

SEP 06 2006

JAMES W. McCORMACK, CLERK
By: *[Signature]*

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS

IN THE MATTER OF MOTION TO QUASH SUBPOENA
ISSUED BY DEFENDANT IN THE CASE OF STEINBUCH
V. CUTLER (DISTRICT COURT OF THE DISTRICT OF
COLUMBIA, 01:05-CV-00970)

INDEX NO. 4:06mc0028slw

ORAL ARGUMENT REQUESTED

This case assigned to District Judge Wright
and to Magistrate Judge _____

MOTION TO QUASH AND FOR PROTECTIVE ORDER

Plaintiff requests that this Court quash Defendant's improper third-party discovery requests served on his current employer, the University of Arkansas School of Law, and issue a protective order to prevent Defendants further attempts to harass, embarrass, and interfere with the current employment of Plaintiff.

Over two years ago, Defendant intentionally publicized private facts of Plaintiff on the internet and placed Plaintiff in false light, causing Plaintiff to suffer from severe emotional distress. In the intervening years, Defendant has continually sought to advantage herself at Plaintiff's expense. Defendant is now attempting to continue her harm of Plaintiff by intentionally seeking to harass, embarrass, and interfere with the employment of Plaintiff by serving an improper and excessive subpoena on Plaintiff's employer.

Yesterday, Plaintiff Law Professor Robert Steinbuch received a phone call from the administration of the University of Arkansas School of Law informing him that the Law School had received from Defendant a subpoena seeking any and all documents in any way relating to Plaintiff. Plaintiff's Counsel has not received a copy of this third-party discovery from Defendant. FRCP 45(b)(1).¹

¹ Plaintiff obtained a copy of Defendant's improperly served and overly broad and harassing third-party discovery from the administration of the University of Arkansas School of Law; it claims that it was

This overly broad discovery request is designed to embarrass and harass Plaintiff and designed to pursue the improper purpose of interfering with Plaintiff's current employment. Plaintiff has never claimed in this action that the damage that he suffered as a result of Defendant's tortious actions prevented him from obtaining his current job. Defendant's attempted discovery of Plaintiff's current employer is designed to harass, is overbroad and is not designed to reasonably lead to discoverable or admissible evidence in this case.

Defendant's subpoena of Plaintiff's current employer at the University of Arkansas School of Law is a blatant attempt to harass, embarrass, and interfere with Plaintiff's current employment as a Law Professor after the damages that Defendant already inflicted. Plaintiff has consistently maintained that his reputation was damaged at potential employers that did not hire him because of Defendant's actions. There is no logical nexus between this case, which involves Defendant's tortious actions on Plaintiff before he ever became a Law Professor, and Defendant's third-party discovery of Plaintiff's employer. Plaintiff has never claimed that his reputation was hurt at his current employment. Plaintiff has always maintained that the damage to his reputation had an affect on the employers that did not hire him – not his employer that did hire him.

Defendant third-party subpoena on Plaintiff's current employer can only be characterized an unmitigated fishing expedition, because Defendant seeks:

1. The complete application, personnel, complaint and/or other files or compilations of documents, including but not limited to all performance appraisals, credentials, commendations, reprimands, warning letters, correspondence relating to work schedules, application for employment, and all other documents contained therein which relate to Robert E. Steinbuch. This specifically includes all records pertaining to correspondence, including letters of

served on Plaintiff's Counsel. Plaintiff's Counsel left messages for opposing counsel who has not returned them.

reference, relating to Steinbuch's efforts to seek employment with your organization. This also includes all allegations or complaints, whether formal or informal, or inappropriate conduct by or involving Steinbuch during his employment with you and all investigation documents including but not limited to interview notes, e-mails, papers, tapes and all other documentation pertaining to the allegations against him, the investigation results and any disciplinary action taken against him related thereto.

2. Each and every email, in electronic form, sent to or from (including cc's and or bcc's) any email account assigned by you to Robert E. Steinbuch, including but not limited to [his work] email address.

Defendants subpoena of Plaintiff's employer, the University of Arkansas School of Law.

