

**IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT
SHELBY COUNTY, ILLINOIS**

IN RE: INVESTIGATION

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No.: 2024 MX 52

MOTION TO QUASH SUBPOENA AND FOR SANCTIONS

Now comes Subpoena Respondent, Benford Brown & Associates by and through its attorney, ROBERT T. HANLON of the NETZKY OLSWANG LAW GROUP, LLC, and moves this Court to Quash the subpoena duces tecum issued August 8, 2024 addressed to Benford Brown & Associates pursuant to Rule of Practice 7-4 and for sanctions, in support of Respondent’s motion states as follows:

1. On August 8, 2024, or thereabouts, Ruth Woolery prepared an administrative subpoena (Not a Grand Jury subpoena) and caused the Clerk of the Circuit Court of Shelby County to issue the Subpoena. A copy of said subpoena is attached hereto as Exhibit A.

2. Upon information and belief, Shelby County does not presently have a grand jury empaneled.

3. This court should quash the subpoena directed to Benford Brown and Associates for the following reasons:

a. The Subpoena is not issued by the correct Court. Shelby County is in the Fourth Judicial Circuit, whereas the subpoena issued by State’s Attorney Woolery purports to be issued by the **Sixth** Judicial Circuit. See Exhibit A, first line.

b. The subpoena, as issued, is improperly returnable to Ruth Woolery at the State’s Attorney’s office in violation of Local Rule 7-4(a).

c. The Subpoena seeks privileged material under the statutory “Accountant’s privilege” prohibited by 225 ILCS 450/27.

- d. The subpoena seeks draft documents from an accounting firm for work of a licensed CPA which cannot amount to anything indicia of a criminal offense within the scope of the power of the State's Attorney because the documents sought are drafts subject to finalization by the Accountant.
- e. The subpoena served did not bear the mandatory legend required by Rule of Practice 7-4(e)
- f. The Subpoena did not have the Seal of Court which ensures the Clerk of the Circuit Court of Shelby County issued the subpoena.
- g. The subpoena failed to have the required certification as required by Rules of Practice 7-4(f).

Improper Return – Violation of Due Process Rights of Respondent

- 4. Local Rule 7-4 (a) provides as follows:

7-4 Subpoenas in Criminal Cases (Adopted 4/24/20) (a) Procedure: The Circuit Clerk shall issue subpoenas limited to the production of specified documents, objects, or tangible things when requested by the prosecutor or the defendant's attorney. The subpoena shall require the person or entity to whom it is directed to produce the designated documents, objects, or tangible things. Subpoenas *shall be returnable to the Circuit Clerk for delivery to the presiding judge or the judge specifically assigned to the case at a time that the court is normally in session.*

See this Court's RULES OF PRACTICE, Page 10 adopted 4/14/23.

- 5. The return on the subpoena issued by Ruth Woolery, Shelby County State's Attorney reads as follows:

"Please send the requested documents along with a copy of this subpoena to Ruth A. Woolery, Shelby County State's Attorney, Shelby County Courthouse, 301 E. Main Street, Shelbyville, Illinois 62565; statesattorney@shelbycounty-il.gov".

- 6. The State's subpoena is offensive to the fundamental due process rights of persons subject to the subpoena power of this Court because it attempts to circumvent the power of the Court to review material.

7. The Illinois Supreme Court provides the authority for the Rules of Practice 7-4 (a) in *People v. Wilson*, 164 Ill. 2d 436, wherein that Court distinguished administrative subpoenas issued by a State's Attorney and a subpoena issued by a Grand Jury. In particular, the Court stated:

"The grand jury has the power to issue subpoenas to obtain documents relevant to its inquiry when an individual is under investigation for a crime. (Ill. Rev. Stat. ch. 38, para. 112-4(b) (1991)). Grand jury subpoenas are returnable to the grand jury, similar to how a witness, who is subpoenaed by the grand jury, must report to the grand jury." *Id.* (emphasis added) "The grand jury has the power to disclose subpoenaed documents to the State's Attorney for the purpose of the State's Attorney's furthering his responsibility of enforcing the law. (Ill. Rev. Stat. ch. 38, para. 112-6(c) (1) (1991))."

8. Because the State's Attorney could receive the Grand Jury material, the Court found harmless error when a Grand Jury Subpoena was returnable to the State's Attorney as opposed to the Grand Jury. *Id.*

9. The Court went on to point out that a State's Attorney also has the power to subpoena documents separately from the Grand Jury with the necessary caveat of its return under control of the court. *Id.* Citing to (Ill. Rev. Stat. ch. 38, para. 155-2 (1991)). And continued that non-Grand Jury subpoenas:

...must be ***returnable to the court***, so the court can determine whether the documents are relevant and material, whether the documents are privileged, and whether the subpoena is unreasonable or oppressive before the State's Attorney has access to the documents." (*emphasis added*)

10. Otherwise, the People would be subject to a totalitarian government without checks and balances and the State's Attorney would be at liberty to pry into the lives of private parties without any restraint.

