

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-00702-WDM-KLM

In re: Subpoena in a Civil Case Involving Inmate Malachi York

ORDER

ENTERED BY MAGISTRATE JUDGE KRISTEN L. MIX

This matter is before the Court on United States' **Motion for Protective Order and to Quash Subpoena to Depose Assistant United States Attorney Marcy E. Cook** [Docket No. 1; Filed March 30, 2009] (the "Motion"). Without permission from this Court, Malachi York issued a deposition subpoena to Marcy E. Cook, Assistant U.S. Attorney, and directed her to appear for a deposition at 5:30 p.m. on April 9, 2009 [Docket No. 1-2]. The subpoena was apparently issued in connection with Mr. York's habeas case pending in the Middle District of Georgia, *York v. United States*, 5:02-cr-27-CAR (M.D. Ga.).

The deposition subpoena is defective. In a habeas action, the petitioner must obtain leave of the court in order to conduct discovery under the Federal Rules of Civil Procedure. Rule 6, Rules Governing Section 2255 Proceedings. From a review of the docket, I note that there is no evidence that Mr. York obtained permission of the United States District Court for the Middle District of Georgia to conduct discovery. In fact, a Recommendation to dismiss Mr. York's habeas petition is pending before the Georgia court [Docket # 406].

To obtain deposition testimony of a United States Justice Department employee, a party must provide the Justice Department a summary of the testimony sought from the Assistant U.S. Attorney. See 28 C.F.R. § 16.23(c). Mr. York has not obtained permission from any court to conduct discovery or provided the necessary information to the Justice

Department. Accordingly,

IT IS HEREBY **ORDERED** that the Motion is **GRANTED**.

IT IS FURTHER **ORDERED** that the deposition subpoena [Docket No. 1-2] propounded by Malachi York on Marcy E. Cook is QUASHED.

IT IS FURTHER **ORDERED** that a Protective Order is entered pursuant to Fed. R. Civ. P. 26(c)(1).

This is the third attempt Mr. York has made to obtain deposition testimony from Ms. Cook. See *In re: Subpoena in a Civil Case Involving Inmate Malachi York*, 09-cv-00685-CMA-MJW [Docket #3]; *York v. Fed. Bureau of Prisons*, 07-cv-01297-PAB-KLM [Docket #203]. He has failed to demonstrate any legitimate legal basis for his attempts. Accordingly, sanctions will be imposed upon Mr. York pursuant to Fed. R. Civ. P. 26(c)(3) and 37(a)(5) if any such further attempts are made.

Dated: April 7, 2009

BY THE COURT:

s/ Kristen L. Mix
U.S. Magistrate Judge L. Mix