

IN THE CHANCERY COURT OF JACKSON COUNTY, MISSISSIPPI

FILED

CYNTHIA N. ALMOND

FEB 05 2015

PLAINTIFF

VERSUS

TERRY MILLER, CLERK CAUSE NO. 2014-2653 NH

SINGING RIVER HEALTH SYSTEM, ET AL

By *[Signature]*
4:24 pm

DEFENDANTS

**DEFENDANT, SINGING RIVER HEALTH SYSTEM'S,
MOTION TO QUASH AND FOR OTHER RELIEF**

COMES NOW the Defendant, Singing River Health System, (hereinafter referred to as "SRHS"), a community owned hospital system, by and through its Attorneys, files this its Motion To Quash the *Subpoena Duces Tecum* issued in the above, for a Protective Order, and for an Order staying all proceedings until the Court rules on the Motion To Recuse, and in support of said Motion would show unto the Court as follows, to-wit:

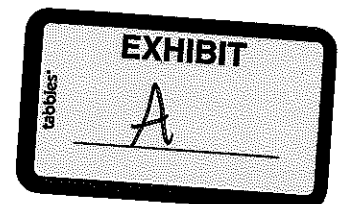
I. BACKGROUND

On January 26, 2015, Plaintiff caused a *Subpoena Duces Tecum* to be issued from the Chancery Clerk's office. See *Subpeona Duces Tecum* attached to the Motion as Exhibit 1.

On Tuesday, January 27, 2015, SRHS's General Counsel, Celeste Oglesby, was served with the *Subpoena Duces Tecum*. The *Subpoena Duces Tecum* contains fifty-eight (58) separate requests for documents and other information and commands compliance by Friday, February 6, 2015.

Prior to the issuance of this Subpoena, SRHS filed a Motion To Recuse The Honorable D. Neil Harris on January 16, 2015. The Motion To Recuse is set for hearing on February 12, 2015 before this Honorable Court.

Without waiving the matters and arguments set forth in its Motion To Recuse, SRHS moves this Honorable Court to quash the *Subpoena Duces Tecum*, enter a Protective Order prohibiting



production of said documents and things pursuant to MRCP 26(d), and enter an Order staying all proceedings pending the hearing on the Motion To Recuse.

II. ARGUMENT

SRHS has moved this Honorable Court to recuse itself from all actions pending against SRHS. Despite this fact, Plaintiff has served SRHS with an overly burdensome document request and requests compliance prior to the hearing on the Motion to Recuse. SRHS submits that the Court must decide the threshold Motion To Recuse prior to any further activity in this case. Plaintiffs' *Subpoena Duces Tecum* is premature and should be quashed.

SRHS is a party to this litigation and Plaintiff must resort to MRCP 34 to obtain requested documents rather than under MRCP 45. Plaintiff is trying to circumvent the normal discovery procedures by issuing a subpoena directly to the Defendant. Moreover, instead of serving Defendant's Attorneys with a typical request for production of documents, Plaintiff's counsel chose to personally serve SRHS's General Counsel with the subpoena when they knew the Defendant was represented by Counsel. Plaintiffs' attempt to subpoena a party, rather than a non-party contemplated by the Rule, must not be condoned.

"The leading treatises agree that although [Federal] Rule 45 may apply to both parties and non-parties, resort to Rule 45 should not be allowed when it circumvents the requirements and protection of Rule 34 for the production of documents belonging to a party.

"Although Rule 45 is not limited by its terms to non-parties, it should not be used to obtain pre-trial production of documents or things, or inspection of premises, from a party in circumvention of discovery rules or orders. Discovery from a party, as distinct from a non-party, is governed by Rule 34, not Rule 45." 7 *Moore's Federal Practice*, Section 34.02[5][e] (3d ed.) (citing *Hasbro, Inc. v. Serafino*, 168 F.R.D. 99 (D. Mass. 1996).

Stokes v. Xerox Corporation, 2006 WL 6686584 (E.D. Mich 2006) and (Construing Federal Rules of Civil Procedure which are similar to Mississippi Rules of Civil Procedure).

