath

DEFENDANT'S MOTION FOR
SUBPOENA SIGNED BY JUDGE

This wrongful imprisonment case was filed on behalf of the Plaintiff Ricky Jackson. The Complaint alleges that Mr. Jackson was wrongfully incarcerated from January 21, 1976 to November 21, 2014 after being convicted of aggravated murder, aggravated attempted murder and aggravated burglary in Cuyahoga County Case No. CR-75-020436-B. Mr. Jackson seeks damages pursuant to R.C. 2743.48, including lost wages pursuant to R.C. 2743.48(E)(2)(c).

Discovery has revealed that Mr. Jackson served in the United States Marines prior to his incarceration. In order to assess Mr. Jackson's lost wages claim, reviewing his prior military records is essential. Defendant requested copies of Mr. Jackson's military records from the National Archives. *See* Duvall Affidavit at ¶ 2. However, further communication with the National Archives' employee revealed that the records could not be released without a subpoena signed by a judge or a court order signed by a judge. *Id.* at ¶¶ 3-5. Therefore, Defendant 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

P. E. D.

PETER E. DEMARCO (0002684)
Principal Assistant Attorney General
AMY S. BROWN (0079650)
Senior Assistant Attorney General
Ohio Attorney General's Office
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Peter.DeMarco@OhioAttorneyGeneral.gov
Amy.Brown@ohioattorneygeneral.gov

COUNSEL FOR DEFENDANT

CERTIFICATE OF SERVICE

On August 13, 2015, we sent a copy of this document via email to Plaintiff's Counsel:

Michele Berry (berr6029@neo.rr.com).

P. E. D.

PETER E. DEMARCO (0002684)
AMY S. BROWN (0079650)
Assistant Attorneys General

IN THE OHIO COURT OF CLAIMS

Ricky Jackson

Plaintiff

v.

STATE OF OHIO

Defendant

Case No. 2015-00127

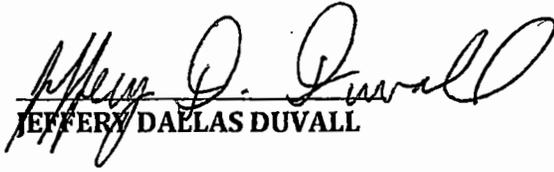
Judge Patrick M. McGrath

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 August 05, 2015, I telephoned the National Personnel Records Center National Personnel Records Center, 1 Archives Drive, St. Louis, MO 63138-1002 and received verification that Ricky Jackson's service record was maintained by the National Personnel records center.
3. On or about August 5, 2015, I discovered after speaking with a representative, National Personnel Records Center via telephone, subpoenas for military records 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 2 is a true and accurate copy of the court order requirements.
4. On or about August 6, 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. Jackson's military records.

5. FURTHER AFFLIANT SAYETH NAUGHT.


JEFFERY DALLAS DUVALL

Sworn to before me and signed in my presence, a Notary Public in and for said State and
County, on this 13th day of August, 2015.


NOTARY PUBLIC

My Commission expires
on December 10, 2017.



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

SUBPOENA

Ricky Jackson :
Plaintiff :
v. : Case No. 2015-00127
State of Ohio :
Defendant : Judge Patrick M. Mcgrath

TO: **National Personnel Records Center**
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.
- X** **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: September 25, 2015 TIME 10:00 A.M.
PLACE: Ohio Attorney General's Office, 18th Floor, 150 E. Gay St. Columbus, OH 43215

DESCRIPTION OF ITEMS TO BE PRODUCED: Complete military records for Mr. Ricky Jackson,)2/07/1957, U.S. Marines Corps. 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 13TH DAY OF AUGUST, 2015.

CLERK OF THE COURT OF CLAIMS OF OHIO.

BY: _____
SIGNATURE OF Judge Patrick M. Mcgrath

REQUESTING PARTY INFORMATION:
NAME: **Amy Brown, Assistant Attorney General, 150 E. Gay St. 18th FL., Columbus, OH 43215.**
[(Attorney for ~~Plaintiff~~) (Defendant)]
ATTORNEY CODE: **0079650** TELEPHONE NUMBER: **(614) 466-1103**

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. If objection is made, the party serving the subpoena shall not be entitled to production except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena, upon notice to the person commanded to produce, may move at any time for an order to compel the production. An order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the production commanded.

(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. A motion filed pursuant to division (C)(3)(d) of this rule shall be supported by an affidavit of the subpoenaed person or a certificate of that person's attorney of the efforts made to resolve any claim of undue burden.

(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. A person producing documents or electronically stored information pursuant to a subpoena for them shall permit their inspection and copying by all parties present at the time and place set in the subpoena for inspection and copying.

(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. Unless ordered by the court or agreed to by the person subpoenaed, a person responding to a subpoena need not produce the same electronically stored information in more than one form.

(3) A person need not provide discovery of electronically stored information when the production imposes undue burden or expense. On motion to compel discovery or for a protective order, the person from whom electronically stored information is sought must show that the information is not reasonably accessible because of undue burden or expense. If a showing of undue burden or expense is made, the court may nonetheless order production of electronically stored information if the requesting party shows good cause. The court shall consider the factors in Civ. R. 26(B)(4) when determining if good cause exists. In ordering production of electronically stored information, the court may specify the format, extent, timing, allocation of expenses and other conditions for the discovery of the electronically stored information.

(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. After being notified, a receiving party must promptly return, sequester, or destroy the specified information and any copies within the party's possession, custody or control. A party may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim of privilege or of protection as trial-preparation material. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

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. The court from which a subpoena was issued may impose upon a party or attorney in breach of the duty imposed by division (C)(1) of this rule an appropriate sanction, which may include, but is not limited to, lost earnings and reasonable attorney's fees.

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