

STATE OF NORTH CAROLINA
VANCE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
10 CVS 361

THOMAS S. HESTER, JR.)

Plaintiff)

v.)

JOHN OR JANE DOE a/k/a)

"BEAUTIFUL DREAMER" AND/OR)

"CONFUSED," "FATBOY,")

"HEELSHOUSE," "INTHEKNOW,")

"INTERESTING," "CATHEY LEE)

McIVER," "MJ," "NORTHSTAR," "NOT)

MY FAULT," "PEARL," "POINT)

KEEPER," "RACHEL," "SPARKY," "THE)

REAL DEAL," "UNDERWORLD,")

"WHO'S WINNING," "A TAY PAYER,")

"SELF SERVING SAM," and "ZIGGY")

Defendants

MOTION TO QUASH

Movants, Jason A. Feingold and Home in Henderson, through undersigned counsel, request the entry of an order quashing the subpoena issued to Mr. Feingold in the above-captioned matter, a copy of which is attached hereto as Exhibit A.

As grounds for their motion, movants represent to the Court as follows:

1. On April 1, 2010, plaintiff filed an Application to extend time to file a libel complaint against certain John Does 1. The Application does not identify the statements that allegedly were posted on the Home in Henderson website and that allegedly are libelous.

2. On April 1, 2010, Judge Howard Manning, Jr. signed an order permitting plaintiff to take expedited discovery in order to learn the identity of certain "posters" on the Home in Henderson website.

3. On or about April 8, 2010, Mr. Feingold received the attached subpoena, which commands him to appear for a deposition and to produce:

Any and all documents in your possession, custody or control relating to "postings" on the website www.homeinhenderson.com by John or Jane Doe aka "Beautiful Dreamer;" and/or "Confused;" "Fatboy;" "Heelshouse;" "In the Know;" "Interesting;" "Cathy Lee McIver;" "MJ;" "Northstar;" "Not My Fault;" "Pearl;" "Point Keeper;" "Rachel;" "Sparky;" "The Real Deal;" "Underworld;" "Who's Winning;" "A Tax Payer;" "Self Serving Sam;" "Ziggy," including but not limited to the proper name of each of the above Defendants, the E-Mail or a URL (Universal Resource Locator) address from which their postings were transmitted to the website of Home in Henderson, Inc. and any and all other information in the possession of Jason A. Feingold which can be used to identify the Defendants by their proper names.

4. Movants at all material times were engaged in publishing local news and commentary on the website "Home in Henderson." Movants are and have been at all material times journalists within the definition set forth in N.C. GEN. STAT. § 8-53.11(a)(1).

5. Under N.C. GEN. STAT. § 8-53.11, movants have "a qualified privilege against disclosure in any legal proceeding of any confidential or nonconfidential information, document, or item obtained or prepared while acting as a journalist."

6. The statute provides:

In order to overcome the qualified privilege provided by subsection (b) of this section, any person seeking to compel a journalist to testify or provide information must establish by the greater weight of the evidence that the testimony or production sought:

(1) Is relevant and material to the proper administration of the legal proceeding for which the testimony or production is sought;

(2) Cannot be obtained from alternate sources; and

(3) Is essential to the maintenance of a claim or defense of the person on whose behalf the testimony or production is sought.

Any order to compel any testimony or production as to which the qualified privilege has been asserted shall be issued only after notice to the journalist and a hearing and shall include clear and specific findings as to the showing made by the person seeking the testimony or production.

N.C. GEN. STAT. § 8-53.11(c).

