

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TENNESSEE,  
AT CHATTANOOGA

**FILED**

2010 JUN -3 A 11: 47

**ROY L. DENTON,**  
*Plaintiff*

v.

**STEVE RIEVLEY,**  
*in his individual capacity*  
*Defendant*

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Case No. 1:07-cv-211

BY \_\_\_\_\_ DEPT. CLERK

Chief Judge Curtis L. Collier

**JURY DEMAND**

U.S. DISTRICT COURT  
EASTERN DIST. TENN.

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**PLAINTIFF ROY L. DENTON'S RESPONSE  
TO DEFENDANT STEVE RIEVLEY'S MOTION TO QUASH,  
OR IN THE ALTERNATIVE, FOR A PROTECTIVE ORDER**

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Comes now, the Plaintiff Roy L. Denton, *pro se*, and files this Response to the Defendant Steve Rievley's Motion to Quash, or in the alternative, for a protective order and hereby submits the following:

The attorney for the defendant in this matter, Ronald D. Wells, was served a subpoena which is exhibited as attached to his motion. *See Court Doc. No. 95-1.*

The plaintiff is representing himself and is acting as his own attorney in this matter. Therefore, plaintiff as such, is not only a party to this litigation, but is also in the unique position of "acting" as his own attorney in this litigation. The plaintiff, while acting in the capacity of a self-represented litigant, held to the same strict standards as an attorney by this court, did indeed personally serve a subpoena upon Mr. Ronald D. Wells.

**Respectfully,** Mr. Wells argues in his instant motion that the subpoena served upon him

should be quashed because in part that “*the service of the subpoena is invalid*”. While Mr. Wells correctly cites Rule 45 (b)(1) of the Federal Rules of Civil Procedure, which provides in pertinent part that “*any person who is at least 18 years old and not a party may serve a subpoena*”, Mr. Wells neglects to inform this court that he has historically **never objected** to his being served a subpoena by the pro se party/litigant Roy L. Denton in the past.

As a matter of fact, on November 3, 2008 Mr. Wells was served a subpoena requesting certain information. *See attached Exhibit A*. Interestingly, that subpoena was personally served upon Mr. Wells by Mr. Denton. Although that subpoena was served by certified U.S. Mail, it nonetheless was served “**personally by Roy L. Denton**”. Therefore, Mr. Wells is incorrect in now stating that the service of a subpoena upon him by “*a party*” is invalid. Clearly, Mr. Wells cannot only accept a subpoena served upon him by “a party” to this litigation almost two years ago and then turn around and hold a position that Mr. Denton serving upon him a second subpoena is now somehow invalid.

Therefore, Mr. Wells’ argument that the instant subpoena at issue is invalid due to it being served upon him by Mr. Denton who is “a party” to this litigation is without merit. Rule 45 sets out the manner in which a subpoena is to be served. The manner in which the party/plaintiff Roy L. Denton served a subpoena upon Ronald D. Wells does not matter. What matters is Mr. Wells was served a subpoena on November 3, 2008 and he never objected or otherwise. In fact, he timely complied with the commands of that subpoena.

Now, Mr. Wells after having been served a second subpoena on May 20, 2010 by the exact same party/litigant now is attempting to evade compliance with the commands of that subpoena. In any event, the bottom line is Mr. Wells never objected to Mr. Denton (a party) serving him a subpoena before and now he cannot do so now having waived any issues

pertaining to Rule 45. Additionally, no matter who serviced the subpoena it was serviced upon Mr. Wells and he received it, period. Mr. Wells cannot show that he has been prejudiced in any way whatsoever by the service of a subpoena upon him. As Mr. Wells pointed out previously to this court (*see Court Doc. 75 pg. 2*) where the Sixth Circuit upheld the district court's decision to allow the late filings, stating:

[a]lthough the second and third reply briefs were not timely filed in accordance with Local Rule 7.1, we do not agree with Plaintiff that it would always be appropriate, barring extreme circumstances, for us to preclude a submission to the district court for failure to comply with the requirements of a local rule. Enforcing timely filing, on these facts, does not constitute an extreme circumstance. We therefore are not inclined to reverse based on the district court's decision not to strictly enforce Local Rule 7.1.

