

STATE OF VERMONT

SUPERIOR COURT
Chittenden Unit

CIVIL DIVISION
Docket No. 902-10-19 Cncv

Physician's Indemnity Risk vs. Joy

ENTRY REGARDING MOTION

Count 1, Petition for Out of State Subpoena - Rule 28 (902-10-19 Cncv)

Title: Motion to Quash Subpoena (Motion 2)
Filer: Peter Joy
Attorney: Gary F. Karnedy
Filed Date: November 7, 2019

Response filed on 11/25/2019 by Attorney Adam C. Varley for Petitioner
Reply filed on 12/09/2019 by Attorney Gary F. Karnedy for Respondent Peter Joy

This case involves a request by Plaintiff for a Vermont subpoena in connection with an out-of-state proceeding. Such requests are covered by Rule 45(f) of the Vermont Rules of Civil Procedure. Defendant seeks to quash the subpoena here, arguing that it was improperly issued because Plaintiff seeks it in connection with an administrative agency proceeding—that of the Nevada Department of Insurance—rather than a court proceeding.

Discussion

Rule 45(f) states that it “governs depositions and discovery conducted in Vermont in connection with a civil action brought in another state.” V.R.C.P. 45(f)(1). It goes on to define a “foreign subpoena” as one “issued under authority of a court of record of a foreign jurisdiction.” *Id.* §(f)(2)(B). The 2011 Reporter’s Notes expressly state that this definition

“exclud[es] subpoenas issued by other tribunals such as administrative agencies or boards of arbitration.” Thus, on its face the rule does not permit issuance of the subpoena here.

Plaintiff proffers two arguments about why the administrative subpoena should be treated as if it were issued by a court. However, none overcome the clear language of our rule. First, Nevada may treat administrative subpoenas as equivalent to court subpoenas, but that does not transform them into court subpoenas. Second, if Nevada subpoenas can be enforced outside Nevada, then no Vermont subpoena is needed. That is what was at issue in Silverman v. Berkson, 661 A. 2d 1266 (N.J.1995): the power of an agency to issue its own subpoena directly to someone in another state—not a subpoena obtained from the courts of the other state. The Silverman procedure would be issuance of the subpoena directly from Plaintiff to Mr. Joy, an enforcement proceeding in the Nevada court if he refused to comply, and then a “full faith and credit” action in Vermont court, if necessary, to enforce any order of the Nevada court.

Because the court concludes that the Vermont rule expressly does not permit the issuance of a Vermont subpoena based upon an out-of-state administrative subpoena, it does not reach the other issues raised by Plaintiff.

Order

The motion to quash is granted and this case is closed.

Dated at Burlington this 11th day of December, 2019.

Helen M. Toor
Superior Court Judge

Notifications:

Adam C. Varley (ERN 8167), Attorney for Petitioner Physician's Indemnity RRG
Gary F. Karnedy (ERN 1741), Attorney for Respondent Peter Joy