7. N.C. GEN. STAT. § 8-53.11 codified the common law reporter's privilege under the First Amendment of the United States Constitution and Article I, Section 14 of the North Carolina Constitution. Under the privilege, news reporters may not be required to testify in a judicial proceeding unless the party seeking the testimony has shown by the greater weight of the evidence that the information sought (1) is relevant and material to the proper administration of the legal proceeding for which the testimony or production is sought; (2) cannot be obtained from alternate sources; and (3) is essential to the maintenance of a claim or defense of the person on whose behalf the testimony or production is sought.¹

8. As a matter of law, counsel for plaintiff cannot satisfy the requirements of the three-part test set forth in the statute. The pleadings filed by the plaintiff provide only the most cursory, conclusory allegations that he has been the subject of "malicious and unlawful libel" by posters on the Home in Henderson website. Of course, there is no cause of action against an individual being malicious, so the only question for the court

1. *Shinn v. Price*, 27 Media L. Rep. (BNA) 2341 (N.C. Super. Ct. 1999); accord *Penland v. Long*, 24 Media L. Rep. (BNA) 1410 (W.D.N.C. 1995) (quashing subpoena seeking reporters' testimony of interviews with defendant); *State v. Demery*, 23 Media L. Rep. (BNA) 1958 (N.C. Super. Ct. 1995) (quashing subpoena on grounds that information sought was not essential or that there were compelling interests sufficient to override press freedoms); *State v. Smith*, 13 Media L. Rep. (BNA) 1940 (N.C. Super. Ct. 1987) (finding the qualified privilege applies to all information acquired by the reporter, regardless of whether the information is confidential); *Locklear v. Waccamaw Siouan Development Ass'n.*, 12 Media L. Rep. (BNA) 2391 (N.C. Gen. Ct. 1986); *Johnson v. Skurow*, 10 Media L. Rep. (BNA) 2463 (N.C. Super. Ct. 1984) (quashing subpoena because the plaintiff was unable to demonstrate that the information was not available from alternative sources); *State v. Hagaman*, 9 Media L. Rep. (BNA) 2525 (N.C. Super. Ct. 1983) (finding a qualified privilege exists under both the United States Constitution and the North Carolina Constitution); *Chappel v. Brunswick Bd. of Edu.*, 9 Media L. Rep. (BNA) 1753 (N.C. Super. Court, 1983) (quashing subpoena seeking a reporter's testimony about her conversations with school board members concerning a teacher's firing by the board); *State v. McKillop*, 24 Media L. Rep. (BNA) 1638 (N.C. Dist. Ct. 1995) (holding an editor and reporter have a qualified privilege from testifying where the State failed to exhaust alternative sources). This qualified privilege extends to non-confidential as well as confidential information. See *North Carolina v. Smith*, 13 Media L. Rep. (BNA) 1940 (N.C. Superior Ct. 1987); *North Carolina v. Rogers*, 9 Media L. Rep. (BNA) 1254 (N.C. Superior Ct. 1983); *North Carolina v. Hagaman*, 9 Media L. Rep. (BNA) 2525 (N.C. Superior Ct. 1983).

is whether the plaintiff has articulated a claim for libel. He has not even alleged the elements of a *prima facie* claim of libel.

9. Separate from the privileges enjoyed by journalists, it is well established that the First Amendment protects the right to speak anonymously, and the subpoena issued to Feingold abridges the time-honored rights -- repeatedly recognized by the United States Supreme Court -- of those who have posted comments on the Home in Henderson website to engage in protected, anonymous speech,. *Buckley v. American Constitutional Law Found.*, 525 U.S. 182, 199, 119 S. Ct. 636, 645-646, 142 L. Ed. 2d 599 (1999); *McIntyre v. Ohio Elections Comm.*, 514 U.S. 334, 115 S. Ct. 1511, 131 L. Ed. 2d 426 (1995); *Talley v. California*, 362 U.S. 60, 80 S. Ct. 536, 4 L. Ed. 2d 559 (1960).

10. Plaintiff has made no compelling showing sufficient to overcome the right to speak anonymously. On its face, plaintiff's complaint is subject to dismissal, as it identifies **no statement** that allegedly is libelous, nor does it allege the additional elements of a libel claim.