Defendant seeks Plaintiff's complete personnel file. Of what relevance can Plaintiff's "complete application, personnel, complaint and/or other files or compilations of documents, including but not limited to all performance appraisals, credentials, commendations, reprimands, warning letters, correspondence relating to work schedules, application for employment, and all other documents contained therein which relate to Robert E. Steinbuch" be to Defendant's invasion of privacy and related claims that occurred during his previous employment? Plaintiff's employment files include, inter alia, personal information, tax identification information, and immigration status documents. None of this is relevant or likely to lead to admissible evidence. Indeed, all of the identifying information is highly secure information ripe for abuse. Equally, Plaintiff's current teaching appraisals have nothing to do with the harm that Defendant did to Plaintiff when he worked in his prior, non-teaching job. Similarly, there is no reasonable basis to seek Plaintiff's credentials, commendations, reprimands, warning letters, and work schedules. This discovery is excessive and unwarranted. Defendant has not only made no attempt to reasonably limit her discovery in any reasonable way, she has intentionally done exactly the opposite. Moreover, rather than serving tailored

requests on Plaintiff, Defendant is intentionally trying to interfere with Plaintiff's current employment by serving an overbroad subpoena on Plaintiff's employer. Such actions are improper. *See Trammell v. Anderson College*, 2006 WL 1997425 at *1 (D.S.C. 2006) ("the items sought by the defendants should have been requested under the provisions of Rule 34 [discovery of the party] and not by subpoena under Rule 45").

Second, Defendant seeks "all allegations or complaints, whether formal or informal, or inappropriate conduct by or involving Steinbuch during his employment with you and all investigation documents including but not limited to interview notes, e-mails, papers, tapes and all other documentation pertaining to the allegations against him, the investigation results and any disciplinary action taken against him related thereto." This is obviously an attempt to dig up mud on Plaintiff. Again, allegations and complaints of wrongdoing in Plaintiff's current position, obtained after Defendant's wrongdoing, would not bear on this case whatsoever. Plaintiff obtained employment with his current employer after Defendant's tortious actions. Plaintiff obviously never claimed Defendant's actions prevented him from getting employment in his current position. Defendant's action interfered with Plaintiff's ability to get other jobs. Defendant should seek discovery from those potential employers that did not hire him as a consequence of Defendant's actions, not Plaintiff's employer that did hire him.

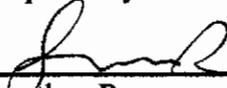
Finally, Defendant seeks all of Plaintiff's email, which contains sensitive information about, inter alia, the Law School, exams, students, grading, hiring, student discipline, academic performance, and peer review. Defendant makes no limitations or restrictions in her request whatsoever. This is truly excessive. This is the archetype of improper, overly broad and harassing discovery designed to interfere with and affect

Plaintiff's current employment. Defendant could have served Plaintiff with tailored document requests, which could include information in Plaintiff's email. Instead, Defendant seeks to bypass normal discovery and discovery time frames and to obstruct Plaintiff's current employment.

This Court should quash Defendant's improper discovery and require Defendant to seek tailored discovery from Plaintiff rather than interfering with his employment.

Dated: September 6, 2006

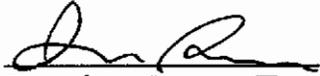
Respectfully Submitted,



Jonathan Rosen
1645 Lamington Road
Bedminster, NJ 07921
(908) 759-1116
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I caused the attached copy of the Motion to Quash and for a Protective Order to be served on Matt Billips, 730 Peachtree Rd, Atlanta, GA 30308, by placing it in a US Mail Box today, September 6, 2006.



Jonathan Rosen, Esq.

AO 88 (Rev. 11/91) Subpoena in a Civil Case

United States District Court

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EASTERN

DISTRICT OF

ARKANSAS

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ROBERT STEINBUNCH

V.

SUBPOENA IN A CIVIL CASE

JESSICA CUTLER

CASE NUMBER: 1:05-CV-970 (PLF)
(U.S.D.C., District of
Columbia)

Relatus (dp)

TO: Jeanette Watkins, Director of Human Resources
University of Arkansas Little Rock
2801 S. University Avenue
Little Rock, Arkansas 77204

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):

SEE ATTACHMENT A

PLACE	DATE AND TIME
Bushman Court Reporting, Attn: Ron Forthman, 620 Third Suite 302, Little Rock, AR 72201	Wednesday, September 6, 2006 11:00 a.m.