SRHS shows that the *Subpoena Duces Tecum*, containing over fifty-eight (58) enumerated requests for documents and other materials, spanning many years and involving many separate corporations, individuals and other entities, should be quashed. Pursuant to Mississippi Rule of Civil Procedure 45(d)(1)(A), SRHS contends that the *Subpoena Duces Tecum* requiring production within ten (10) days fails to allow a reasonable time for compliance. SRHS is entitled to the time provided in MRCP 34 and its providing for at least thirty (30) days in which to respond. SRHS is also entitled to the limitations on discoverable information as provided under MRCP 26 and case law interpreting same. The *Subpoena Duces Tecum* also seeks disclosure of privileged or other protected matter for which there is no exception or waiver that is applicable and also subjects SRHS to undue burden and expense in responding to same.

III. WRITTEN OBJECTIONS

In addition to seeking to quash the subpoena, SRHS also serves the following written objections to the requested items listed in the *Subpoena Duces Tecum* pursuant to MRCP 45(d)(2)(B)

1. Any and all documents provided to William Guice, Esquire, since March 2014 to present.

OBJECTION: This requests seeks information which is over broad, irrelevant, privileged, unduly burdensome, and not likely to lead to the discovery of admissible evidence.

2. Any and all documents provided to Jackson County Board of Supervisors in response to any and all requests for documents since October 2014 to present;

OBJECTION: This requests seeks information which is over broad, irrelevant, privileged, unduly burdensome, and not likely to lead to the discovery of admissible evidence.

3. Any and all documents provided to Jackson County District Attorney's office since March 2014 to present.

OBJECTION: This requests seeks information which is over broad, irrelevant, privileged, unduly burdensome, and not likely to lead to the discovery of admissible evidence.

4. Any and all documents provided to the Federal Bureau of Investigation in response to any and all requests for documents since March 2014 to present;

OBJECTION: This request seeks information which is over broad, irrelevant, privileged, unduly burdensome, and not likely to lead to the discovery of admissible evidence.

5. The Engagement letters and/or contracts with KPMG Consulting for financial touching on or concerning at all audits of Singing River Health System performed from 2005 to present.

OBJECTION: Defendant is a party to this matter and any such request should be the subject of a proper request for production pursuant to MRCP 34.

6. The Engagement letters and/or contracts with Transamerica Retirement Solutions Corporation touching on or concerning any and all business engagements with Singing River Health System from 2005 to present.

OBJECTION: Defendant is a party to this matter and any such request should be the subject of a proper request for production pursuant to MRCP 34.

7. The Engagement letters and/or contracts with any actuary who worked on the Singing River Health System Employees' Retirement Plan or plans from the date of inception of each plan or amended from the inception of the first retirement plan until present;

OBJECTION: Defendant is a party to this matter and any such request should be the subject of a proper request for production pursuant to MRCP 34.

8. The Engagement letter and/or contract with any attorney(s) who provided counsel or advice to the Singing River Health System with regards to the Employees' Retirement Plan from the date of the inception of the first retirement plan to present;

OBJECTION: This request seeks information which is protected by the attorney-client and/or work product privilege.

9. The Engagement letter and/or contract with any accounting firm employed to provide any services to the Singing River health System Employees' retirement plan from the date of the inception of the first plan to present.

OBJECTION: Defendant is a party to this matter and any such request should be the subject of a proper request for production pursuant to MRCP 34.

10. Any and all correspondence between the Singing River Health System Employees' Retirement Plan trustees, attorneys, representatives, or advisors and the Internal Revenue Service from the date of the inception of the first retirement plan to present;

OBJECTION: This request seeks information protected by the attorney-client privilege and/or work product doctrine. Also, said request is over broad, unduly burdensome, and not likely to lead to the discovery of admissible evidence.

11. Engagement letters and/or contracts with Diversified Retirement Corporation for all

business engagements with Singing River Health System from 2005 to present.

OBJECTION: Defendant is a party to this matter and any such request should be the subject of a proper request for production pursuant to MRCP 34.

