

Sec. 4. The state shall pay the expenses incurred by a judge from a threatened, pending, or completed action or proceeding that arises from:

- (1) making;
 - (2) performing; or
 - (3) failing to make or perform;
- a decision, a duty, an obligation, a privilege, or a responsibility *of the judge's office*.

Ind. Code § 33-38-12-4 (emphasis added). The code defines “expenses” for use in Chapter 12 as including the following:

- (1) Reasonable attorney’s fees, if the attorney general has authorized the chief administrative officer of the office of judicial administration to hire private counsel to provide the defense.
- (2) *A judgment.*
- (3) *A settlement.*
- (4) Court costs.
- (5) Discovery costs.
- (6) Expert witness fees.
- (7) Any other expense incurred as a result of an action or a proceeding.

Ind. Code § 33-38-12-2 (emphasis added). Contrary to Indiana Code § 34-13-4-1, which governs indemnification of state employees and which gives the state discretion to indemnify for punitive damages, *see* Ind. Code § 34-13-4-1, the provision for indemnification of judges grants no such discretion as to punitive damages, *see* Ind. Code § 38-38-12-4. Thus, as argued by Defendant Lake County Superior Court Judges, who are represented by the Office of the Indiana Attorney General, the State of Indiana would indemnify the judges sued in their individual capacities for a judgment for damages, including punitive damages, for the alleged misconduct that occurred in this case in the performance of a decision, duty, obligation, privilege, or responsibility “of the judge’s office.”

The Seventh Circuit Court of Appeals has held that when an individual defendant is to be fully indemnified, evidence of the defendant’s net worth is inadmissible for purposes of calculating punitive damages. *Kemezy v. Peters*, 79 F.3d 33, 37 (7th Cir. 1996) (considering the admissibility of personal financial information in a case brought under 42 U.S.C. § 1983 against an Indiana police

officer). Because the Lake County Superior Court Judges, sued in their individual capacities, will be fully indemnified by the State of Indiana, evidence of their net worth would be inadmissible. Therefore, discovery of the judge's personal financial information is not relevant, and discovery of their personal financial information is overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. *See* Fed. R. Civ. P. 26(b)(1).

As a result, the Court quashes the subpoenas duces tecum issued to Defendants Judges Clarence D. Murray and Diane Ross Boswell on July 23, 2018, and July 27, 2018, respectively, as both subpoenas seek only personal financial information. *See* Fed. R. Civ. P. 45(d)(3)(A)(iii). Likewise, finding good cause shown, the Court grants the request for a protective order and orders that Plaintiff is prohibited from seeking personal financial information from the Defendant Lake County Superior Court Judges and that the Judges are not required to respond to Plaintiff's July 3, 2018 requests for production of documents and interrogatories, which request only the individual Judges' personal financial information. *See* Fed. R. Civ. P. 26(c)(1)(A) (providing that a court may, for good cause shown, issue an order to protect a person from annoyance, embarrassment, oppression, or undue burden or expense by forbidding the disclosure or discovery).

CONCLUSION

Based on the foregoing, the Court hereby **GRANTS** the Motion to Quash Subpoena Duces Tecum [DE 125] and the Motion for Protective Order [DE 126]. The Court **QUASHES** the July 23, 2018 and July 27, 2018 subpoenas duces tecum issued to Defendants Clarence D. Murray and Diane Ross Boswell. *See* (ECF 125-1, 125-2). The Court further **ORDERS** that Plaintiff is forbidden from seeking discovery from the individual Defendant Judges Salvador Vasquez, Clarence D. Murray, Diane Ross Boswell, Thomas P. Stefaniak, Jr., and Samuel L. Cappas regarding their personal

financial information and that these Defendant Judges need not respond to Plaintiff's July 3, 2018 discovery requests. *See* (ECF 126-1).

SO ORDERED this 23rd day of August, 2018.

s/ Paul R. Cherry
MAGISTRATE JUDGE PAUL R. CHERRY
UNITED STATES DISTRICT COURT