

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA**

**ALABAMA STATE CONFERENCE)
OF THE NAACP, ET AL.,)**

Plaintiffs,)

v.)

STATE OF ALABAMA, ET AL.,)

Defendants.)

**CIVIL ACTION NO.
2:16-cv-00731-WKW-CSC**

MOTION TO QUASH OR MODIFY

The Alabama State Bar Association (“the Bar”), a non-party, through its Office of General Counsel, requests that this Honorable Court quash or modify the scope of a non-party subpoena served on it by Plaintiffs on October 27, 2017. As grounds, the Bar submits the following:

Plaintiffs' subpoena commanded the Bar to produce the following:

“In an Excel format or comma delimited text format, addresses, including zip codes, of all lawyers who currently have offices or office addresses in the State of Alabama. If an address is a post office box, if available, also provide the street or civic address.”

Rule 45(d)(1), Fed. R. Civ. P., states that “[a] party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden ... on a person subject to the subpoena.” When evaluating whether a subpoena places an undue burden on a non-party, courts consider such factors as

the particularity with which the information requested is described, the relevance of the information requested, and requesting party's need for the information. *See Wiwa v. Royal Dutch Petroleum Co.*, 392 F.3d 812, 818 (5th Cir. 2004); *Fadalla v. Life Auto Products*, 258 F.R.D. 501, 504 (M.D. Fla. 2007); *Cytodyne Techs., Inc. v. Biogenic Techs., Inc.*, 216 F.R.D. 533, 535 (M.D. Fla. 2003); *Green v. Mobis Alabama, LLC*, case no. 2:12cv277, 2014 U.S. Dist. LEXIS 67373 at *9 (M.D. Ala. May 16, 2014).

Argument for Quashing the Subpoena

Here, Plaintiffs have not described with clarity the information that they need or explained why they need it and how it is relevant to any issue in this case.

Specifically, it is not clear from Plaintiffs' subpoena exactly what Plaintiffs mean by the words "lawyers." Do Plaintiffs mean all members of the Bar whether or not they are actively engaged in the practice of law? Does the request include only those members with occupational licenses or all members, regardless of the type of membership?

It is also not clear from Plaintiffs' subpoena exactly what Plaintiffs mean by the words "offices or office address." Do Plaintiffs mean law offices open to the public or every mailing and/or physical addresses each member has provided, regardless of whether it is actually a law office open to the public?

Until Plaintiffs clarify their request and articulate their need for and the relevance of the information requested, the Bar should not be burdened with producing it.

Argument for Modifying the Subpoena

If Plaintiffs are seeking the addresses of every Bar member, the Bar submits some members have a right of privacy in their addresses that entitles them not to have their addresses disclosed.

All Bar members, regardless of their type of membership, are required to provide the Bar with a current mailing address for membership-related communications and are also asked to provide the Bar with the physical address of their principal office (if different from their mailing address) for use in the election of the Bar's commissioners. However, not every member of the Bar has a law office open to the public or wants their Bar-related correspondence delivered to their business office; therefore, many members provide the Bar with a mailing and/or physical address that is a home address.

The Bar does not make any addresses provided as physical addresses available to the public. It does publish members' mailing addresses, unless the member elects not to have his or her mailing address published. The Bar does not ask members to give a reason for their election against publication.

The Bar submits those members who have elected against publication of their mailing addresses have a right to expect that the Bar will continue to maintain the privacy of all of their address information, even when responding to a subpoena.

In addition, because the Bar does not publish physical addresses, members who have provided physical addresses different from their mailing addresses have a right to expect that the Bar will continue to maintain the privacy of their physical addresses, even when responding to a subpoena.

Undersigned counsel has found no case law directly addressing the privacy rights of third parties in their addresses when they have provided the addresses solely for membership in a professional organization and, either (1) specifically requested that the organization not publish the addresses provided, or (2) reasonably believed that the organization would use the addresses solely for the purpose of voting in that organization and not publish them. However, federal courts have recognized, mostly in cases brought under the federal Freedom of Information Act, 5 U.S.C.S. § 552 (“FOIA”), that individuals have some right to privacy in their home addresses. *See e.g. United States DOD v. FLRA*, 510 U.S. 487, 497, 114 S. Ct. 1006 (1994) (recognizing that federal civil service employees had a right to privacy in their home addresses); National Ass'n of Retired Federal Employees v. Horner, 879 F.2d 873, 875 (D.C. Cir. 1989) (stating that “the privacy

interest of an individual in avoiding the unlimited disclosure of his or her name and address is significant").

Because the Bar does not ask members why they are electing not to publish their mailing address or why they are providing a physical address different from their mailing address, the Bar cannot know which of the members doing so are using home addresses. Certainly some are. However, even if the addresses at issue are not home addresses, it is clear that those members who have requested that their mailing address not be published have a privacy concern significant enough to motivate them to act where others have not. For that reason alone, the mailing and physical addresses of those members who have elected against publication should be excluded from production.

The reason why some members provide a physical address different from their mailing address likely varies greatly among members. However, the fact that the Bar does not publish those addresses entitles the members who have provided physical addresses different from mailing addresses to have their physical addresses excluded from discovery here.

In an attempt to resolve these issues without court action, the undersigned has in good faith conferred with counsel for Plaintiffs, but counsel could not agree upon the scope of production.

Relief Requested

For the reasons set forth herein, the Bar seeks the following relief:

1. To quash Plaintiffs' subpoena;
2. To exclude from production the mailing and physical address of every member who has elected not to have his or her mailing address published by the Bar;
3. To exclude from production all physical addresses of members that are different from their mailing addresses; and/or
4. Such other relief as the Bar may be entitled to under the facts, including but not limited to the entry of a protective order.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of November, 2017, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel currently listed to receive email notices for the above-styled action. In addition, I have sent a copy of the foregoing document by U.S. Mail, postage prepaid, to the following counsel who are of record in the above-styled action and are not listed to receive e-mail notices:

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s/ J. Douglas McElvy
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