12. Any and all plans for retirement offered since 2005, by Singing River Health System to any persons or organizations, and a list of those who have participated in said plan or plans. The list shall include the name, address, and contact information for all companies which have held and/or administered each such plan.

OBJECTION: This requests seeks information which is over broad, unduly burdensome and requests confidential information.

13. Any and all correspondence regarding Singing River Health System Retirement plan to and from any and all persons acting as a trustee over said plan since March 2014 to present and received from or directed to each party, whether emails, texts, faxes, letters, or any other written communication in any form.

OBJECTION: This requests seeks information which is over broad, unduly burdensome and requests confidential information.

14. Any and all letters sent to any employees, retirees or plan participants regarding contributions to the Singing River Health System Employees' Retirement plan from 2005- Presently any of the Defendants, their agents, employees, contractors, or representatives of any nature.

OBJECTION: This requests seeks information which is over broad, unduly burdensome and requests confidential information.

15. Any and all documents displayed, made available, or physically provided to any person during new employee orientation regarding the Singing River Health System Employees' Retirement Plan from 2005 to Present.

OBJECTION: Defendant is a party to this matter and any such request should be the subject of a proper request for production pursuant to MRCP 34. Also, this request is overly broad and unduly burdensome.

16. Any and all documentation showing bonuses paid to the top twenty (20) highest paid employees from 2005 to present to include a copy of all checks or transfers of money which accomplished said payments.

OBJECTION: This request is over broad, unduly burdensome and seeks irrelevant information which is also confidential.

17. Any and all Singing River Health System Employees' Retirement Plan annual statements of the top twenty (20) highest-paid employees from 2005 to present.

OBJECTION: This request is over broad, unduly burdensome and seeks irrelevant and confidential information.

18. Any and all videos, charts and/or PowerPoint presentations made by or related to any Singing River Health System employees, trustees, contractor or agent or presented to any group of Singing River health System employee concerning the Singing River Health System Employees' retirement plan.

OBJECTION: Defendant is a party to this matter and any such request should be the subject of a proper request for production pursuant to MRCP 34.

19. Any and all Pension Plan Annual Financial Reports from 2005 to Present.

OBJECTION: Defendant is a party to this matter and any such request should be the subject of a proper request for production pursuant to MRCP 34.

20. Singing River Health System Employees' Retirement Plan Contract/Agreements by and between Singing River Health System and its employees, all documents detailing in writing.

OBJECTION: Defendant is a party to this matter and any such request should be the subject of a proper request for production pursuant to MRCP 34.

21. In addition to each Plan of Retirement in written form, copies of each and every amendment to the Singing River Health System Employees' Retirement Plan from the date of inception to Present.

OBJECTION: Defendant is a party to this matter and any such request should be the subject of a proper request for production pursuant to MRCP 34.

22. Copies of any and all documents related to Cynthia Almond's participation in the Singing River Health System Employees' Retirement Plan.

OBJECTION: Defendant is a party to this matter and any such request should be the subject of a proper request for production pursuant to MRCP 34.

23. Salaries of the Singing River Health System executive staff, including, but not limited to: the Chief Executive Officer, Chief Financial Officer, Director of Human Resources, General Counsel for SRHS and Chief Operating Officer from January 2005, to present.

OBJECTION: This request is over broad, unduly burdensome, irrelevant, seeks confidential information and is not likely to lead to the discovery of admissible evidence.

24. Employment contracts and amendments thereto for the Singing River Health System Executive staff, including, but not limited to: the Chief Executive Officer, Chief Financial Officer, Director of Human Resources, General Counsel for SRHS and Chief Operating Officer for the entire year of 2005, to Present.

OBJECTION: This request is over broad, unduly burdensome, irrelevant, seeks confidential information and is not likely to lead to the discovery of admissible evidence.

25. Salaries of Singing River Health System's twenty (20) highest paid non-medical employees not included in previous requests.

OBJECTION: This request is over broad, unduly burdensome, irrelevant, seeks confidential information and is not likely to lead to the discovery of admissible evidence.

