

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH

http://www.courts.state.nh.us

Court Name: Cheshire Superior Court

Case Name: State v. Jason Talley

Case Number: 213-2011-CR-00216
(if known)

LIMITED

APPEARANCE/WITHDRAWAL
SUPERIOR COURT

I request a jury trial
(If you do not check this box, your case will be heard by a judge)

APPEARANCE (LIMITED)

Please enter my appearance as

Counsel for Judge Edwin Kelly and
Judge Tina Nadeau (for the
limited purpose of filing Motion to Quash)

I will represent myself (*pro se*).

WITHDRAWAL

Please withdraw my appearance as

Counsel for _____

Notice of Withdrawal sent to my clients on:

_____ at the following address:

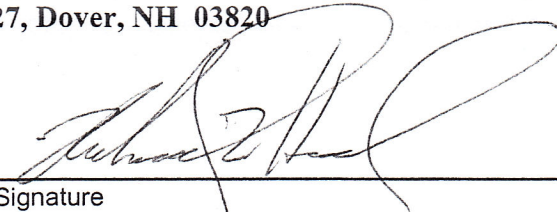
I hereby certify that duplicates of this notice were delivered mailed to the person(s) listed below (or on attached list) on 03/14/2012 :
Date

Name: John S. Webb, Esquire, Cheshire County Attorney's Office

Address: 12 Court Street, Keene, NH 03431 and Bradley Jarvis, 42
Main Street #27, Dover, NH 03820

3/14/2012

Date


Signature

Richard W. Head
Printed Name

Address: 33 Capitol Street
Concord, NH 03301-6397

(603) 271-3650
Telephone

7900
NH Bar ID #

Email Address (optional)

THE STATE OF NEW HAMPSHIRE

CHESHIRE, SS.

SUPERIOR COURT

213-2011-CR-00216

State

v.

Jason Talley

MOTION TO QUASH

NOW COME Judge Edwin Kelly and Judge Tina Nadeau, by and through their attorneys, the Office of the Attorney General, and respectfully request that this Court quash subpoenas duces tecum issued to each of them.¹

1. The judges who have received subpoenas are required to appear at the Cheshire County Superior Court the week of April 9, 2012 to testify in the matter of *State v. Jason Talley*. Copies of the subpoenas are attached as Exhibit A. The subpoenas, which require the same thing from each judge, include the following production requirement:

and you are required to bring with you and produce at that time knowledge pertaining to the origination of New Hampshire Circuit Court Order 2011-03 which became effective on July 1st 2011, the New Hampshire superior court order issued on July 1st 2011 which enforced circuit court order 2011-03 in the superior court, and the "order in reference to administrative order 2011-3" issued in the Cheshire County Superior Court on July 15th 2011.²

2. The three documents regarding which the Defendant seeks testimony are all court orders. The first, Circuit Court Order 2011-03, is an administrative order of Judge Kelly,

¹ Upon information and belief, subpoenas have also been signed to compel the appearance of Judge Edward Burke and Judge John Arnold. Neither of those subpoenas has been served upon them. The Office of the Attorney General reserves the right to amend this Motion upon receipt of proof of service on Judges Burke and Arnold.

² The Subpoenas require the judges bring with them "knowledge pertaining to..." Undersigned counsel has interpreted this to mean the subpoenas seek only testimony regarding the subjects listed, and not records.

Administrative Judge of the Circuit Courts, regarding security at the 8th Circuit Court in Keene. The second order, dated July 1, 2011, was issued by Judge Nadeau, Chief Justice of the Superior Courts, adopting Order 2011-03 for the Cheshire County Superior Court effective July 1, 2011. The third order, issued by Judge Arnold, clarifies Administrative Order 2011-03 relative to the duty of court security to remove cell phones and other video and recording equipment from members of the public at the Court entrance. Copies of Circuit Court Order 2011-03 and the July 1, 2011 and July 15, 2011 Superior Court orders are attached as Exhibit B, C and D respectively.

3. Judges are not required to answer inquiries into the mental processes by which their decisions were reached. *Merriam v. Salem*, 112 N.H. 267, 268 (1972). While the New Hampshire Supreme Court has recognized that a judge may be a competent witness to prove all that occurred before him, judges may not be compelled to do so. *Gelinas v. Metropolitan Property & Liability Ins. Co.*, 131 N.H. 154, 168-69 (1988).

4. To the extent the Defendant seeks to inquire into the Justices' recollection of proceedings or the basis for any order issued, such an inquiry is both inappropriate and unnecessary. Any testimony from these judges regarding the orders would be an inadmissible intrusion into the thought process which led to the issuance of the orders. To the extent the Defendant is seeking testimony regarding events that occurred before these judges in court, such testimony may not be compelled.

5. Even if the testimony could be compelled, such testimony is necessarily irrelevant in any proceeding to determine whether an individual has violated the orders. "Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the

evidence.” N.H.R. Ev. 401. Any testimony regarding the development of the orders, or the meaning of the orders themselves, is irrelevant as to the issue of whether a violation of the orders occurred.

6. The Defendant has copies of the three orders at issue. If the trial court deems the orders themselves relevant and admissible evidence, they can be admitted as trial exhibits by the proffering party. Testimony from judges regarding their mental process leading up to the issuance of their orders, however, is prohibited and properly excluded.

7. For these and other reasons, requiring the appearance of these judges in the above captioned proceedings is both unnecessary and improper.

WHEREFORE, the State respectfully requests that this Honorable Court:

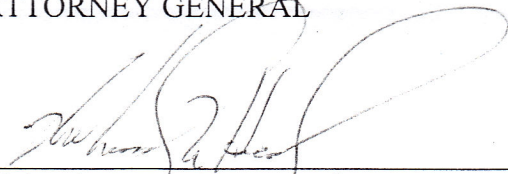
- (A) Quash the subpoenas issued to the judges in the above referenced matter; and
- (B) Grant such further relief as may be deemed just and proper.

Respectfully submitted,

JUDGE EDWIN KELLY AND
JUDGE TINA NADEAU

By their attorney,

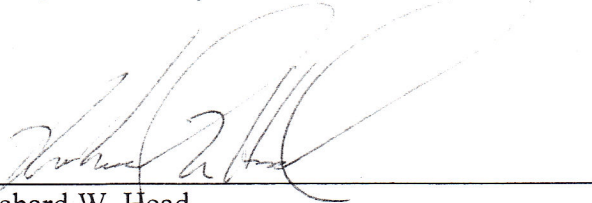
MICHAEL A. DELANEY
ATTORNEY GENERAL



Date: March 14, 2012

Richard W. Head, NH Bar #7900
Associate Attorney General
33 Capitol Street
Concord, NH 03301-6397
(603) 271-1221

I hereby certify that a copy of the foregoing was mailed this day, postage prepaid, to John S. Webb, Esq., Cheshire County Attorney's Office, and Bradley Jarvis, 42 Main Street #27, Dover, NH 03820.



Richard W. Head

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