11. Because compelled identification of anonymous speakers abridges the speaker's First Amendment right to remain anonymous, the First Amendment creates a qualified privilege against disclosure. When deciding whether to compel the disclosure of a speaker's identity, the courts apply a three-part test, under which the person seeking to identify the anonymous speaker has the burden of showing that (1) the issue on which the material is sought is not just relevant to the action, but goes to the heart of its case; (2) disclosure of the source to prove the issue is "necessary" because the party seeking disclosure can prevail on all the other issues in the case, and (3) the discovering party has exhausted all other means of proving this part of its case. *Carey v. Hume*, 492 F.2d 631 (D.C. Cir. 1974); *Cervantes v. Time*, 464 F.2d 986 (8th Cir. 1972), *cert. denied*, 409

U.S. 1125, 93 S. Ct. 939, 35 L. Ed. 2d 257 (1973); *Richards of Rockford v. PGE*, 71 F.R.D. 388, 390-391 (N.D. Cal. 1976).

12. The protections of anonymous speech have been recognized and extended to the context of postings on the internet. See, e.g., *Sony Music Entm't Inc. v. Does 1-40*, 326 F. Supp. 2d 556, 562 (S.D.N.Y. 2004) (citing *Buckley v. American Constitutional Law Found.*, 525 U.S. 182, 200 (1999) ("The Supreme Court has recognized that the First Amendment protects anonymous speech.") and *Reno v. ACLU*, 521 U.S. 844, 870 (1997) ("It is well-settled that the First Amendment's protection extends to the Internet.")). "Through the use of chat rooms, any person with a phone line can become a town crier with a voice that resonates farther than it could from any soapbox. Through the use of Web pages, mail exploders, and newsgroups, the same individual can become a pamphleteer," *Reno*, 521 U.S. at 870, and there is "no basis for qualifying the level of First Amendment scrutiny that should be applied to this medium." *Id.* at 845.

"Internet anonymity facilitates the rich, diverse, and far ranging exchange of ideas. The 'ability to speak one's mind' on the Internet 'without the burden of the other party knowing all the facts about one's identity can foster open communication and robust debate.'" *Doe v. 2TheMart.com Inc.*, 140 F. Supp. 2d 1088, 1092 (W.D. Wash. 2001) (citing *Columbia Ins. Co. v. Seescandy.com*, 185 F.R.D. 573, 578 (N.D. Cal. 1999)). "The use of a pseudonymous screen name offers a safe outlet for the user to experiment with novel ideas, express unorthodox political views, or criticize corporate or individual behavior without fear of intimidation or reprisal. In addition, by concealing speakers' identities, the online forum allows individuals of any economic, political, or social status to be heard without suppression or other intervention by the media or more powerful figures in the field." *Krinsky v. Doe 6*, 159 Cal. App. 4th 1154, 1162, 72 Cal. Rptr. 3d 231, 238 (Cal. Ct. App. 2008).

13. Even in the context of a grand jury investigation of allegedly criminal behavior, the courts have recognized the need to balance investigatory interests against the public's constitutional right to speak publicly and anonymously on the Internet as guaranteed by the First Amendment. *See, e.g., Matter of Grand Jury Subpoenas for Locals 17, 135, 257 & 608 of the United Bhd. of Carpenters & Joiners of Am., AFL-CIO*, 72 N.Y.2d 307, 312 (1988) ("When a First Amendment claim is presented, the government may not enforce a [grand jury] subpoena of this type unless it is substantially related to a compelling governmental interest."); *see also Matter of Full Gospel Tabernacle v. Attorney-General*, 142 A.D.2d 489, 493, 536 N.Y.S.2d 201, 203 (3d Dep't 1988) ("[T]he prosecution has the burden of establishing that the [First Amendment] infringement is outweighed by a compelling State interest, to which the information sought is substantially related, and that the State's ends may not be achieved by less restrictive means.").

14. In the civil context, courts "have repeatedly recognized that the First Amendment protects the right to participate in online forums anonymously or under a pseudonym, and that anonymous speech can foster the free and diverse exchange of ideas." *Greenbaum v. Google, Inc.*, 18 Misc. 3d 185, 187, 845 N.Y.S.2d 695, 698 (N.Y. Sup. Ct. 2007). The benchmark case for a court's analysis to strike the proper balance is *Dendrite International, Inc. v. Doe No. 3*, 775 A.2d 756 (N.J. Super Ct. App. Div. 2001), in which the court established a five-part test of when a website operator might be compelled to divulge the identity of online posters.² The *Dendrite* court found a party

