

MS. HAYES: Correct, your Honor. I'm not. I'm here representing Danny Shelton.

THE COURT: So what under, under what provision of the rule are you proceeding? Isn't that the party to whom the subpoena was issued?

3. Attorney Jerrie Hayes' answer did not satisfy Magistrate Judge Boylan, and thus at about 15:44 into the recording, the following interchange took place:

THE COURT: What provision under Rule 45 are you, are you proceeding under?

MS. HAYES: Well, the motion to quash, your Honor, is based on Rule 26, um, that being that discovery cannot be had by, um, cannot be had for information that is burdensome, harassing, or, um --

THE COURT: How is it burdensome, harassing, or otherwise to you. I mean, the subpoena was served on the bank, and they're not even here.

MS. HAYES: Well, what's burdensome and harassing, your Honor, is that this is a search for Danny Lee Shelton's individual, personal private banking records which, as he's attested to in the affidavit, he has always maintained as confidential, which are private to him and which are extremely personal.

4. Attorney Jerrie Hayes' answer still did not satisfy Magistrate Judge Boylan, and thus at about 17:02 into the recording, the following interchange took place:

THE COURT: I'm not quite sure if we've gotten to the point beyond my question about under Rule 45, under what provision of Rule 45 you're, you're, you're proceeding on. Rule 45 is the rule that, um, talks about subpoenas, and it talks about parties to whom subpoenas have been issued, and the duties in responding to subpoenas. Um. I don't see where Rule 45 allows a different party to come in and complain about it, does it?

MS. HAYES: Your honor, [pause] Rule 45 including, which has been uh, the rules concerning, [??] rules concerning subpoena and the issue of subpoena enforcement have been interpreted by a variety of courts to include, um, that individuals may object to the subpoena for procedural improprieties within the ten days, and they also object to the subpoena and make a motion to quash the subpoena if the subpoena, um, is for what, you know, for a variety of reasons: it's overly broad, it's unduly burdensome, the same issues that go to discovery --

THE COURT: Sure, the party to whom the subpoena is issued. But you, you haven't had the subpoena issued to you.

MS. HAYES: Correct, your Honor, but we are a third party that has a right or privilege, right, privilege, or interest in the materials that are being sought, and if this Court, um, --

THE COURT: Where does it say that under Rule 45? Do you have yours handy?

MS. HAYES: Your, your Honor, I don't have the rules in front of me, and I don't believe that Rule 45 specifically permits that. However this court has allowed motions to quash to be made by interested and affected third parties.

THE COURT: Let me ask about what records they're looking at. They're looking for records of Mr. Danny Lee Shelton, correct?

MS. HAYES: Correct, his private banking records, his --

THE COURT: They're also looking for some records from a business, a sole proprietorship.

MS. HAYES: Correct.

THE COURT: They're also looking for some records from a corporation.

MS. HAYES: Correct, again a --

The very next portion of the hearing, about 18:40 into the recording, appears at ¶ 16 of Doc. 185.

5. Since Mr. Joy and I had been told by clerk(s) at the federal courthouse in Worcester, Massachusetts, that no one knew where the bank records we subpoenaed from MidCountry Bank ("MidCountry") ("MidCountry records") were, I took the docket text for Docket Entry #160 to mean that the Court had finally found the MidCountry records and was acknowledging their receipt.

6. When I originally opened up the actual receipt (Doc. 160), less than half of it was visible in my browser. When I read, "Received of the Clerk, U.S. District Court," I took that to mean that the MidCountry records had been received by the clerk, not received from the clerk. To my recollection, until recently, I never understood that receipt to mean anything else.

7. On December 4, 2009, the First Circuit Court of Appeals ruled on our motion to

include the documents produced by Remnant Publications, Inc. as part of the record on appeal. That order is attached hereto as **Exhibit A**.

8. The same week of December 4, 2009, I was looking at the receipt (Doc. 160) again while talking to Mr. Joy, and, scrolling down the page, for the first time that I can recall noticed the address under the signature of Christine Parizo (“Parizo”). That address was “Fierst, Pucci & Kane,” Plaintiffs’ counsel’s law firm. This alerted Mr. Joy and I to the fact that the receipt was not a receipt for the courthouse having received the MidCountry records.

9. Attached hereto as **Exhibit B** is the PDF version of a c. 2008 article which I downloaded from <http://www.lawcrossing.com/article/3894/Christine-Parizo-Author-of-A-Paralegal-s-Blog/>. Page 2 says that Parizo works at Fierst, Pucci, & Kane. Attached hereto as **Exhibit C** is Pucci’s resume, which I downloaded from <http://www.fierstpucci.com/cv/pucci.pdf>.

10. I have never consented to the return of the MidCountry records.

11. On December 10, 2009, I contacted a clerk at the federal courthouse in Worcester, Massachusetts, to see if anyone knew where the MidCountry records were. She told me that they were looking into it, and were trying to determine whether the subpoenaed records had already been forwarded to the Court of Appeals.

12. On December 15, 2009, I contacted the same clerk again to obtain an update. She told me that the MidCountry records had been “returned” to MidCountry or the Plaintiffs, whichever the receipt on the docket indicated, and that since the MidCountry records had not been entered in the docket prior to our first notice of appeal, the MidCountry records had not been forwarded to the Court of Appeals prior to their being “returned.”

13. On December 15, 2009, I wrote Attorney John P. Pucci (“Pucci”) to seek the return of the MidCountry records to this Court. That letter is attached hereto as **Exhibit D**. Pucci replied via email the same day, and his reply is attached hereto as **Exhibit E**.

FURTHER DEPONENT TESTIFIES NOT.

Signed and sealed this 17th day of December, 2009.

/s/ Bob Pickle

Bob Pickle
Halstad, MN 56548
Tel: (218) 456-2568

Subscribed and sworn to me
this 17th day of December, 2009.

/s/ Andrew Shae

Notary Public—Minnesota

My Commission Expires Jan. 31, 2010