

IN THE UNITED STATES DISTRICT FOR  
THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

DAN McCALEB, Executive Editor of )  
THE CENTER SQUARE, )

Plaintiff, )

v. )

Case No. 3:22-cv-00439

MICHELLE LONG, in her official )  
capacity as DIRECTOR of the )  
TENNESSEE ADMINISTRATIVE )  
OFFICE OF THE COURTS, )

Judge Richardson

Magistrate Judge Frensley

Defendant. )

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**PLAINTIFF’S MOTION TO COMPEL  
NON-PARTY TENNESSEE SUPREME COURT  
JUSTICES’ COMPLIANCE WITH SUBPOENA**

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Plaintiff Dan McCaleb files this Motion to Compel pursuant to Fed. R. Civ. P. 45(g) and LR 7.01 and moves this Honorable Court for an Order compelling compliance with Subpoena that commands deposition testimony from Non-Party Tennessee Supreme Court Chief Justice Holly Kirby, Justice Jeffrey Bivins, Justice Roger Page, and Special Justice Sharon Lee (collectively the “Justices”).

In support of this Motion to Compel, McCaleb relies upon the Memorandum of Law filed herewith, along with the following attached exhibits:

- **Exhibit 1**, Michelle Long Deposition
- **Exhibit 2**, Gino Bulso Deposition

- **Exhibit 3**, Michelle Consiglio-Young Deposition
- **Exhibit 4**, Lang Wiseman Deposition
- **Exhibit 5**, James McQuaid Declaration
- **Exhibit 6**, Buck Dougherty Declaration
- **Exhibit 7**, Statement on the Record (CJ Kirby failure to appear)

1. The Justices’ remote depositions via Zoom were scheduled for this week on November 27, 28, 29, and 30. The Justices have not contested service of the four subpoenas and notices of deposition (collectively the “Subpoena”) served upon them on October 31, 2023.

2. However, the Justices filed a motion to quash the Subpoena or alternatively for a protective order on Thanksgiving Eve — 22 days after being served with the Subpoena and 1 business day before Chief Justice Kirby’s scheduled deposition on November 27. ECF No. 60.

3. Then after filing the motion, the Justices said they would not be appearing at their depositions this week to give testimony until they received a decision from the Court on the motion to quash.

4. But as more fully set forth in McCaleb’s Memorandum, merely filing — and resting on — a motion to quash was not an “adequate excuse” under Rule 45 for the Justices to then disobey the Subpoena and fail to appear at their scheduled depositions to give testimony when the Court had not ruled on the motion to quash.<sup>1</sup>

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<sup>1</sup> Although briefing has closed and the matter is ripe the Court has yet to rule on the Justices’ motion to quash the Subpoena, at or about the time of filing this motion to compel. *See* Justices’ Reply, ECF No. 64, filed on November 28, 2023.

5. Pursuant to LR 7.01(a)(1), Plaintiff's counsel's most recent communication with the Justices' counsel was email communication with attorney Cody Brandon on Monday, November 27, 2023, at approximately 9:15 am CDT. That email communication from Mr. Brandon is attached as **Exhibit 7** and is part of the Statement on the Record. At that time, Mr. Brandon said, "As we informed you on our call, none of the Justices will appear for deposition until we receive a decision on their Motion to Quash." See **Exhibit 7**, Statement on the Record. Thus, the relief McCaleb is requesting here is opposed by the non-party Justices.

### **RELIEF REQUESTED**

Plaintiff Dan McCaleb respectfully requests that the Court grant his Motion to Compel and enter an Order compelling the Justices' compliance with the Subpoena that commands their deposition testimony.

November 30, 2023

Respectfully submitted,

/s/ M. E. Buck Dougherty III

M. E. Buck Dougherty III, TN BPR #022474

James McQuaid, *Pro Hac Vice*

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## CERTIFICATE OF SERVICE

I, counsel for Plaintiff, hereby certify that a true and correct copy of the foregoing document has been served on the following counsel of record, via the Court's ECF system by email on this 30th day of November 2023:

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