

Salvatierra-Jovel in a federal case. Thomson asserts that in November 2010, AUSA Terrien contacted Thomson and indicated that Salvatierra-Jovel wanted Thomson, not Heblich, to represent him. In December 2010, Thomson and Heblich endorsed an order substituting Thomson as counsel, and the order was entered by Chief Judge Glen E. Conrad.

A few days later, Magistrate Judge James G. Welsh informed Judge Conrad that the government suspected Thomson of attempting to buy drugs from Salvatierra-Jovel and therefore there was a problem with Thomson representing Salvatierra-Jovel. Based on a conversation with Salvatierra-Jovel, it was determined that Heblich should be reappointed as counsel. However, AUSA Terrien contacted Judge Conrad and asked that the judge not enter the order substituting Heblich because it would alert Thomson to the government's suspicions. Judge Conrad permitted AUSA Terrien to make a formal application asking the court to appoint Heblich as "shadow counsel" for Salvatierra-Jovel. Judge Conrad determined that appointing "shadow counsel" was inappropriate and appointed Heblich in an unsealed order.

Thomson subpoenaed Heblich on June 2, and on June 8, District Federal Public Defender Larry W. Shelton advised Thomson's attorney that the subpoena could not be considered until he complied with applicable procedures.

Generally, whether to enforce or quash a subpoena is left within the district court's broad discretion, and the court may quash a subpoena if compliance would be unreasonable or oppressive. Fed. R. Crim. P. 17(b). When a trial court considers quashal of a subpoena duces tecum, the court must determine whether the evidence sought is relevant and admissible and whether the subpoena is sufficiently specific so that compliance will not be overly burdensome. *United States v. Debolt*, No. 5:09CR24, 2010 WL 4281699, at *3 (N.D.W. Va. Oct. 19, 2010) (citing *United States v. Richardson*, 607 F.3d 357, 363 (4th Cir. 2010)).

In addition to these considerations, the government argues that Thomson failed to comply with applicable regulations governing the issuance of a subpoena of an employee of the federal judicial system. The regulations were adopted by the United States Judicial Conference at its March 2003 meeting and were made pursuant to the authority granted to the Director of the Administrative Office of the United States Courts by Congress.

Section 7(a) of the regulations requires that subpoenas issued to employees of the federal judiciary system must be approved by determining officers. The government maintains that the determining officer in this case is Federal Public Defender Larry Shelton. Section 6(a) of the regulations requires that each request for testimony or documents be accompanied by a written statement or affidavit explaining the nature of the testimony or documents sought, their relevance, and

why they are not readily available from other sources. Section 6(b) requires that the request and statement be provided at least 15 working days before the testimony or documents are required.

The government asserts that the subpoena of Hebllich was not approved by Shelton and does not comply with the regulations because the request and statement required by the regulations were not submitted within the appropriate time period.

Thomson makes several arguments in response. First, he argues that the regulations do not apply in these circumstances because they do not apply in criminal cases. Furthermore, he argues that the regulations are invalid because they violate the right of compulsory process and rules of reciprocal discovery. Finally, he argues that the government failed to make this motion promptly, as required by Federal Rule of Criminal Procedure 17 and has failed to show that the subpoena was unreasonable or oppressive.

Regardless of Thomson's noncompliance with the regulations and the regulations' validity, the subpoena should be quashed because the testimony and documents sought by Thomson are irrelevant to his guilt or innocence. See *Smith v. BIC Corp.*, 869 F.2d 194, 202 (3rd Cir. 1989) (affirming the order quashing subpoenas because the information sought was irrelevant).

Thomson alleges that misconduct occurred in the government's investigation with regard to the appointment of "shadow counsel." He alleges that Heblich improperly acted as an agent for the government rather than as counsel. As this court has repeatedly stated in hearings and through its orders, Thomson's rights were not violated by the government's investigation. Thomson's claims regarding the course of the investigation are irrelevant to his guilt or innocence, and evidence to support his claims are therefore inadmissible at trial. Accordingly, Thomson has failed to show that Heblich's testimony or the documents sought in the subpoena could be relevant and admissible.

For the foregoing reasons, it is hereby **ORDERED** that the government's motion to quash is **GRANTED** and the subpoena to Fred Heblich is **QUASHED**.

ENTER: June 24, 2011

/s/ James P. Jones
United States District Judge