11. Every State's Attorney should know this basic rule of procedure especially since it is codified in this Court's Rules of Practice.

12. Here, Shelby County State's Attorney, Ruth A. Woolery, failed to direct the return of the non-Grand Jury subpoena to the Circuit Court as mandated by the Illinois Supreme Court in *People v Wilson* and this Court's Rules of Practice adopted in April 2023. In doing so, the State attempts to improperly use the power of the Circuit Court to obtain information, and individuals subject to the power of a subpoena are prejudiced because the mandatory review by this court was circumvented. Moreover, diverting the document from review by the court circumvents the protections afforded all of the People from the curious mind of a petulant prosecutor.

13. The Illinois Supreme Court clearly spells out the reasons, which are **"so the court can determine whether the documents are relevant and material, whether the documents are privileged, and whether the subpoena is unreasonable or oppressive before the State's Attorney has access to the documents."**

14. Amongst the privileges that this court would have observed is the accountant's privilege, which will be discussed below.

15. The State's Subpoena Duces Tecum should be quashed by this Honorable Court as it fails to conform to the Illinois Supreme Court authority and the Local Rules of the Fourth Judicial Circuit in that said subpoena is overboard in its reach, and beyond the scope of any pending action. Clearly, the issuance of the subject subpoena is a fishing expedition and unrelated to any actual legitimate investigation.

Accountant's Privilege:

16. Benford Brown and Associates is an accounting firm.

17. 225 ILCS 450/27 provides:

A licensed or registered CPA shall not be required by any court to divulge information or evidence which has been obtained in the licensee or registrant's confidential capacity as a licensed or registered CPA.

18. Here, the State clearly knew that the respondent was an accountant. In addressing the subpoena, the language used includes "CPA" and seeks information in the licensee or registrant's capacity as a CPA.

19. The Illinois Supreme Court in *Brunton v. Kruger*, 2015 IL 117663, P33 stated:

The key words of the statute, which speak directly to the holder of the privilege, are the words "shall not be required by any court." Section 27 does not state that the client shall not be required by any court to divulge his information; it states that the accountant shall not be required to do so. Under the plain meaning of these words, even if a client were to consent to disclosure by the accountant, the statute still protects the accountant from being required by a court to divulge the information.

20. Any basic examination of the authority available would have alerted the State to the impropriety of issuing a subpoena to a CPA for documents and records.

Improper Form and Content.

21. Local Rule 7-4(e) provides for the Form of Subpoena. The Rule states:

A subpoena issued under this provision seeking specified documents, objects, or tangible things shall bear the following legend on the face of said subpoena, or conspicuously attached thereto, and a copy of said subpoena and notice of service shall be mailed first class within 48 hours of issuance to all parties having appeared in the action:

YOU MAY COMPLY WITH THIS SUBPOENA BY APPEARING IN PERSON IN COURT ON THE RETURN DATE WITH THE SUBPOENAED MATERIALS. YOU ALSO MAY COMPLY BY MAILING LEGIBLE AND COMPLETE COPIES OF ALL SPECIFIED DOCUMENTS, OBJECTS, OR TANGIBLE THINGS REQUESTED IN THIS SUBPOENA AT LEAST FIVE DAYS BEFORE THE DUE DATE TO CIRCUIT CLERK, (Courthouse Address), ILLINOIS (Zip code)." COMPLIANCE BY MAIL REQUIRES THAT THE ATTACHED CERTIFICATE BE SIGNED AND RETURNED. DO NOT SEND THESE MATERIALS TO ANYONE OTHER THAN THE CIRCUIT CLERK, FOR DELIVERY TO THE PRESIDING JUDGE OR THE JUDGE SPECIFICALLY ASSIGNED TO THE CASE.

22. The legend mandated by this Court's Local Rules of Practice 7-4(e) is not present on the subpoena issued by the State. Moreover, the seal of the Court is not present on the subpoena. Thus, the document is completely non-compliant with the form requirements of a subpoena issued as an investigative subpoena.

23. The presence of the Court's seal on a subpoena is no trivial matter. The seal alerts the recipient that the court did in fact issue the subpoena. Without the Seal of Court on the subpoena served, it begs the authentic nature of the instrument. That Seal of Court is affixed by the Clerk to ensure that Clerk of the Court actually issued the subpoena and that it is an authentic seal.

24. Rule 7-4(f) provides as follows:

(f) Certification: A certification page containing the following language shall be sent with all subpoenas issued pursuant to this section: I hereby certify, under penalty of perjury and contempt of court, that I have examined the subpoena issued in this cause and that the documents, objects, and tangible things attached here.

25. Once again, State's Attorney Woolery failed to comply with the Rule of Practice 7-4(f) in that the State failed to provide the Certification mandated by Rule of Practice 7-4(f)

26. Like the Illinois Supreme Court Rules, local court rules are meant to be followed, as written, and are not mere suggestions or guidelines from which deviations may be made by the litigants. As such, this Court has recognized that a trial court has the discretion to impose sanctions on a party for an abuse of procedural rules. See, e.g., *Sander v. Dow Chemical Co.*, 166 Ill. 2d 48, 65, 651 N.E.2d 1071, 209 Ill. Dec. 623 (1995). See also *VC&M, Ltd. v. Andrews*, 2013 IL 114445, P26.