² The *Dendrite* or similar guidelines have been followed by federal and state courts nationwide. *See e.g., Doe I v. Individuals*, 561 F. Supp. 2d 249, 254-55 (D. Conn. 2008) (noting that the anonymous individual "has a First Amendment right to anonymous Internet speech, but that the right is not absolute and must be weighed against [the] need for discovery to redress alleged wrongs. Courts have considered a number of factors in balancing these two competing interests. This balancing analysis ensures that the First Amendment rights of anonymous Internet speakers are not lost unnecessarily, and that plaintiffs do not use discovery to 'harass, intimidate or silence critics in the public forum opportunities presented by the Internet.'" (*citing Dendrite*, favorably));

must (1) attempt to notify the anonymous users that they are the subject of such a subpoena or application; (2) temporarily withhold action and afford the anonymous users the opportunity to oppose the subpoena; (3) identify the exact statements that the party alleges are actionable speech; and (4) make a prima facie showing of evidence as to every element of the alleged cause of action. *Id.* Only after the party seeking the information has satisfied those four elements will the court proceed to the fifth step: (5) “balance the defendant’s First Amendment right of anonymous free speech against the strength of the prima facie case presented and the necessity for the disclosure of the anonymous defendant’s identity to allow the plaintiff to properly proceed.” *Id.* at 760-61.

15. In this case, upon information and belief, plaintiff has made no attempt to notify the anonymous users that they are the subject of such a subpoena or application. This could have been accomplished through a direct posting on the Home in Henderson website, but it was not. Accordingly, plaintiff has afforded the anonymous users no

Highfields Capital Mgmt., L.P. v. Doe, 385 F. Supp. 2d 969 (N.D. Cal. 2005) (requiring “real evidentiary basis” that defendant had engaged in wrongful conduct before compelling disclosure); *Columbia Ins. Co. v. Seescandy.com*, 185 F.R.D. 573 (N.D. Cal. 1999) (adopting a four-part procedure requiring the proponent to: identify the anonymous party with specificity; identify all steps taken to identify the anonymous party; establish that proponent’s lawsuit could withstand a motion to dismiss; and file a request for discovery with the Court); *Doe v. 2TheMart.com Inc.*, 140 F. Supp. 2d at 1095 (adopting standard that requires showing that information necessary to cure claim or defense is not available from another source and granting motion to quash); *Independent Newspapers, Inc. v. Brodie*, 966 A.2d 432, 456 (Md. 2009) (adopting and discussing at length *Dendrite* standard: “[W]e believe that a test requiring notice and opportunity to be heard, coupled with a showing of a prima facie case and the application of a balancing test . . . most appropriately balances a speaker’s constitutional right to anonymous Internet speech with a plaintiff’s right to seek judicial redress from defamatory remarks.”); *Mobilisa, Inc. v. Doe 1*, 170 P.3d 712, 721 (Ariz. Ct. App. 2007) (adopting and applying a variation the *Dendrite* standard); *Krinsky*, 159 Cal. App. 4th at 1172 (“We . . . agree with those courts that have compelled the plaintiff to make a prima facie showing of the elements of libel in order to overcome a defendant’s motion to quash a subpoena seeking his or her identity.”); *Doe v. Cahill*, 884 A.2d 451 (Del. 2005) (requiring that the claim would survive summary judgment before enforcing subpoena for poster identity); *In re Subpoena Duces Tecum to America Online, Inc.*, No. 40570, 2000 WL 1210372 (Va. Cir. Ct. Jan. 31, 2006) (requiring that the court be satisfied by the pleadings or evidence that subpoena proponent has a legitimate, good faith basis for the action and that the anonymous party’s identity is central to the claim’s advancement), *rev’d on other grounds, America Online, Inc. v. Anonymous Publicly Traded Co.*, 542 S.E.2d 377 (Va. 2001); *see also Sony Music Entm’t*, 326 F. Supp. 2d 556, 564 (S.D.N.Y. 2004) (applying guidelines similar to *Dendrite* to disclosure of identities of anonymous individuals engaged in file sharing).

opportunity to oppose the subpoena. Plaintiff has not identified any statements that he alleges to be actionable, much less made a *prima facie* showing of evidence as to the elements of his alleged cause of action.

