

CASE NO. 13LF-CV00461

William M. Windsor	§	IN THE CIRCUIT COURT
	§	
Plaintiff,	§	
	§	
v.	§	
	§	15th JUDICIAL CIRCUIT
Allie Loraine Yager Overstreet,	§	
Mark Supanich, Brenda Williamson	§	
And John Does 1-1000,	§	
	§	
Defendants	§	LAFAYETTE COUNTY, MISSOURI

MOTION TO ORDER CLERK OF THE COURT
TO ISSUE SIGNED SUBPOENAS

Comes Now, William M. Windsor (“Windsor” or “Plaintiff”) and files this MOTION TO ORDER CLERK OF THE COURT TO ISSUE SIGNED SUBPOENAS. PLAINTIFF shows the Court as follows:

1. The PLAINTIFF needs to subpoena production of documents from non-parties.
2. The PLAINTIFF has been denied those subpoenas by the Clerk of the Court, citing a local rule. However, there is no local rule in regard to subpoenas for discovery from non-parties.

3. The Missouri Rules of Civil Procedure clearly provide the procedure for such discovery. Rule 58.02 Rules of Civil Procedure - Rules Governing Civil Procedure in the Circuit Courts - Production of Documents and Things and Entry Upon Land for Inspection and Other Purpose -- Subpoena to Non-Party for Production of Documents and Things:

A party may serve a subpoena on a non-party to:

- (1) Produce and permit inspection and copying of any designated documents, or
- (2) Permit inspection, copying testing, or sampling of any tangible things that constitute or contain matters within the scope of Rule 56.01(b) and that are in the possession, custody or control of the non-party.
- (3) Every such subpoena for document production and things shall:
 - (A) Be issued by the clerk of the court in which the civil action is pending;

4. The Clerk has no discretion in this matter and must be ordered to issue the subpoenas as per Missouri law.

5. The Clerk has told the PLAINTIFF that he may not request subpoenas until all parties are served, but the PLAINTIFF believes one of the parties is evading service. The Rules of Civil Procedure clearly provide that discovery may commence after the first Defendant is served.

6. This Court must order the Clerk of the Court to provide signed subpoenas for discovery.

7. Most of the people to be subpoenaed are likely to be named as parties once this is confirmed by review of documents.

8. This Court must issue the subpoenas immediately so the PLAINTIFF will have time to get them served.

The right of access to courts requires that an individual have "adequate, effective, and meaningful" access to court procedures. *Ryland v. Shapiro*, 708 F.2d 967, 972 (5th Cir. 1983); see also *Bounds v. Smith*, 430 U.S. 817, 822, 52 L. Ed. 2d 72, 97 S. Ct. 1491 (1977); *Rudolph v. Locke*, 594 F.2d 1076, 1078 (5th Cir. 1979). ... courts have found various acts of delay in court proceedings and suppression or destruction of evidence to constitute an impermissible burden on the right of access to courts. See *Germany v. Vance*, 868 F.2d 9, 15 (1st Cir. 1989); *Jackson v. Proconier*, 789 F.2d 307, 311 (5th Cir. 1986) ("Any deliberate impediment to access, even a delay of access, may constitute a constitutional deprivation"); *Bell v. Milwaukee*, 746 F.2d 1205, 1260-63 (7th Cir. 1984); *Ryland v. Shapiro*, 708 F.2d 967, 973 (5th Cir. 1983); *McCray v. Maryland*, 456 F.2d 1, 6 (4th Cir. 1972) (right of access violated where court official, by refusal or neglect, impedes the filing of court papers); *Sigafus v. Brown*, 416 F.2d 105, 107 (7th Cir. 1969) (destruction of legal papers necessary for appeal constitutes denial of access); *Crews v. Petrosky*, 509 F. Supp. 1199, 1204 (W.D. Pa. 1981) (allegation that clerk of court delayed filing of a petition for appeal may state valid claim for violation of right of access). (*Chrissy F. v. Mississippi Dept. of Pub. Welfare*, 780 F. Supp. 1104 (S.D.Miss. 12/6/1991).) (See also *Green v. Johnson*, 977 F.2d 1383, 1389 (10th Cir. 1992); *Simkins v. Bruce*, 406 F.3d 1239 (10th Cir. 05/09/2005); *Jackson v. Proconier*, 789 F.2d 307, 311 (5th Cir. 1986); *Bilbrew v. Wilkinson*, 05-0130. (S.D.Tex. 11/09/2005).)

9. WHEREFORE, PLAINTIFF prays that this Court order the Clerk of the Court to issue signed subpoenas to PLAINTIFF as needed for discovery; and grant such other relief as the Court deems appropriate.

Submitted this 5th day of June, 2013,

A handwritten signature in black ink, appearing to read "William M. Windsor". The signature is written in a cursive, flowing style.

William M. Windsor
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Fax: 770-234-4106

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CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing by delivering a copy
by United States Postal Service with sufficient postage applied to:

Allie Overstreet -- 1208 N. Main, Higginsville, Missouri 64037

Brenda Williamson -- 210 Chestnut – Apartment A, Belton, Missouri
64012

Mark Supanich -- 1826 Lucky Strike Road, Helena, Montana 59602

Submitted this 5th day of June, 2013,



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