

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA**

ROY L. DENTON)	
)	
Plaintiff)	Case No. 1:07-cv-211
)	
v.)	JURY DEMAND
)	
STEVE RIEVLEY)	Collier/Carter
)	
Defendant)	

**DEFENDANT STEVE RIEVLEY’S MOTION TO QUASH, OR IN THE
ALTERNATIVE, FOR A PROTECTIVE ORDER
FED. R. CIV. P. 45**

Comes the Defendant, Steve Rievley, in his individual capacity, (herein “Officer Rievley”) pursuant to Rule 45 of the *Federal Rules of Civil Procedure* and moves this Court to quash the subpoena served upon the defendant’s attorneys on May 20, 2010, or, in the alternative, for a protective order from the same. The Subpoena in question is attached hereto as Exhibit A and seeks certain information relating to Officer Rievley’s cellular telephones. For cause, Officer Rievley would show this Court as follows.

During the course of this litigation, the Plaintiff propounded Interrogatories to Officer Rievley. Below is Interrogatory # 6 propounded by the Plaintiff and Officer Rievley’s response to the same.

6. Do you use a cellular phone while on duty at the city of Dayton Police Department, or any other governmental entity?

(a) If so, provide the telephone number and service provider for such phone.

ANSWER: OBJECTION. The Interrogatory seeks information that is not relevant and which is not reasonably calculated to lead to the discovery of relevant information. Specifically, objection is made to providing account numbers and cell phone numbers without an order from the Court and without a protective order for the use of same. Without waiving any objection, see below.

I have a personal cell phone and a cell phone issued to me by the City of Dayton. I use both of them in the course of my duties. My personal cell phone service is through Sprint. The service provider for the cell phone issued to me by the City of Dayton is Verizon.

See Attached Exhibit B. Thus, it is clear Officer Rievley objected to providing this information to the Plaintiff on April 22, 2008, more than two years ago.

Again, on May 20, 2010, the Plaintiff, Roy L. Denton **personally** served Officer Rievley's attorney with Exhibit A. Exhibit A commands Officer Rievley to produce

The cell phone number of Steve Rievley's city issued "Verizon" phone and Steve Rievley's personal "Sprint" phone as indicative (sic) in Interrogatory #6 dated 4-22-08."

See Exhibit A. The subpoena commanded that these cell phone numbers be produced at 3 p.m. at 120 6th Avenue, Dayton, Tennessee 37321 by May 27, 2010, just five (5) business days after the subpoena was served personally by the Plaintiff. *See Id.* Previous court documents filed in this matter, including the Complaint, have shown that the 120 6th Avenue address is the home residence of the Plaintiff.

1. The service of the subpoena is invalid.

Rule 45(b)(1) of the *Federal Rules of Civil Procedure* provides in pertinent part that "[a]ny

person who is at least 18 years old and **not a party** may serve a subpoena.” *Id.* (emphasis added). The Proof of Service of Exhibit A clearly shows that the subpoena was served by “Roy L. Denton, Plaintiff.” See *Exhibit A*. Because the Plaintiff is a party to the instant litigation, he may not serve the subpoena himself. Thus, the service of the subpoena was improper under Rule 45(b)(1) of the Federal Rules of Civil Procedure.

2. The subpoena does not allow for a reasonable time to comply.

Rule 45(c)(3)(A)(1) of the *Federal Rules of Civil Procedure* allows for the Court to quash a subpoena if the subpoena “fails to allow a reasonable time to comply.” *Id.* The Plaintiff is commanding the attorney for Officer Rievley to appear at the Plaintiff’s home in Dayton, Tennessee at 3p.m. to produce the cell phone numbers of Officer Rievley. He has given Attorney Wells only five (5) business days to comply with this subpoena (which was improperly served by the Plaintiff). Although the Plaintiff is not required to do so, he has not inquired of Attorney Wells if such a time or place is convenient given the lack of adequate notice. Accordingly, the subpoena should be quashed pursuant to Rule 45(c)(3)(A)(1) of the *Federal Rules of Civil Procedure*.

3. The subpoena seeks information that is not relevant and which is not reasonably calculated to lead to the discovery of relevant information.

Rule 26(b)(1) of the *Federal Rules of Civil Procedure* allows for discovery if “appears reasonably calculated to lead to the discovery of admissible evidence.” *Id.* Officer Rievley’s work and personal cell phone records are not reasonably calculated to lead to the discovery of admissible evidence. Although the Plaintiff may argue that such cell phone numbers are required so that he may issue subpoenas to obtain the phone records of Officer Rievley, allowing such a broad and general use of a subpoena far exceeds its intended scope and power. The Plaintiff simply does not need

unfettered access to Officer Rievley's business and personal cell phone accounts.

The only relevant issue in this case is what occurred in the very early morning hours of September 9, 2006. Attorneys for Officer Rievley have attempted to contact the Plaintiff in effort to resolve this issue and 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.

Accordingly, Officer Rievley respectfully requests that this Court grant him a protective order from providing the information requested. In the alternative, if the Court decides that Officer Rievley must provide his cell phone number to the Plaintiff, then Officer Rievley would respectfully request that this Court enter an Order that the Plaintiff only be allowed to obtain 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.

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CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of May, a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. Mail. Parties may access this filing through the Court's electronic filing system.

This the 26th day of May, 2010.

Robinson, Smith & Wells

By: s/ Elizabeth Dickson

c: Roy L. Denton
120 6th Avenue
Dayton, TN 37321

CERTIFICATE OF GOOD FAITH

I hereby certify that on the 26th day of May I attempted to confer with other affected parties in an effort to resolve the dispute without court action pursuant to Rule 26(c)(1).

Robinson, Smith & Wells

By: s/ Elizabeth Dickson