

IN THE CIRCUIT COURT
TWENTIETH JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS

GERARD SCOTT, JR.,)	
)	
Plaintiff,)	
)	
Vs.)	No. 23LA1139
)	
BRADLEY VANHOOSE,)	
)	
Defendants.)	

SPECIAL AND LIMITED APPEARANCE

Comes now the law firm of Clayborne & Wagner LLP and enters its Special and Limited Appearance on behalf of, KENT LUEBBERS, MATT MODROVSKY, AND DAN CARY, pursuant to Rule 1.7, 1.8, 201 and 203 of the Illinois Supreme Court and 735 ILCS 5/2-1101 of the Illinois Compiled Statutes, for the sole purpose of challenging subpoena response.

CLAYBORNE AND WAGNER LLP

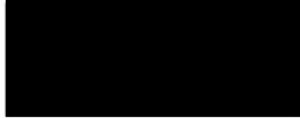
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CERTIFICATE OF SERVICE

The undersigned attorney certifies that a copy of the foregoing was served upon the following person(s) and/or attorneys via the Court's electronic filing system on this 26th day of January 2024, addressed to the following attorneys or individuals:

Doug Stewart, IL 6333618
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Fairview Heights, IL 62208
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Attorney for Plaintiff

Bradley Vanhoose



/s/ Bryce R. Lickfield

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**MOVANTS
MOTION TO QUASH SUBPOENAS**

COMES NOW, movants, **KENT LUEBBERS, MATT MODROVSKY, AND DAN CARY**, by and through his attorneys, Clayborne and Wagner, LLP, and for their Motion to Quash Plaintiff's Subpoena Duces Tecum, which has been served upon each of the movants.

I. INTRODUCTION

1. Gerard Scott, ("Plaintiff") has mailed Matt Modrovsky, Kent Luebbers, and Dan Cary ("Movants") subpoena duces tecum ("Subpoena") (attached hereto as Exhibit A). The Subpoenas should be quashed for several procedural and substantive reasons. **First, there is a blatant conflict of interest between Plaintiff's attorney, Douglas Stewart, and the Movants, with whom Mr. Stewart represents in their official capacity.** Ill. S. Ct. R. 1.7(a). Second, the Subpoena is unclear as to scope of its request and to what capacity it treats the Movants, being in their official or personal capacity. Finally, the Subpoenas are unreasonable and, therefore, the primary effect of the Subpoenas is harassment.

II. LEGAL AUTHORITY

2. Rule 201 of the Illinois Supreme Court Rules directs that discovery must be limited to information that is "relevant to the subject matter involved in the pending action" in order to protect the responding party from being subjected to an undue burden and that discovery must be managed so as "to prevent unreasonable annoyance, expense, embarrassment, disadvantage, or oppression." Ill. S. Ct. R. 201(b)(1) and 201(c)(1).

3. Rule 204 of the Illinois Supreme Court Rules explains that subpoenas may be issued by an attorney admitted to practice in the State of Illinois who is currently counsel of record in the pending action. The subpoena may command the person to whom it is directed to produce documents or tangible things which constitute or contain evidence relating to any of the matters within the scope of the examination permitted under these rules subject to any limitations imposed under Rule 201(c). Ill. S. Ct. R. 204(a)(1).

4. Rule 1.7 of the Illinois Supreme Court Rules lays out the parameters in which an attorney may not represent a client if representation involves a concurrent conflict of interest as well as when that conflict can be waived. Ill. S. Ct. R. 1.7(a)

III. BACKGROUND

5. On October 5, 2023, Plaintiff filed a complaint against Bradley Vanhooze for making defamatory statements. Within the FACTS PERTINENT TO ALL COUNT(S) section, Plaintiff explained that he was employed by the Village of Caseyville (hereinafter "Village"). Further, Plaintiff lists himself as a public official for the village as he serves as representative of District 2 on the St. Clair County Board.