27. The State's Attorney, in her official capacity, is the representative of all of the people, including individuals that are defendants and suspects, and it is as much her duty to

safeguard the constitutional rights of the accused as much as any other citizen. See *People v Cochran*, 313 Ill. 508, 526 (1924). See also *Berger v United States*, 295 U.S. 78, 88; 79 L.ed. 1314, 55 S.Ct. 629, 633 (1935). However, State's Attorney Woolery abdicated her duty in failing to follow the safeguards set in place by this Court's Rules of Practice and the precedent of the Court. As such, given the significant departure of nearly every rule for issuance of subpoenas, this Court should sanction State's Attorney Woolery a sufficient amount to coerce her into compliance with the Court's orders, precedent and to respect statutory privileges clearly ignored in this case.

WHEREFORE, Benford Brown & Associates prays that this Honorable Court grant the following Relief:

- A) Quash the State's Subpoena Duces Tecum dated August 8, 2024, directed to Benford Brown & Associates commanding specified documents;
- B) Sanction the Shelby County State's Attorney, Ruth A. Woolery, individually, for misappropriating the power of this court for improper purposes;
- C) That this court order an audit of MX cases since May 10, 2024, to ensure that any and all other subpoenas issued by the state did not in fact circumvent the power of this Court to review subpoenas and the returns; and
- D) Issue a rule to show cause why State's Attorney Ruth A. Woolery should not be held in contempt for her substantial failure to comply with the Rules of Practice.
- E) for any further relief this Court deems equitable and just.

Respectfully submitted.

/s/Robert T. Hanlon
ROBERT T. HANLON,
One of Benford Brown & Assoc.'s Attorneys

Netzky Olswang Law Group LLC (Cook County #100298)
8605 West Bryn Mawr, Suite 309
Chicago, Illinois 60631
Direct: (312) 622-7325

Rule 137 Certification

I, Robert T. Hanlon, being an attorney for the Respondent, certify that the positive statements are true and correct, and I believe the matters stated on information and belief are also true and that this motion is not advanced for any improper purpose.

/s/Robert T. Hanlon

Robert T. Hanlon

Proof of Service

I, Robert T. Hanlon, the undersigned do hereby state that I served a copy of the accompanying motion and a notice of motion in accord with Illinois Supreme Court Rule 11 upon the following via E-mail this 14th day of August, 2024:

Ruth A. Woolery
Shelby County State's Attorney
301 East Main Street
Shelbyville, Illinois 62565
e-mail statesattorney@shelbycounty-il.gov

/s/Robert T. Hanlon

ROBERT T. HANLON

One of Benford Brown & Assoc.'s
Attorneys

Netzky Olswang Law Group LLC (#100298)
Robert T. Hanlon, Of Counsel
8605 West Bryn Mawr, Suite 309
Chicago, Illinois 60631
Direct: (847)224-1169
Robert@robhanlonlaw.com

Exhibit A

IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT OF ILLINOIS
SHELBY COUNTY, ILLINOIS

In Re: Investigation

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Case No. 2024-MX-52

SUBPOENA DUCES TECUM

TO: Benford Brown & Associates
Attn: Timothy S. Watson, CPA
8334 S. Stony Island Avenue
Chicago, IL 60617
twatson@benfordbrown.com

YOU ARE HEREBY COMMANDED to bring the following before the Shelby County State's Attorney, 301 E. Main St., Shelbyville, Illinois 62565 on August 22, 2024, at 9:00 a.m.

1. A copy of the Shelby County 2022 Audit Report received from Benford Brown & Associates on July 29, 2024.
2. A copy of the Shelby County 2022 Audit Report received from Benford Brown & Associates on August 5, 2024.

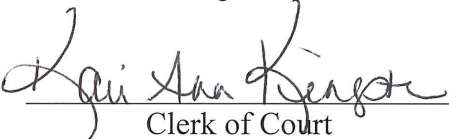
Please send the requested documents along with a copy of this Subpoena to: Ruth A. Woolery, Shelby County State's Attorney, Shelby County Courthouse, 301 E. Main Street, Shelbyville, Illinois 62565; statesattorney@shelbycounty-il.gov

If the State's Attorney of Shelby County receives the document(s) from you by U.S. Mail, or email, on or before **August 22, 2024**, then you do not need to personally appear on that date.

YOUR FAILURE TO APPEAR IN PERSON IN RESPONSE TO THIS SUBPOENA WILL SUBJECT YOU TO PUNISHMENT FOR CONTEMPT OF COURT.

(SEAL OF COURT)

Witness, August 8, 2024


Clerk of Court

Prepared by:

Ruth A. Woolery
State's Attorney
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Shelbyville, IL 62565
Phone (217) 774-5511
Email: statesattorney@shelbycounty-il.gov