16. Upon information and belief, the plaintiff has been a public official in the past and currently is again a candidate for public office in the future. As such, he is by definition subject to more public scrutiny and criticism than the average, private citizen, and the Supreme Court has recognized that our public values demand that restrictions on political speech must be interpreted “against the background of a profound national commitment to the principle that debate on public issues should be uninhibited, robust and wide- open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.” *Watts v. United States*, 394 U.S. 705, 708 (1969) (internal citations omitted). Therefore, political speech “is often vituperative, abusive and inexact,” and even a “very crude offensive method of stating a political opposition” is protected. *Id.* (internal citations omitted).

17. Under a *Dendrite* standard, the court weighs the “First Amendment right of anonymous speech against the strength of the prima facie case presented and the necessity for the disclosure of the anonymous defendant’s identity.” *Dendrite*, 775 A.2d at 760-61. In this case, the plaintiff has made *no* showing of any right to recover, and accordingly he should not be permitted to go on a fishing expedition or to use the judicial system as a cudgel to settle personal squabbles with those who may have criticized him through online postings.

WHEREFORE, movants request that the Court quash the subpoena issued to Mr. Feingold.

This the 14th day of April, 2010.

EVERETT, GASKINS, HANCOCK & STEVENS, LLP



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Motion to Quash was served on counsel for the plaintiff email and by depositing a true copy thereof with the United States Postal Service, first class postage prepaid, addressed to:

Michael E. Satterwhite
Stainback, Satterwhite, Burnette &
Zollicoffer, PLLC
P.O. Box 1820
Henderson, NC 27536
msatter@sbzlaw.com

This the 14th day of April, 2010.


C. Amanda Martin

In The General Court of Justice
 District Superior Court Division

Vance County
 THOMAS S. HESTER, JR. Additional File Numbers

VERSUS

JOHN OR JANE DOE AKA
 "BEAUTIFUL DREAMER" ET AL **SUBPOENA**

Party Requesting Subpoena
 State/Plaintiff Defendant G.S. 1A-1, Rule 45

NOTE TO PARTIES NOT REPRESENTED BY COUNSEL: Subpoenas may be produced at your request, but must be signed and issued by the office of the Clerk of Superior Court, or by a magistrate or judge.

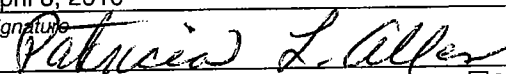
<i>Name And Address of Person Subpoenaed</i> TO Jason A. Feingold 543 Sagefield Drive Henderson, NC 27537	<i>Alternate Address</i> E.M. Rollins Elementary School 1600 S. Garnett Street Henderson, NC 27536
<i>Telephone No.</i> unknown	<i>Telephone No.</i> (252) 438-2189

YOU ARE COMMANDED TO: (check all that apply):

appear and testify, in the above entitled action, before the court at the place, date and time indicated below.
 appear and testify, in the above entitled action, at a deposition at the place, date and time indicated below.
 produce and permit inspection and copying of the following items, at the place, date and time indicated below.
 See attached list. (List here if space sufficient.)

Any and all documents in your possession, custody or control relating to "postings" on the website www.homeinhenderson.com by John or Jane Doe aka "Beautiful Dreamer;" and/or "Confused;" "Fatboy;" "Heelshouse;" "In the Know;" "Interesting;" "Cathy Lee Mclver;" "MJ;" "Northstar;" "Not My Fault;" "Pearl;" "Point Keeper;" "Rachel;" "Sparky;" "The Real Deal;" "Underworld;" "Who's Winning;" "A Tax Payer;" "Self Serving Sam;" "Ziggy," including but not limited to the proper name of each of the above Defendants, the E-Mail or a URL (Universal Resource Locator) address from which their postings were transmitted to the website of Home in Henderson, Inc. and any and all other information in the possession of Jason A. Feingold which can be used to identify the Defendants by their proper names.