6. The Movants are each a member of the board of trustees for the Village. During Village meetings the Movants are seated with Doug Stewart for the purpose of handling Village affairs and work with Mr. Stewart as their attorney within their respective positions.

7. The Village board consists of a Mayor and six (6) Trustees, three (3) of which have been served with a Subpoena for correspondence(s), documents, emails, letters, logs, notes, phone bills, records, reports, texts, or the like related to a number of individuals which include each of the Movants as well as the Mayor's son (Plaintiff).

8. As a Village employee, Doug Stewart has access to many of the documents he is requesting from the Movants.

9. The October 5, 2023, Complaint fails to distinguish whether the suit is being brought in the Plaintiffs official capacity as an employee of the Village or as an individual.

10. The Movants have not provided informed consent for Doug Stewart to represent the Plaintiff in this case, where a conflict of interest exists as required by the Supreme Court Rules, Ill. S. Ct. R. 1.7(b).

11. The Plaintiff has an interest that is directly adverse to the Movants, as he seeks evidence to substantiate a claim for defamation. As such, Doug Stewart has a conflict of interest as outlined by the Supreme Court Rules, Ill. S. Ct. R. 1.7(a)

12. Underpinning the litigation brought by the Plaintiff in this case, were remarks made by the Defendant, which are alleged to be false and defamatory in nature. However, if these allegations were true, then Doug Stewart would likely be involved as the city attorney, in dealing with the misappropriation of Village funds on personal property.

13. Prior to bringing this action, Doug Stewart conducted an investigation into whether the allegations brought by the defendant were true. Through this investigation, Mr. Stewart collected many of the documents and communications from the Movants that he is requesting in the Subpoena. Proof of this investigation and its connection to the Movants is found in a December

20, 2023, letter titled "Allegations of Misue of Public Funds by Brad Vanhooose" which was disseminated to the Village. (Exhibit B)

IV. ARGUMENT

14. Pursuant to Illinois Supreme Court Rule 201, a Court may enter a Protective Order quashing a deposition "as justice requires, denying, limiting, conditioning, or regulating discovery to prevent unreasonable annoyance, expense, embarrassment, disadvantage, or oppression."

15. Doug Stewart is and has been the city attorney of the Village for several years, including present time in which the Movants are all class members of the Board of Trustees. Thus, the Movants are clients of Doug Stewart. Further, the Plaintiff in this matter is the son of the Mayor for the village, possibly being in his official capacity as a Village employee, which creates a tenuous conflict relationship between the Plaintiff, Movants, and counsel.

16. As city attorney for the Village, Doug Stewart has direct access to the Trustees and many of the articles he seeks to attain via the Subpoena.

17. If the fruit of the Subpoena supports the Plaintiff's Complaint, it is possible that the deponent could implicate himself as a party to the Defendant. Should this occur, the Rule language within 1.7 of the Illinois Supreme Court makes clear that representation of one client cannot be directly adverse to another. Thus, the Complaint of Plaintiff may be proper and proceed as alleged, but the representation of such by Doug Stewart stands in direct opposition to the rule. Ill. S. Ct. R. 1.7(a). There are mechanisms in place in the following subsection of the Supreme Court Rules; however, Doug Stewart has not complied with those rules at this time.

18. Finally, the Court should consider the voluminous records requested by the Plaintiff in this matter. The Movants, as fellow Trustees for the Village, have a considerable number of communications between each other and members of the community and press, especially the

Mayor's Village Employee son. The Plaintiff requests these records dating back over a year, to December 1, 2022, further complicating the remarkable volume of records being demanded.

WHEREFORE, for the reasons set forth above, the Movants respectfully moves the Court to grant their Motion to Quash Subpoenas, quash subpoenas issued to Kent Luebbers, Matt Modrovsky, And Dan Cary, and grant such further relief as it deems just and appropriate.

Respectfully submitted,

CLAYBORNE & WAGNER, LLP

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