Accordingly, this court should deny the defendant's motion to quash the subpoena.

In response to the defendant's argument that the subpoena somehow does not allow for adequate time to comply, just the opposite is true. Mr. Denton has calculated and allowed a rather generous amount of time in which to allow Mr. Wells to comply with the mandates of the subpoena. Mr. Wells is mistaken, or does not fully understand the newly revised subpoena form AO 88B which is clearly indicated as such to be a subpoena to produce documents, information, objects or to permit inspection, etc. in a civil action. Nothing in the subpoena requires Mr. Wells to "appear" or "travel" anywhere whatsoever.

As a learned attorney, Mr. Wells bases his claim to not having a "reasonable time to comply" solely upon his belief that he somehow had to personally "appear at the plaintiff's home in Dayton, Tennessee at 3:00 p.m. to produce the cell phone numbers of Officer Rievley". Clearly, Mr. Wells is again mistaken or does not fully understand the Rule applicable to a federal subpoena. Federal Rule of Civil Procedure 45 (c)(2)(A) states:

*Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of

premises, **need not appear in person at the place of production** or inspection unless also commanded to appear for a deposition, hearing, or trial. (*emp. added*)

Additionally, as the attorney for the Defendant Steve Rievley, Mr. Wells could have easily called or otherwise easily obtained his clients cellular phone numbers. In fact, according to the motion as filed by Mr. Rievley's attorney, his legal counsel actually states that they **"have offered to provide Officer Rievley's redacted cell phone records which would show any calls made by Officer Rievley from 12:00am until 3:00am on September 9, 2006 to the City of Dayton Police Department/Jail."** See *Defendant's Motion – Court Doc. No. 95, pg. 4.*

It is a fact that Mr. Wells and/or Ms. Dickson has stated to this court in their instant motion that the fact exists, as presented to this court by them as officers of the court, that in the very least, on the date of the filing of their instant motion, that Mr. Wells and Ms. Dickson actually had in their possession **"redacted cell phone records which would show any calls made by Officer Rievley"**. Frankly, it is hard to understand how there is some sort of "burden" being placed on anyone when Mr. Wells already has in his possession the information commanded and sought in the subpoena. The subpoena could have easily been complied with, even in part, by simply providing the information counsel states to this court to already possess and had even "attempted to contact" and "offered to provide" information counsel state they already have in their possession.

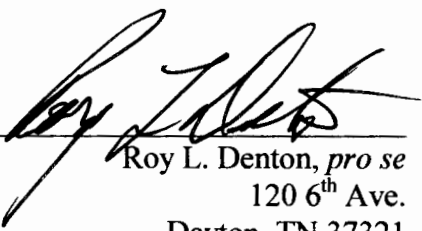
In any event, the subpoena commands the production of the cell phone number of Steve Rievley's city issued Verizon cell phone as well as Rievley's personal Sprint cell phone that he indicated in his answer to Interrogatories which is attached to defendant's motion that he also used such personal phone in his work as a Dayton City police officer. See *Court Doc. 95-2, pg. 3.*

Lastly, as the counsel of the defendant should know, public taxpayer issued cell phones issued to city employees, including city police employees, have been opinioned by the Tennessee State Comptroller as well as the Tennessee Attorney General, in addition to numerous state court holdings, that firmly establish such public provided cell phones issued to public employees are public record available to the public pursuant to the Tennessee Public records Act.

Furthermore, the plaintiff does not desire “unfettered” access, as defense counsel points out, to anyone’s business or cell phone records or accounts. As for the relevancy of the defendants phone records and the discovery that is expected to be found therein, is a question that must be addressed or challenged in some other exclusionary proceeding.