<i>Name And Location of Court/Place Of Deposition/Place To Produce</i> Stainback, Satterwhite, Burnette & Zollicoffer, PLLC 115 North Garnett Street Henderson, NC 27536	<i>Date To Appear/Produce</i> April 20, 2010
	<i>Time To Appear/Produce</i> 4:00 <input type="checkbox"/> AM <input checked="" type="checkbox"/> PM

<i>Name And Address of Applicant or Applicant's Attorney</i> Michael E. Satterwhite P.O. Box 1820 Henderson, NC 27536	<i>Date</i> April 8, 2010
	<i>Signature</i> 

<i>Telephone No.</i> (252) 438-4136	<input type="checkbox"/> Deputy CSC	<input checked="" type="checkbox"/> Assistant CSC	<input type="checkbox"/> Clerk Of Superior Court	<input type="checkbox"/> Superior Court Judge
	<input type="checkbox"/> Magistrate	<input type="checkbox"/> Attorney / DA	<input type="checkbox"/> District Court Judge	

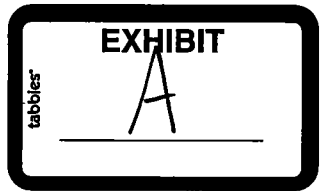
RETURN OF SERVICE

I certify that this Subpoena was received and served on the person subpoenaed as follows:

By personal delivery.
 registered or certified mail, receipt requested and attached.
 telephone communication (For use only by the sheriff's office for witness subpoenaed to appear and testify.)
 I was unable to serve this subpoena.

<i>Service Fee</i> \$ 15.00	<input checked="" type="checkbox"/> Paid <input type="checkbox"/> Due	<i>Date Served</i> 04-08-2010	<i>Signature of Authorized Server</i>	<i>Title</i> Deputy Sheriff
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NOTE TO PERSON REQUESTING SUBPOENA: A copy of this subpoena must be delivered, mailed or faxed to the attorney for each party in this case. If a party is not represented by an attorney, the copy must be mailed or delivered to the party. This does not apply in criminal cases.



NOTE: Rule 45, North Carolina Rules of Civil Procedure, Parts (c) and (d).

(c) Protection Of Persons Subject To Subpoena

(1) Avoid undue burden or expense. - A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing an undue burden or expense on a person subject to the subpoena. The court shall enforce this subdivision and impose upon the party or attorney in violation of this requirement an appropriate sanction that may include compensating the person unduly burdened for lost earnings and for reasonable attorney's fees.

(2) For production of public records or hospital medical records. - Where the subpoena commands any custodian of public records or any custodian of hospital medical records, as defined in G.S. 8-44.1, to appear for the sole purpose of producing certain records in the custodian's custody, the custodian subpoenaed may, in lieu of personal appearance, tender to the court in which the action is pending by registered or certified mail or by personal delivery, on or before the time specified in the subpoena, certified copies of the records requested together with a copy of the subpoena and an affidavit by the custodian testifying that the copies are true and correct copies and that the records were made and kept in the regular course of business, or if no such records are in the custodian's custody, an affidavit to that effect. When the copies of records are personally delivered under this subdivision, a receipt shall be obtained from the person receiving the records. Any original or certified copy of records or an affidavit delivered according to the provisions of this subdivision, unless otherwise objectionable, shall be admissible in any action or proceeding without further certification or authentication. Copies of hospital medical records tendered under this subdivision shall not be open to inspection or copied by any person, except to the parties to the case or proceedings and their attorneys in depositions, until ordered published by the judge at the time of the hearing or trial. Nothing contained herein shall be construed to waive the physician-patient privilege or to require any privileged communication under law to be disclosed.