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 Rules of Civil Procedure, 30(b)(6).

SUBPOENA OFFICER SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

Matthew C. Billips, Attorney for Defendant

SUBPOENA OFFICER'S NAME, ADDRESS AND PHONE NUMBER

Miller & Billips, P.C., 730 Peachtree Street, Suite 750, Atlanta, Georgia 30308

DATE

August 28, 2006

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PROOF OF SERVICE

DATE Aug 30, 2006 PLACE _____

SERVED

SERVED ON (PRINT NAME)

MANNER OF SERVICE

SERVED BY (PRINT NAME)

TITLE

Process Server # DP 04

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 August 30, 2006
DATE

Diane Pindon
SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Parts C & D:

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) - A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B). Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in per-

son, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or
(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

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

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

SUBPOENA DUCES TECUM - EXHIBIT "A"

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Definition

"Documents" shall mean any and all documents and other tangible things, defined in the broadest sense permitted by the Fed. R. Civ. Pro. and including without limitation originals or, if such are not available, true copies of all memoranda, reports, evaluations, correspondence, interoffice communications or memoranda, agreements, contracts, invoices, checks, journals, ledgers, telegraphs, telexes, handwritten notes, periodicals, pamphlets, computer or business machine printouts, accountant's work papers, accountant's statements and writings, notations or records of meetings, books, papers, diaries, promissory notes, evidences of indebtedness, security agreements, loan applications, leases, documents creating or reflecting security interests, loan agreements, financing statements, deposit slips, advertising, office manuals, employee manuals, rules and regulations, reports of experts, drafts and copies of any of the foregoing, or such documents as are not an identical copy of an original or where such copy contains any commentary or notation whatsoever that does not appear on the original, tape recordings or other sound or visual production materials, electronically stored information, whether on computer disk, tape, or other storage media and any other written matter, tangible or physical objects, however produced or reproduced, upon which words or phrases are affixed and from which by appropriate transcription such matter or tangible thing may be produced in the possession, custody or control of you and/or your agents, predecessors, successors, attorneys, or employees.

DOCUMENTS REQUESTED

Please produce the following documents:

1. The complete application, personnel, complaint and/or other files or compilations of documents, including but not limited to all performance appraisals, credentials, commendations, reprimands, warning letters, correspondence relating to employment, work schedules, application for employment, and all other documents contained therein which relate to Robert E. Steinbuch. This specifically includes all records pertaining to correspondence, including letters of reference, relating to Steinbuch's efforts to seek employment with your organization. This also includes all allegations or complaints, whether formal or informal, of inappropriate conduct by or involving Steinbuch during his employment with you and all investigation documents including but not limited to interview notes, e-mails, papers, tapes, and all other documentation pertaining to the allegations against him, the investigation results and any disciplinary action taken against him related thereto.
2. Each and every email, in electronic form, sent to or from (including cc's and/or bcc's) any email account assigned by you to Robert E. Steinbuch, including but not limited to the email address resteinbuch@ualr.edu.

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ROBERT STEINBUCH,)
)
 Plaintiff,)
)
 v.)
)
 JESSICA CUTLER,)
)
 Defendant)
 _____)

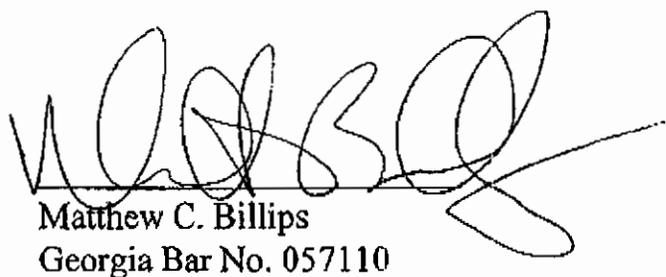
Case No. 1:05-CV-970 (PLF)
Judge Paul L. Friedman

CERTIFICATE OF SERVICE

This is to certify that I have on this day served copies of the attached
"SUBPOENA- (University of Arkansas - Little Rock, AR)" by depositing a copy
of same in the United States mail with adequate postage thereon, addressed as
follows:

Jonathan Rosen, Esq.
1645 Lamington Road
Bedminster, New York 07921

This 23rd day of August, 2006.


Matthew C. Billips
Georgia Bar No. 057110

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