

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,

Plaintiff,

RACHEL TUDOR,

Plaintiff-Intervenor,

v.

Case No. 15-cv-324-C

SOUTHEASTERN OKLAHOMA STATE
UNIVERSITY, and

THE REGIONAL UNIVERSITY SYSTEM
OF OKLAHOMA,

Defendants.

MOTION TO QUASH TRIAL SUBPOENAS FOR NON PARTY WITNESSES

Non-Party Witnesses, Dr. William Fridley and The Honorable Judge Richard Ogden, pursuant to Fed. R. Civ. P. 45(d)(3)(A)(i) and (iv), respectfully request the Court enter an order quashing the subpoenas served on them on November 13, 2017, for failure to provide these witnesses with reasonable time to comply, and subjecting these witnesses to a undue burden.

Fed. R. Civ. P. 45 provides in part:

(3) Quashing or Modifying a Subpoena.

(A) When Required. On time motion, the court for the district where compliance is required must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(iv) subjects a person to undue burden.

In support hereof, the Non-Party witnesses would show as follows:

DR. WILLIAM FRIDLEY

1. This case has been scheduled for November trial since June 13, 2017. [Doc. 142].
2. Dr. Fridley was not deposed in this case and has not been contacted by any of Plaintiff's counsel regarding appearing as a witness in this case.
3. Plaintiff's counsel issued the subpoena on November 6, 2017, [Doc. 235], but did not serve the subpoena upon Dr. Fridley until November 13, 2017, after 2:00 p.m. The subpoena requires Dr. Fridley's appearance at trial at 9:00 a.m. on November 14, 2017.
4. The witness check served with the subpoena is dated November 13, 2017, suggesting no effort was made to serve him prior to today.
5. Dr. Fridley, has a scheduled virtual meeting for one of the classes he teaches at 7:30 p.m. on November 13, 2017 and is scheduled to teach three classes on Tuesday, November 14, 2017.
6. Plaintiff, previously an assistant professor at SEOSU, would be well aware of the inconvenience and burden caused by seeking to compel testimony by a professor with less than 24-hours-notice. Dr. Fridley has regularly scheduled classes, and such late notice would likely require Dr. Fridley to cancel classes with a last minute notice to students, some of whom travel far distances to classes. This undue burden is unfair to place on both Dr. Fridley and his students.
7. Plaintiff wholly failed to take reasonable steps to prevent this undue burden. Nothing prevented Plaintiff from timely serving the subpoena after issuance, to minimize the burden placed upon Dr. Fridley directly and indirectly on the students.

8. Dr. Fridley resides and teaches in Durant, Oklahoma, which is approximately 149 miles from the Western District Court.

THE HONORABLE JUDGE RICHARD OGDEN

1. Judge Ogden was deposed on August 26, 2016 in this case and has not been contacted by any of Plaintiff's counsel regarding appearing as a witness in this case;

2. Plaintiff issued the subpoena on November 6, 2017, [Doc. 234], but did not serve the subpoena on Judge Ogden until November 13, 2017, at approximately 11:00 a.m. The subpoena requires his appearance at trial at 9:00 a.m. on November 14, 2017.

3. The witness check is dated November 13, 2017, suggesting no effort was made to serve him prior to today.

4. Judge Ogden is a district judge in Oklahoma County, with a full daily docket.

5. Upon being served, Judge Ogden contacted the undersigned to advise that he not only has his own full docket this week, but he is also covering retired Judge Stuart's docket this week.

6. Plaintiff wholly failed to take reasonable steps to prevent undue burden on Judge Ogden. Plaintiff had every opportunity to timely serve the subpoena on Judge Ogden, as well as take reasonable efforts to minimize the burden placed upon him and the Oklahoma County District Court.

The subpoenas served upon these two (2) witnesses fail to allow the requisite reasonable time to comply, and pose undue burdens on each witness. Therefore, as required by Fed. R. Civ. P. 45(3)(A)(i), the Court must quash these subpoenas.

WHEREFORE, for the above stated reasons, these witnesses respectfully request the Court issue an order quashing the trial subpoenas served upon non-parties, Dr. William Fridley and Judge Richard Ogden.

Respectfully submitted,

/s/ Dixie L. Coffey

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CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of November 2017, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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Dixie L. Coffey