(3) Written objection to subpoena. - Subject to subsection (d) of this rule, a person commanded to appear at a deposition or to produce and permit the inspection and copying of records may, within 10 days after service of the subpoena or before the time specified for compliance if the time is less than 10 days after service, serve upon the party or the attorney designated in the subpoena written objection to the subpoena, setting forth the specific grounds for the objection. The written objection shall comply with the requirements of Rule 11. Each of the following grounds may be sufficient for objecting to a subpoena:

- a. The subpoena fails to allow reasonable time for compliance.
- b. The subpoena requires disclosure of privileged or other protected matter and no exception or waiver applies to the privilege or protection.
- c. The subpoena subjects a person to an undue burden.
- d. The subpoena is otherwise unreasonable or oppressive.
- e. The subpoena is procedurally defective.

(4) Order of court required to override objection. - If objection is made under subdivision (3) of this subsection, the party serving the subpoena shall not be entitled to compel the subpoenaed person's appearance at a deposition or to inspect and copy materials to which

an objection has been made except pursuant to an order of the court. If objection is made, the party serving the subpoena may, upon notice to the subpoenaed person, move at any time for an order to compel the subpoenaed person's appearance at the deposition or the production of the materials designated in the subpoena. The motion shall be filed in the court in the county in which the deposition or production of materials is to occur.

(5) Motion to quash or modify subpoena. - A person commanded to appear at a trial, hearing, deposition, or to produce and permit the inspection and copying of records, books, papers, documents, or other tangible things, within 10 days after service of the subpoena or before the time specified for compliance if the time is less than 10 days after service, may file a motion to quash or modify the subpoena. The court shall quash or modify the subpoena if the subpoenaed person demonstrates the existence of any of the reasons set forth in subdivision (3) of this subsection. The motion shall be filed in the court in the county in which the trial, hearing, deposition, or production of materials is to occur.

(6) Order to compel: expenses to comply with subpoena. - When a court enters an order compelling a deposition or the production of records, books, papers, documents, or other tangible things, the order shall protect any person who is not a party or an agent of a party from significant expense resulting from complying with the subpoena. The court may order that the person to whom the subpoena is addressed will be reasonably compensated for the cost of producing the records, books, papers, documents, or tangible things specified in the subpoena.

(7) Trade secrets, confidential information. - When a subpoena requires disclosure of a trade secret or other confidential research, development, or commercial information, a court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or when the party on whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot otherwise be met without undue hardship, the court may order a person to make an appearance or produce the materials only on specified conditions stated in the order.

(8) Order to quash: expenses. - When a court enters an order quashing or modifying the subpoena, the court may order the party on whose behalf the subpoena is issued to pay all or part of the subpoenaed person's reasonable expenses including attorney's fees.

(d) Duties In Responding To Subpoena

(1) Form of response. - A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label the documents to correspond with the categories in the request.

(2) Specificity of objection. - When information subject to a subpoena is withheld on the objection that it is subject to protection as trial preparation materials, or that it is otherwise privileged, the objection shall be made with specificity and shall be supported by a description of the nature of the communications, records, books, papers, documents, or other tangible things not produced, sufficient for the requesting party to contest the objection.

INFORMATION FOR WITNESS

NOTE: If you have any questions about being subpoenaed as a witness, you should contact the person named on the other side of this Subpoena in the box labeled "Name And Address Of Applicant Or Applicant's Attorney."

DUTIES OF A WITNESS

- Unless otherwise directed by the presiding judge, you must answer all questions asked when you are on the stand giving testimony.
- In answering questions, speak clearly and loudly enough to be heard.
- Your answers to questions must be truthful.
- If you are commanded to produce any items, you must bring them with you to court or to the deposition.
- You must continue to attend court until released by the court. You must continue to attend a deposition until the deposition is completed.

BRIBING OR THREATENING A WITNESS

It is a violation of State law for anyone to attempt to bribe, threaten, harass, or intimidate a witness. If anyone attempts to do any of these things concerning your involvement as a witness in a case, you should promptly report that to the district attorney or the presiding judge.

WITNESS FEE

A witness under subpoena and that appears in court to testify, is entitled to a small daily fee, and to travel expense reimbursement, if it is necessary to travel outside the county in order to testify. (The fee for an "expert witness" will be set by the presiding judge.) After you have been discharged as a witness, if you desire to collect the statutory fee, you should immediately contact the Clerk's office and certify to your attendance as a witness so that you will be paid any amount due you.