26. Any and all required Surety Bonds for the Singing River Health System Board of Trustees and Executive staff, included but not limited to: the Chief Executive Officer, Chief Financial Officer, and Chief Operating Officer for 2005 to present.

OBJECTION: Defendant is a party to this matter and any such request should be the subject of a proper request for production pursuant to MRCP 34.

27. Bylaws for Singing River Health System Board of Trustees.

OBJECTION: Defendant is a party to this matter and any such request should be the subject of a proper request for production pursuant to MRCP 34.

28. Bylaws of any entity touching or concerning Singing River Health System Hospital Administration.

OBJECTION: Defendant is a party to this matter and any such request should be the subject of a proper request for production pursuant to MRCP 34.

29. All official Minutes from Singing River Health System Board of Trustees Meetings from January, 2005, to present.

OBJECTION: Defendant is a party to this matter and any such request should be the subject of a proper request for production pursuant to MRCP 34.

30. Official Minutes from Singing River Health System Retirement Committee Meetings from January, 2005, to present.

OBJECTION: Defendant is a party to this matter and any such request should be the subject of a proper request for production pursuant to MRCP 34.

31. Any all contracts and purchase orders concerning Fletcher Construction company or any company or individual of like or any of its affiliations or principles or agents.

OBJECTION: This request is over broad, unduly burdensome, irrelevant and not likely to lead to the discovery of admissible evidence.

32. Any all contracts and purchase orders, directly or indirectly concerning Crown Healthcare Laundry Service, or any payments made directly or indirectly thereto.

OBJECTION: This request is over broad, unduly burdensome, irrelevant and not likely to lead to the discovery of admissible evidence.

33. Any all contracts and purchase orders concerning Vending Services, Inc, or any payments made directly or indirectly thereto.

OBJECTION: This request is over broad, unduly burdensome, irrelevant and not likely to lead to the discovery of admissible evidence.

34. Any all contracts and purchase orders concerning Acadian, LLC, or any payments made directly or indirectly thereto.

OBJECTION: This request is over broad, unduly burdensome, irrelevant and not likely to lead to the discovery of admissible evidence.

35. Any all contracts, lease agreements, and purchase orders concerning Doctors Plaza, LLC, or any payments made directly or indirectly thereto.

OBJECTION: This request is over broad, unduly burdensome, irrelevant and not likely to lead to the discovery of admissible evidence.

36. Any all contracts and purchase orders concerning Mississippi Laundering Services any and all submitted bids concerning contracts that were awarded to Mississippi Laundering Services or any payments made directly or indirectly thereto.

OBJECTION: This request is over broad, unduly burdensome, irrelevant and not likely to lead to the discovery of admissible evidence.

37. Any all contracts and purchase orders concerning Jackson County Collections any and all submitted bids concerning contracts that were awarded to Jackson County Collections or any payments made directly or indirectly thereto.

OBJECTION: This request is over broad, unduly burdensome, irrelevant and not likely to lead to the discovery of admissible evidence.

38. Any all bids, contracts, and purchase orders concerning Trane and Airmasters any and all submitted bids concerning contracts that were awarded to Trane and Airmaster or any payments made directly or indirectly thereto.

OBJECTION: This request is over broad, unduly burdensome, irrelevant and not likely to lead to the discovery of admissible evidence.

39. Any all contracts, bids, and purchase orders concerning Hilton Garden Inn (Pascagoula), and any and all submitted bids concerning contracts that were awarded to Hilton Garden Inn, Pascagoula or any payments made directly or indirectly thereto.

OBJECTION: This request is over broad, unduly burdensome, irrelevant and not likely to lead to the discovery of admissible evidence.

40. Any all contracts, bids, and purchase orders concerning Crews Electric, and any and all submitted bids concerning contracts that were awarded to Crews Electric.

OBJECTION: This request is over broad, unduly burdensome, irrelevant and not likely to lead to the discovery of admissible evidence.

41. Any and all audits, contracts, engagement letters prepared in connection or involving the Horne Group and Singing River Health System.

