

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

PETER M. BERNEGGER,

Plaintiff,

v.

Case No. 07-C-1028

GRAY & ASSOCIATES LLP, et al.,

Defendants.

**ORDER DENYING MOTION TO QUASH SUBPOENA
AND FOR PROTECTIVE ORDER**

Non-party and attorney Abigail O'Dess has filed an expedited motion to quash the subpoena and for a protective order relieving her of the obligation to appear for a deposition scheduled for January 14th, 2009 at 1:00 p.m. The subpoena was issued by Peter Bernegger, the pro se plaintiff in the above matter. The action involves Bernegger's claims under the Fair Debt Collection Practices Act ("FDCPA") against Gray & Associates and one or more of its attorneys. O'Dess claims that she is unaware of information she could have regarding the preparation or filing of Gray's pleadings in state court, federal court, or Gray's alleged contact with Bernegger through unauthorized parties. She further states that even if she has such information, Bernegger can obtain it from other sources.

In response, Bernegger indicates that he has been unable to obtain the information he seeks from other sources and, based on O'Dess's involvement of the case, there is good reason to believe that she possesses discoverable information.

Under the circumstances O'Dess's motion must be denied. The Court is not in a position to determine with any certainty whether O'Dess possesses information that is either itself relevant or may

lead to the discovery of relevant evidence. O'Dess, like any witness, is required to respond to a subpoena absent a showing of good cause to justify entry of a protective order. No such showing has been made here.

This does not mean, however, that there is no remedy in the event that Bernegger is abusing the subpoena process. In the event the deposition by Bernegger reveals that he has not acted in good faith, O'Dess is free to seek recovery of costs or other sanctions in court at that time. As of now, however and based on the record as it now stands, the motion will be denied.

SO ORDERED this 12th day of January, 2009.

s/ William C. Griesbach
WILLIAM C. GRIESBACH
United States District Judge