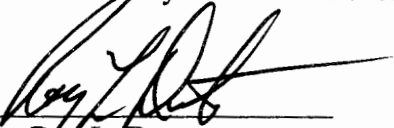
Therefore, all that needs to be done is for the defendant’s attorney comply with the subpoena and provide the defendant’s cellular phone numbers or in the alternative, simply provide the plaintiff with the phone records they state they already have which is what the plaintiff actually seeks to find through his cellular phone providers which is any calls made by defendant Rievley from 12:00 a.m. until 3:00 a.m. on September 9, 2006.

Respectfully submitted this 1<sup>ST</sup> day of JUNE, 2010.

  
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Roy L. Denton, *pro se*  
120 6<sup>th</sup> Ave.  
Dayton, TN 37321  
423-285-5581

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that an exact copy of this document has been served upon all parties of interest in this cause by placing an exact copy of same in the U.S. Mail addressed to such parties, with sufficient postage thereon to carry same to it's destination, on this 15 day of June, 2010.

  
\_\_\_\_\_  
Roy L. Denton

Copy mailed to:

Ronald D. Wells, BPR# 011185  
Suite 700 Republic Centre  
633 Chestnut Street  
Chattanooga, TN 37450  
Phone:423-756-5051

*copy*

Issued by the  
UNITED STATES DISTRICT COURT

**FILED**

By *L. DENTON*  
v.  
*STEVE RIEVLEY*

2008 NOV 14 A 11: 23

SUBPOENA IN A CIVIL CASE  
U.S. DISTRICT COURT  
EASTERN DIST. TENN.

Case Number: *1:07-cv-211*

TO: *RONALD D. WELLS, ATTORNEY FOR DEF.*  
*633 CHESTNUT ST. SUITE 700*  
*CHAFFINBURG, TN 37450*

YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME
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YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects): *WRITTEN STATEMENT OF JESSICA CARROLL, COMPLETE INVENTORY + LOCATION OF ALL BELONGINGS TAKEN FROM THE HOME OF ROY L. DENTON, ALL INFORMATION AVAILABLE REGARDING GERALD BREWER.*  
*"SEE ATTACHED EXHIBIT A"*

PLACE <i>ROY L. DENTON</i> <i>2457 AIRPORT THRUWAY PWB-126, COLUMBUS, GA 31909</i>	DATE AND TIME <i>NOV. 14, 2008 - 3:00 PM</i>
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YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME
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Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rule of Civil Procedure 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT) <b>PATRICIA L. McNUTT, CLERK</b>	DATE <b>FEB 22 2008</b>
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ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER <i>P. Lewis</i>
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(See Federal Rule of Civil Procedure 45 (c), (d), and (e), on next page)

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.

PROOF OF SERVICE

SERVED	DATE 11-3-08	PLACE 633 CHESTNUT ST. SUITE 100 CHATTANOOGA, TN 37450
SERVED ON (PRINT NAME) Ronald D. Walls	MANNER OF SERVICE U.S. MAIL - CERTIFIED	2008 NOV 14 A 11:23 2008/1830 00005894 U.S. DISTRICT COURT EASTERN DIST. TENN.
SERVED BY (PRINT NAME) Ray L. Deard	TITLE PLAINTIFF	BY _____

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on 11-3-08 DATE

SIGNATURE OF SERVER

2457 ADAMS TRAILWAY - RTB #106 ADDRESS OF SERVER

COLUMBUS, GA 31904

Federal Rule of Civil Procedure 45 (c), (d), and (e), as amended on December 1, 2007:

(c) PROTECTING A PERSON SUBJECT TO A SUBPOENA.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the issuing court must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information;
- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or
- (iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(d) DUTIES IN RESPONDING TO A SUBPOENA.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena 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 party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT.

The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).