OBJECTION: This request is over broad, unduly burdensome, irrelevant and not likely to lead to the discovery of admissible evidence.

42. Any and all information, banking statements, annual statements, and all account or accounting documents related to any account in which the SRHS Employees' Retirement deduction from pay checks were held prior to deposit into the SRHS Employee's retirement fund and the same information for the accounts into which all money was transferred from its initial depository account.

OBJECTION: This request is over broad, unduly burdensome, irrelevant, seeks confidential information and is not likely to lead to the discovery of admissible evidence.

43. Any and all payments made to Mississippi Affiliates Network from 2005 to present.

OBJECTION: This request is over broad, unduly burdensome, irrelevant and not likely to lead to the discovery of admissible evidence.

44. Any and all payments made to Dogan & Wilkinson, PLLC, and bills from Dogan & Wilkinson, PLLC, from September 29, 2014, to present.

OBJECTION: This request is over broad, unduly burdensome, irrelevant, seeks confidential information and is not likely to lead to the discovery of admissible evidence.

45. A full and complete list with names, address, phone numbers and last date of employment of any and all current and past employees who have elected to not participate in the plan since 2009, to Present and withdrew their funds, and on which date the funds were removed.

OBJECTION: This request is over broad, unduly burdensome, irrelevant, seeks confidential information and is not likely to lead to the discovery of admissible evidence.

46. Any and all correspondence (including, emails, letters, statements, etc.) to and from the SRHS Bond Holder(s) from March 2014, to present.

OBJECTION: This request is over broad, unduly burdensome, irrelevant, seeks confidential information and is not likely to lead to the discovery of admissible evidence.

47. Copies of any and all appraisals and closing documents of any and all purchases and/or sale or lease or sublease touching or concerning any and all real estate transactions from 2009, to present.

OBJECTION: This request is over broad, unduly burdensome, irrelevant, seeks confidential information and is not likely to lead to the discovery of admissible evidence.

48. Any and all contracts, bids, purchase orders, and documentation related to the purchase and transition to EPIC or any payments made directly or indirectly thereto.

OBJECTION: This request is over broad, unduly burdensome, irrelevant, seeks confidential information and is not likely to lead to the discovery of admissible evidence.

49. Any and all security tapes, videos, computer files related to the video and/or audio recordings in the Lingle Building, Financial Services, and Human Resources department of SRHS from the dates of January 5, 2015, at 12:00 a.m. to January 20, 2015, at 5:00 a.m.

OBJECTION: This request is over broad, unduly burdensome, irrelevant, seeks confidential information and is not likely to lead to the discovery of admissible evidence.

50. Any and all documents, payments, monies received, bond or loan company communication, etc. touching or pertaining to the Cost Overrun to Con Number: HG-MOB-0310-012; R-0814 Construction of a Medical Office Building submitted to Mississippi State Department of Health May, 2014.

OBJECTION: This request is over broad, unduly burdensome, irrelevant, seeks confidential information and is not likely to lead to the discovery of admissible evidence.

51. Any and all documents, payments, monies received, bond or loan company communication, etc. rules, regulations, applications, etc. touching or pertaining to the Federal Reimbursement of the EPIC computer system, the application/grant process, and any and all deposits, expenditures, and banking accounts associated with the Federal reimbursement;

OBJECTION: This request is over broad, unduly burdensome, irrelevant, seeks confidential information and is not likely to lead to the discovery of admissible evidence.

52. Any and all documents, payments, monies received, bond or loan company communication, etc. touching or pertaining to the Addition of Level II comprehensive Medical Rehabilitation Beds Con review: HG-CB-1211-02.

OBJECTION: This request is over broad, unduly burdensome, irrelevant, seeks confidential information and is not likely to lead to the discovery of admissible evidence.

53. And all documents touching or pertaining to construction of one or more chiller plants at any and all SRHS locations to include but not be limited to construction documentation, emails, memorandums, purchase orders, payments, purchases and any and all other documents touching said project.

