FILED
THOMAS D. HALL
OCT 30 2000
CLERK, SUPREME COURT
BY_____

IN THE JUDICIAL QUALIFICATIONS COMMISSION
STATE OF FLORIDA

INQUIRY CONCERNING A JUDGE
MATTHEW E. McMILLAN
Nos. 99-10 & 00-17

Sup. Ct. Case No. 95,886
00-703

_____/

MOTION TO QUASH TRIAL SUBPOENA

Non-parties the Bradenton Herald, Inc. and Eydie Cubarrubia (collectively the "Herald") move to quash an untimely subpoena seeking privileged information. Grounds for this motion are as follows:

1. The Bradenton Herald is a daily newspaper of general circulation in Manatee County, Florida. Eydie Cubarrubia is employed as a reporter for the newspaper.

2. At 2 p.m. on October 27, 2000, Judge McMillan's counsel attempted to serve a subpoena on Cubarrubia commanding that she appear and provide testimony the next business day at 9 a.m.

3. The notice provided was clearly unreasonable. For that reason alone, the subpoena should be quashed. See Turner v. Greyhound Financial Corp., 567 So.2d 1042, 1043 (Fla. 1st DCA 1990) (quashing discovery order because notice of hearing was served only one day before hearing; "one day notice is not reasonable").

4. The subpoena also should be quashed because any information Cubarrubia could supply would be privileged. The Florida Evidence Code and the Florida common law recognize privileges that protect newsgathering information. See § 90.5015, Fla. Stat. (2000); Morris Communications Corp. v. Frangie, 720 So.2d

230 (Fla. 1998); In re Graziano, 696 So.2d 744, 752 (Fla. 1997) (JQC was within its discretion in quashing subpoena of newspaper reporter). In recognizing these privileges, the Florida Supreme Court has "emphasize[d] the strong responsibility of the courts to protect the rights of a free press." State v. Davis, 720 So. 2d 220, 222 (Fla. 1998). To protect these rights, the statutory privilege allows a journalist "not to be a witness concerning, and not to disclose the information, including the identity of any source, that the professional journalist has obtained while actively gathering news." § 90.5015(2).

5. The statutory privilege may be defeated only by a clear and specific showing: (1) that the information sought is relevant to an unresolved issue in the case; (2) of a compelling need for the information; and (3) that the information is not available from alternative sources. § 90.5015(2). The common law privilege imposes similar requirements. Morris Communications, 720 So. 2d at 231.

6. Judge McMillan has not even attempted to satisfy these requirements. No showing has been made of a compelling need, relevance, or a lack of alternative sources. Consequently, the subpoena must be quashed.

WHEREFORE, the subpoena of Eydie Cubarrubia should be quashed, and the Herald and Ms. Cubarrubia should be awarded such other and further relief as is the Commission deems proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on October 30th 2000, a true copy of this motion has been furnished by hand delivery to Arnold D. Levine, Esq., 100 S. Ashley Dr., Suite 1600, Tampa, FL 33602; Thomas C. MacDonald, Esq., Cook & MacDonald Mediation Group, 100 N. Tampa St., Suite 2100, Tampa, FL 33602; and Lansing C. Scriven, Esq., Trenam, Kemker, Scharf, Barkin, Frye, O'Neill & Mullis, P.A., 101 East Kennedy Boulevard, Suite 2700, Tampa, FL 33602.

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