

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

VIRGIE ARTHUR	§	
PLAINTIFF	§	
	§	
v.	§	Civil Action No. 6:08MC6
	§	
NELDA (ROSE) MILLIGAN TURNER,	§	
and KENNETH TURNER	§	
DEFENDANTS	§	

**PLAINTIFF'S REPLY TO RESPONSE  
TO MOTION TO COMPEL SUBPOENA**

Virgie Arthur, files this Plaintiff's Reply to Response to Motion to Compel Subpoena,<sup>1</sup> which Response was filed by Nelda ("Rose") Turner and Kenneth Turner.

**INTRODUCTION**

1. The case was commenced in state court and was removed to federal court. It involves allegations that Howard K. Stern conspired with CBS Studios, Inc. ("CBS") and KPRC Houston to defame Virgie Arthur and that they did defame her. Plaintiff alleges that Stern and CBS arranged for Vickie Lynn Marshall, aka Anna Nicole Smith, who was Virgie Arthur's daughter, to give an interview to Entertainment Tonight, one of CBS's television shows, and to defame Virgie Arthur in the most grotesque terms possible, *i.e.* to claim that Virgie Arthur was complicit in sexual abuse of Ms. Marshall as a child.

2. The conspiracy later widened to include Howard K. Stern's sister, Bonnie Stern, Rose Turner, and others. They republished the original defamation and invented and/or republished more defamatory stories, falsely asserting that Virgie Arthur had committed incest. This is not about Virgie Arthur being "unhappy" with public discussion about her

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<sup>1</sup> The Turners' document will be referred to as "Response."

relationship with her daughter, as the Turners say with a smirk in their Response. The subpoenas at issue are about vicious defamation gratuitously inflicted on an innocent victim, Virgie Arthur, by persons whom she never met, the Turners.

### **Argument and Authorities**

3. Ms. Arthur already has presented to the court in the main case, Civil Action No. 4:07-cv-03742; *Virgie Arthur v. Howard K. Stern, CBS Studios, Inc. and KPRC Houston*; In the Southern District of Texas, Houston Division, in Judge Lee Rosenthal's court, considerable evidence of the Turners' participation in a conspiracy to defame Ms. Arthur and their actions in that regard in Texas, for the most part, online. That the Turners, through the use of their computers, played a key part of Howard K. Stern's efforts against Virgie Arthur has been substantiated by the sworn statements of two confessed former members of the conspiracy.<sup>2</sup> Nevertheless, counsel for the Turners represented to Judge Rosenthal that his clients "had nothing to do with all this." That representation was utterly false, and so are several of the representations to this Court in the Response.<sup>3</sup>

4. The Response characterizes one website, [www.rosespeaks.com](http://www.rosespeaks.com), and one weblog [www.rosespeaks.com/rose-blog](http://www.rosespeaks.com/rose-blog), as containing discussion of high-profile and celebrity court cases.<sup>4</sup> That characterization is highly misleading. In reality, those sites were created and maintained for the purposes of supporting Defendant Howard K. Stern and for the purpose of, in Rose Turner's own words, "destroying" Plaintiff Virgie Arthur,<sup>5</sup> as

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<sup>2</sup> See generally the sworn statements of Chrystal Baker and Yvonne Waddle, attached as Exhibit B.

<sup>3</sup> False statements in a court filing may constitute tampering with a government record. See *State v. Vasilas*, \_\_\_ S.W.3d \_\_\_, PD-1473-06 (Tex. Cr. App. May 7, 2008). <http://www.cca.courts.state.tx.us/OPINIONS/PDFOPINIONINFO2.ASP?OPINIONID=16878&FILENAME=PD-1473-06.PDF>. See also, <http://www.texasappellatelawblog.com/2008/05/articles/final-judgments/stretch-the-facts-go-to-jail/> (explaining the Vasilas decision).

<sup>4</sup> Response paragraph 2.

<sup>5</sup> See e-mail from Rose Turner ("Cajunrose") to Chrystal Baker ("Sweet Havana"), April 11, 2007, 2:16:37 a.m. attached as Exhibit A.

well as any person perceived by Ms. Turner as being opposed to Stern's interests. Ms. Turner began discussing other celebrity cases on Mar. 5, 2008, only after she had been served with the initial subpoena in the present case.

