

## Rule 45

change the law in replacing “unreasonable and oppressive” with “undue burden,” older decisions on what is an unreasonable and oppressive subpoena must be read with care. For example, the law has changed considerably on this point both in terms of the amendments of the Federal Rules themselves and in terms of judicial attitudes towards subpoenas and discovery. This is made abundantly clear by the admonition in Rule 45(c)(1) addressed to both the bench and litigants that they have a responsibility to avoid “imposing undue burden or expense” to the person subpoenaed. The district judge may impose “an appropriate sanction” on a party or attorney who does not meet this responsibility.

Ordinarily a party has no standing to seek to quash a subpoena issued to someone who is not a party to the action,<sup>6</sup> unless the objecting party claims some personal right or privilege with regard to the documents sought. This

---

<sup>6</sup>Party lacks standing

*Brown v. Braddick*, C.A.5th, 1979, 595 F.2d 961, 967, **citing Wright & Miller.**

*Chamberlain v. Farmington Savs. Bank*, D.C.Conn.2007, 2007 WL 2786421 (slip op.), **citing Wright & Miller.**

*Trujillo v. Board of Educ. of the Albuquerque Public Schools*, D.C.N.M.2007, 2007 WL 2296916 (slip op.).

*Maxwell v. Health Center of Lake City, Inc.*, D.C.Fla.2006, 2006 WL 1627020 (slip op.).

*In re Application of FB Foods, Inc.*, D.C.N.Y.2005, 2005 WL 2875366, **citing Wright & Miller.**

*Auto-Owners Ins. Co. v. Southeast Floating Docks, Inc.*, D.C.Fla.2005, 231 F.R.D. 426, **quoting Wright, Miller & Marcus.**

*Washington v. Thurgood Marshall Academy*, D.C.D.C.2005, 230 F.R.D. 18, **citing Wright & Miller.**

*Nova Prods., Inc. v. Kisma Video, Inc.*, D.C.N.Y.2004, 220 F.R.D. 238, **citing Wright & Miller.**

*Zhou v. Pittsburg State Univ.*, D.C.Kan.2002, 2002 WL 1932538.

*Liberty Mut. Fire Ins. Co. v. Ravannack*, D.C.La.2002, 2002 WL 1770936.

*Stewart v. Mitchell Transp.*, D.C.Kan.2002, 2002 WL 1558210.

*Fleet Bus. Credit Corp. v. Hill City Oil Co.*, D.C.Tenn.2002, 2002 WL 1483879.

*Kessel v. Cook County*, D.C.Ill.2002, 2002 WL 398506, **quoting Wright & Miller.**

*Flint Hills Scientific, LLC v. Davidchack*, D.C.Kan.2001, 2001 WL 1717902.

Absent a showing of the plaintiff's personal right or privilege with respect to the medical records of her doctor, the plaintiff's motion to quash a subpoena of medical records of her doctor was denied. *Hertenstein v. Kimberly Home Health Care, Inc.*, D.C.Kan.1999, 189 F.R.D. 620 (denying motion, additionally, due to failure to comply with local rule imposing duty to confer with opposing party regarding discovery dispute).

*Gatewood v. Stone Container Corp.*, D.C.Iowa 1996, 170 F.R.D. 455 (employer lacked standing to

## Rule 45

personal right or privilege standard has been recognized in numerous cases.<sup>7</sup>

challenge subpoena duces tecum served by employee against union in employment discrimination action, since employer failed to assert any personal right with respect to subject matter of subpoena).

Smith v. Midland Brake, Inc., D.C.Kan.1995, 162 F.R.D. 683 (defendant corporation had no standing to challenge subpoena served on its employee because it did not show privilege or a personal right to be protected).

Haywood v. Hudson, D.C.N.Y. 1993, 1993 WL 150317, **citing Wright & Miller.**

Kansas Health Care Ass'n, Inc. v. Kansas Dep't of Social & Rehabilitation Servs., D.C.Kan.1990, 1990 WL 255000.

Oliver B. Cannon & Son, Inc. v. Fidelity & Cas. Co., D.C.Del. 1981, 519 F.Supp. 668, 680, **citing Wright & Miller.**

Clayton Brokerage Co. v. Clement, D.C.Md.1980, 87 F.R.D. 569, 571, **citing Wright & Miller.**

The defendants, who were neither in possession nor control of documents involved in a subpoenas duces tecum, nor the persons to whom the subpoenas were directed, lacked standing to move to quash the subpoenas. Vogue Instrument Corp. v. Lem Instruments Corp., D.C.N.Y.1967, 41 F.R.D. 346.

Shepherd v. Castle, D.C.Mo. 1957, 20 F.R.D. 184, 188.

**But see**

The defendant challenged a third-party subpoena issued to his bank, a nonparty in the case; the plaintiff argued that the defendant lacked standing under Rule 45 to do so. The district court held that the defendant's assertion of personal privilege with respect to his

bank account records was sufficient to confer standing for purposes of the motion. However, because the defendant ultimately failed to prove the existence of a "personal privilege," the district court denied his motion and upheld the subpoena. DIRECTV, Inc. v. Richards, D.C.N.J.2005, 2005 WL 1514187.

**<sup>7</sup>Personal right or privilege**

In re Impounded Case, C.A.3d, 1989, 879 F.2d 1211.

In re Antitrust Grand Jury, C.A.6th, 1986, 805 F.2d 155.

Chamberlain v. Farmington Savs. Bank, D.C.Conn.2007, 2007 WL 2786421 (slip op.), **citing Wright & Miller.**

Schmulovich v. 1161 Route 9, LLC, D.C.N.J.2007, 2007 WL 2362598 (slip op.) (personal rights claimed with respect to bank accounts gave individual standing to challenge third-party subpoena served upon financial institutions holding such information).

Trujillo v. Board of Educ. of the Albuquerque Public Schools, D.C.N.M.2007, 2007 WL 2296916 (slip op.) (party generally has no standing to challenge subpoena directed to non-party, but does have standing if subpoena infringes upon that party's legitimate interests).

Abbott Diabetes Care, Inc. v. Roche Diagnostics Corp., D.C.Cal. 2007, 2007 WL 2255236 (slip op.) (party has standing to quash third-party subpoena so long as party demonstrates right or interested in requested documents).

Will-Drill Resources, Inc. v. J.R. Pounds, Inc., D.C.Miss.2007, 2007 WL 609791 (slip op.).

Manufacturer Direct, LLC v. Directbuy, Inc., D.C.Ind.2007, 2007