

SAO88 (Rev. 12/06) Subpoena in a Civil Case

Issued by the
UNITED STATES DISTRICT COURT

Central

DISTRICT OF

Massachusetts

Three Angels Broadcasting and Danny Shelton

SUBPOENA IN A CIVIL CASE

V.

Gailon Arthur Joy and Robert Pickle

Case Number: 07-40098-FDS

TO: Alan Lovejoy, or Keeper of the Records of Gray Hunter
 Stenn LLP, Greetings!

YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

| | |
|--------------------|---------------|
| PLACE OF TESTIMONY | COURTROOM |
| | DATE AND TIME |

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

| | |
|---------------------|---------------|
| PLACE OF DEPOSITION | DATE AND TIME |
|---------------------|---------------|

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

See Exhibit A, attached hereto.

| | | | |
|-------|---|---------------|------------------|
| PLACE | Sam C. Mitchell & Assoc., Lower Floor, 115 1/2 E Main St., West Frankfort, IL 62896 | DATE AND TIME | 1/3/2008 9:00 am |
|-------|---|---------------|------------------|

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

| | |
|----------|---------------|
| PREMISES | DATE AND TIME |
|----------|---------------|

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

| | |
|---|------|
| ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT) | DATE |
|---|------|

| |
|--|
| ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER |
| SARAH A. THORNTON |

(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)

¹ If action is pending in district other than district of issuance, state district under case number.

AO88 (Rev. 12/06) Subpoena in a Civil Case

PROOF OF SERVICE

| | |
|------------------------|-------------------|
| DATE | PLACE |
| SERVED | |
| SERVED ON (PRINT NAME) | MANNER OF SERVICE |
| SERVED BY (PRINT NAME) | TITLE |

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on

DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2006:

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENA.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises — or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

- (i) fails to allow reasonable time for compliance;
- (ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business, in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held;
- (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) If a subpoena

- (i) requires disclosure of a trade secret or other confidential research, development, or commercial information; or
- (ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party; or
- (iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject

to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) (A) 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 them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) (A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(e) **CONTEMPT.** Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the limits provided by clause (f) of subparagraph (c)(3)(A).

EXHIBIT A

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified:

For whatever time periods that you have such documents in your possession:

- All contracts, agreements, work papers, engagement letters, management letters, management representation letters, or other documents arising from any auditing services rendered to 3ABN, as defined herein.
- All contracts, agreements, tax returns, invoices, records of payments made or received, whether direct or indirect, or any other accounting records or documents arising from any accounting or tax form preparation services rendered to 3ABN, as defined herein.
- All contracts, agreements, work papers, engagement letters, management letters, management representation letters, or other documents arising from any auditing services rendered to Danny Shelton, as defined herein.
- All contracts, agreements, tax returns, invoices, records of payments made or received, whether direct or indirect, or any other accounting records or documents arising from any accounting or tax form preparation services rendered to Danny Shelton, as defined herein.

Definitions:

- **3ABN** means Three Angels Broadcasting Network, Inc., and all its related organizations or organizations which it controls, and their assumed names, whether past or present, whether for profit or non-profit, including but not limited to: Three Angels Broadcasting, Inc., Three Angel's Broadcasting School, Inc., Broadcast Communications Service, Inc., Three Angels TV & Radio Broadcasting Network (in Russia), Tres Anjos Broadcasting Network - LTDA (in Brazil), Association Three Angels Broadcasting Network (in Peru), 3ABN, 3ABN Philippines, Inc., Three Angels Enterprises, L.L.C., Crossbridge Music, Inc., 3ABN Books, 3ABN Music, or 3ABN Radio.
- **Danny Shelton** means Danny Lee Shelton, and any of his DBA's or organizations over which he has or has had control, including but not limited to D & L Publishing and DLS Publishing.
- **Or** is used in the inclusive sense (i.e. "and/or"). Thus, if a request seeks all documents relating to "A or B," You are to produce all documents relating to "A," all documents relating to "B," and all documents relating to "A and B."
- **Document** shall have the broadest possible meaning permitted under applicable law, and shall include any written, recorded or graphic material of any kind, including the originals and all non-identical copies, including those materials in electronic form, that is or has been in Your possession, control or custody or of which You have knowledge, including, but not limited to: documents, letters, correspondence, e-mail, memoranda, notes, invoices, bulletins, calendars, diaries, contracts, agreements, letters, telegrams, minutes, reports, studies, checks, statements, receipts, vouchers, invoices, summaries, pamphlets, blueprints, specifications, drawings, sketches, interoffice and intraoffice communications, stenographic or handwritten notes of any sort of conversation, telephone calls, meetings or other communications, agendas, computer printouts, graphical records or representations of any kind (including without limitation photographs, charts, graphs, microfiche, microfilm, videotapes, recordings, and motion

pictures), electrical data compilation, electronic mail, computer files or documents, computer disks, computer programs, computer software, tapes and all other tangible things upon which any handwriting, typing, printing, drawing, representation, photocopy, magnetic, electrical or optical impulse, data, or other form of communication is stored, recorded, or reproduced, and preliminary drafts and non-identical copies of the above. The term also includes each and every file folder, folio or other material in which the above items are stored, filed, or maintained as well as every copy of such documents where the original is not in Your possession, custody or control, or where such copy is not an identical copy of an original or where such copy contains any commentary or notation whatsoever that does not appear in the original.

Instructions:

- Your attention is directed to Federal Rule of Civil Procedure 34(b)(i) (and (c)), which requires that documents be produced for inspection "as they are kept in the usual course of business or shall organize and label them to correspond with the categories of the request." In this connection, and for purposes of illustration, it is requested that all documents requested be produced in the file folders and cartons in which they have been maintained and stored, clipped, stapled or otherwise arranged in the same form and manner as they were found. If you choose to produce the documents requested corresponding with the categories in the request, it is requested that you identify the file folders, drawers or cartons in which the documents were originally maintained.
- Federal Rule of Civil Procedure 34(b)(ii) stipulates that electronically stored information must be produced "in a form or forms in which it is ordinarily maintained or in a form or forms that are reasonably usable."
- If any document requested herein was at one time in existence but has been lost, discarded or destroyed, identify such document as completely as possible, providing as much of the following information as possible:
 1. the type of document;
 2. the document's date;
 3. the date or approximate date the document was lost, discarded or destroyed;
 4. the circumstances under which and the manner in which the document was lost, discarded or destroyed;
 5. the reason or reasons for disposing of the document (if discarded or destroyed);
 6. the identity of all persons authorized or having knowledge of the circumstances surrounding disposal of the document;
 7. the identity of the person(s) who lost, discarded, or destroyed the document; and
 8. the identity of all persons having knowledge of the contents of the document.