

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA**

JEFFREY C. CLARK

CIVIL ACTION

VERSUS

NO. 00-956-JWD-RLB

STATE OF LOUISIANA, ET AL.

ORDER

Before the court is Plaintiff's Motion to Quash Subpoena of Dr. David Fowler (R. Doc. 173) filed on December 15, 2015. The time for filing an opposition has not expired.

Plaintiff moves the court to quash a subpoena *duces tecum* issued by this court served by Defendants on Plaintiff's expert, Dr. Fowler, on November 30, 2015. (R. Doc. 173-2). The subpoena seeks compliance in Cockeysville, Maryland by December 30, 2015. (R. Doc. 173-2 at 3). Plaintiff argues that the subpoena should be quashed because Defendants would not accommodate a one-month extension of the response date to January 30, 2016. (R. Doc. 173-1 at 3). Plaintiff further argues that the subpoena should be quashed because it seeks drafts of documents that are privileged pursuant to Rule 26(b)(4)(B) of the Federal Rules of Civil Procedure. (R. Doc. 173-1 at 4-5).

On December 11, 2015, Defendants served a second subpoena *duces tecum* issued by this court on Dr. Fowler. (R. Doc. 173-10). The second subpoena seeks the same documents as the original subpoena, but seeks compliance by January 15, 2016 in Cockeysville, Maryland. (R. Doc. 173-10 at 3).

Rule 45 of the Federal Rules of Civil Procedure sets forth the procedures for subpoenas served on non-parties. A motion to quash or modify a Rule 45 subpoena on the basis that the

subpoena “fails to allow a reasonable time to comply” must be filed in “the court for the district where compliance is required.” Fed. R. Civ. P. 45(d)(3). “When the court where compliance is required did not issue the subpoena, it may transfer a motion under this rule to the issuing court if the person subject to the subpoena consents or if the court finds exceptional circumstances.” Fed. R. Civ. P. 45(f).

The subpoena at issue seeks compliance in Cockeysville, Maryland, which is located in the United States District Court for the District of Maryland. To seek the relief sought through the instant motion, Plaintiff should refile his motion to quash in the court where compliance is required. *See* Fed. R. Civ. P. 45(d)(3).

This Court takes no position as to whether the subpoena allows a reasonable time to comply in light of the issuing party’s refusal to accommodate Dr. Fowler’s requested extension based on the holidays and his international travel schedule, and also takes no position as to the appropriateness of the apparent rejection of Plaintiff’s offer of a rolling production of information responsive to the subpoena.

The parties are strongly encouraged to make another attempt at resolving this issue without court intervention.

IT IS ORDERED that Plaintiff’s Motion to Quash is **DENIED** with leave to refile in the court where compliance is required.

Signed in Baton Rouge, Louisiana, on December 21, 2015.



RICHARD L. BOURGEOIS, JR.
UNITED STATES MAGISTRATE JUDGE