OBJECTION: This request is over broad, unduly burdensome, irrelevant, seeks confidential information and is not likely to lead to the discovery of admissible evidence.

54. Any and all documents payments, monies received, bond or loan company communication, etc. touching or pertaining to the Amendment and Cost Overrun to Con No. R-0781 (Electrical Services Upgrade) and Con No. R-0795 (Modular Chiller Plant and pipe bridge project/ construction) review: HG-CB-1211-027.

OBJECTION: This request is over broad, unduly burdensome, irrelevant, seeks confidential information and is not likely to lead to the discovery of admissible evidence.

55. Any and all documents, payments, monies received, bond or loan company communication, etc. touching or pertaining to the Amendment to Con # R-0751

(Construction of Observation Unit and Outpatient Service Improvement) Con review: HG-CB-1211-027.

OBJECTION: This request is over broad, unduly burdensome, irrelevant, seeks confidential information and is not likely to lead to the discovery of admissible evidence.

56. Any and all documents, payments, monies received, bond or loan company communication, etc. touching or pertaining to the Cost Overrun to Con Number: HG-MOB- 0310-012 Construction of a Medical Office Building submitted to Mississippi State Department of Health May, 2010.

OBJECTION: This request is over broad, unduly burdensome, irrelevant, seeks confidential information and is not likely to lead to the discovery of admissible evidence.

57. Any and all documents payments, monies received, bond or loan company communication, etc. touching or pertaining to the Modular Chiller Plant and Pipe Bridge Project Con review: HG-C-0608-014 submitted to Mississippi State Department of Health August, 2009.

OBJECTION: This request is over broad, unduly burdensome, irrelevant, seeks confidential information and is not likely to lead to the discovery of admissible evidence.

58. Any and all documents payments, monies received, bond or loan company communication, etc. touching or pertaining to the Addition of a backup generator, three centrifugal chillers, and the electrical distribution Con Review No. HG- R-1207-030 submitted to the Mississippi State Department of Health February, 2008.

OBJECTION: This request is over broad, unduly burdensome, irrelevant, seeks confidential information and is not likely to lead to the discovery of admissible evidence.

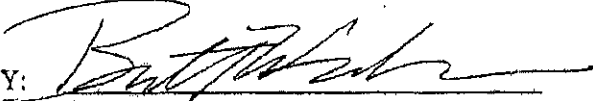
IV. CONCLUSION

SRHS respectfully requests that this Honorable Court quash the subject *Subpoena Duces Tecum*. Plaintiff's *Subpoena* is unreasonable and oppressive. Plaintiff is impermissibly trying to circumvent the Mississippi Rules of Civil Procedure governing request for production of documents and the protections afforded responding parties therein. SRHS requests that the Court enter a Protective Order precluding any compliance with Plaintiff's *Subpoena Duces Tecum*.

WHEREFORE, PREMISES CONSIDERED, SRHS requests that the Court quash Plaintiff's *Subpoena Duces Tecum*, enter a Protective Order precluding Plaintiff from obtaining the documents and information requested within said *Subpoena Duces Tecum*,

stay all proceedings pending the Court's ruling on the Motion to Recuse, and for such other and further relief which the Court may deem appropriate.

SINGING RIVER HEALTH SYSTEM

BY: 

BRETT K. WILLIAMS, ATTORNEY
HANSON HORN, ATTORNEY
G. CHARLES BORDIS, ATTORNEY
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COUNSEL FOR SINGING RIVER HEALTH
SYSTEM

CERTIFICATE OF SERVICE

I, Brett K. Williams, do hereby certify on this 5th day of February, 2015, that I have forwarded via mail first class, postage prepaid, email, facsimile and/or hand delivered, a true and correct copy of the above and foregoing to the usual and regular mail addresses of the following:

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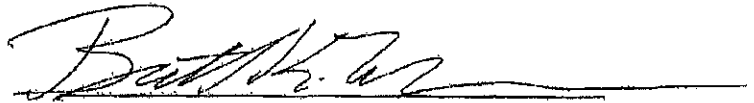
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