

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, EX REL., MUNICIPAL)
CONSTRUCTION EQUIPMENT)
OPERATORS' LABOR COUNCIL, et al.,)
Relators)
-v-)
CITY OF CLEVELAND, et al.,)
Respondents.)

Case No. 2006-2056

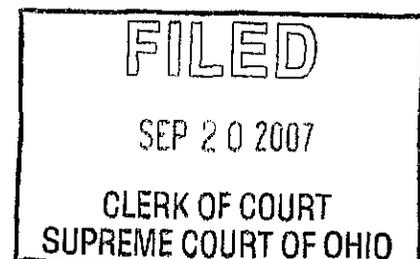
RESPONDENTS' MOTION TO QUASH SIX SUBPOENAS ISSUED TO CITY OFFICIALS

Stewart D. Roll (0038004)
Persky, Shapiro & Arnoff Co., L.P.A.
Signature Square II
25101 Chagrin Boulevard, Suite 350
Beachwood, Ohio 44122
(216) 360-3737
Fax No. (216) 593-0921
sroll@perskylaw.com

COUNSEL FOR RELATORS

Robert J. Triozzi, Director of Law
Theodora Monegan (0039357), Chief Assistant Director of Law
William A. Sweeney (0041415), Assistant Director of Law
City of Cleveland Department of Law
601 Lakeside Avenue, Room 106
Cleveland, Ohio 44114
(216) 664-2800
Fax No. (216) 664-2663
tmonegan@city.cleveland.oh.us

COUNSEL FOR RESPONDENTS



proceedings, and because, in the case of five of the subpoenas, they were improperly served.

Supreme Court Rule X, Section 2, provides, "The Ohio Rules of Civil Procedure shall supplement these rules unless clearly applicable." The Supreme Court Rules regarding original actions do not address subpoenas. Civil Rule 45(A)(1)(a) requires every subpoena to "state the name of the court from which it is issued." All five subpoenas are headed, "In the Court of Common Pleas." They cite Case No. "Supreme Court Case No. 2006-2056." There is no such case pending in the Court of Common Pleas for Cuyahoga County.

Civil Rule 45(A)(1) further states, "A subpoena may not be used to obtain the attendance of a party or the production of documents by a party in discovery. Rather, a party's attendance at deposition may be obtained only by notice under Civ. R. 30, and documents may be obtained from a party in discovery only pursuant to Civ. R. 34." This rule is mandatory, not discretionary. All five persons named in the subpoenas are employees and officials of Respondent City of Cleveland. As such, they are considered parties under this Rule.

This Court has issued a final judgment in this case. Relator has filed motions to order Respondents to show cause why it should not be held in contempt and for sanctions. Respondents oppose those motions. The Court has not ruled. There is no need or right to discovery at this point in the proceedings.

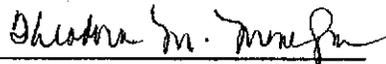
Civil Rule 45(B) requires, "Service of a subpoena upon a person named therein shall be made by delivering a copy of the subpoena to the person, by reading it to him or her in person, or by leaving at the person's usual place of residence. . . ." By the admission of the person who served the subpoenas in the Affidavit of Service, five of them were not served in any of the required ways, but were left at the offices of the persons named in them. That is not an option for service. The only subpoena served upon the person named in the subpoena is the subpoena issued to Douglas Divish, Commissioner of Information Technology and Services for the City. Thus, the remaining five subpoenas were improperly served.

Conclusion

For the reasons stated above, Respondents respectfully request the Court to quash the six subpoenas served on the six City officials.

Respectfully submitted,

ROBERT J. TRIOZZI
Director of Law

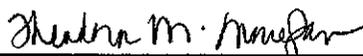
By: 
Theodora M. Monegan (0039357)
Chief Assistant Director of Law
601 Lakeside Avenue, Room 106
Cleveland, Ohio 44114
(216) 664-2800
(216) 664-2663 facsimile
tmonegan@city.cleveland.oh.us

ATTORNEYS FOR RESPONDENTS

CERTIFICATE OF SERVICE

Respondents mailed a copy of this Motion to Quash Six Subpoenas Issued to City Officials on the 19th day of September, 2007 to the attorney for Relators at the following address:

Stewart D. Roll
Persky, Shapiro & Arnoff Col., L.P.A.
Signature Square II
25101 Chagrin Blvd., Suite 350
Cleveland, Ohio 44122-5687



Theodora M. Monegan