5. The Response avoids any mention of the other websites and e-mail addresses that are the subjects of the subpoenas, such as <http://www.atruerose.com>, which the Turners describe as an "adult site," and on which they display the motto "We're a porn-free kink site and proud of it." At least one of the e-mail addresses for which the subpoenas seek discovery, [stormdnc@gmail.com](mailto:stormdnc@gmail.com), was associated with <http://www.atruerose.com>.<sup>6</sup> At one point in the conspiracy to defame Virgie Arthur, Bonnie Stern, the sister of Defendant Howard K. Stern, directed the conspirators to send to the stormdncr e-mail address all of their research on Ms. Arthur and any other person perceived as being opposed to Defendant Stern. Bonnie Stern explained, "i can't have it all go to my personal email." That directive from Bonnie Stern caused concern among some of the conspirators, who did not wish to be associated with such a website, and some left the group as a result.<sup>7</sup> That website played an important role in the conspiracy, but the Turners do not mention it in their Response.

6. The Response falsely states that Plaintiff originally issued subpoenas to the Turners in the Southern District of Texas,<sup>8</sup> when, in truth, the original subpoenas were issued in the Eastern District of Texas.<sup>9</sup>

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<sup>6</sup> See also <http://www.atruerose.com/people/stormdncr/stormdncr.htm> for a more clear explanation of the relationship of "stormdncr" to "atruerose."

<sup>7</sup> See <http://annanicoleandhowardkstern.com/2008/02/a-not-so-quiet-departure/> ("R" is Rose, a nickname for Nelda Turner.)

<sup>8</sup> Response, para. 11.

<sup>9</sup> Attached as Exhibit C.

7. The Response states that Plaintiff “inexplicably” withdrew the earlier subpoenas and filed them again in the Eastern District of Texas.<sup>10</sup> There is nothing inexplicable about it. Actually, the reason for the withdrawal, *i.e.* a technical flaw claimed by the Turners to be in the subpoenas, was made clear to counsel for the Turners in a telephone conversation. The reason for refileing in the Eastern District is the same reason as for the original filing, *i.e.* the Turners reside in that district. The rules clearly specify that a subpoena should not require a person who is not a party “to travel more than 100 miles from where that person resides,” FED. R. CIV. P. Rule 45(c)(3)(A)(ii), and that the subpoenas in question must be issued “from the Court for the district where the production or inspection is to be made.” FED. R. CIV. P. Rule 45(a)(2)(C). The matter of the Turner’s place of residence was explained orally to the court and to counsel for the Turners at the hearing on April 18, 2008. It also was explained in writing on April 17, 2008.<sup>11</sup>

8. The Response falsely implies that an hour-and-a-half hearing was held on the subpoenas<sup>12</sup> in Judge Rosenthal’s court, even though the court spent no more than a few minutes on the issue.<sup>13</sup>

9. The Response falsely states that the Turners have twice timely moved for protection and to quash.<sup>14</sup> Actually, they have not done so even once in the proper court.

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<sup>10</sup> Response paragraph 6.

<sup>11</sup> See Supplemental Response to Motion to Quash and /or for Protection Regarding March 14 Subpoenas, attached as exhibit D.

<sup>12</sup> Response paragraph 6.

<sup>13</sup> The Turners have offered to provide a transcription of the April 18 hearing. Except for the delay that would occasion, the Plaintiff would urge the Court to take them up on the offer. The transcription would show counsel for the Turners telling Judge Rosenthal that his clients “had nothing to do with all this.” The attached statements of the Turners’ co-conspirators belie that statement.

<sup>14</sup> Response paragraph 7.

10. The Response argues that the Turners were entitled to present their Motion to Quash to Judge Rosenthal pursuant to FED. R. CIV. P. Rule 26(c)(1),<sup>15</sup> but they did not do so. In their motion, which the Turners erroneously filed in Judge Rosenthal's court, they made no mention of Rule 26.<sup>16</sup> Instead, they mistakenly relied on Rule 45, which clearly states that the *issuing court* may quash a subpoena. Rule 45(c)(3)(B). See *In re: Clients and Former Clients of Baron and Budd, P.C.*, 478 F.3d 670, 670-71 (5<sup>th</sup> Cir. 2007) (with exception of MDL cases, only issuing court has authority to rule on subpoena). Counsel for Virgie Arthur cited the *Baron and Budd* case to the court and to counsel in the hearing on April 18, 2008, but counsel for the Turners inexplicably has ignored it in the Response.

11. The Response characterizes Plaintiff's statement in the Motion to Compel that the Turners have "offered no excuse for their failure to produce" as "disingenuous" and "utterly false."<sup>17</sup> Plaintiff reiterates that, to this date, the Turners still have offered no excuse for their failure to produce the items subject to subpoena. Baseless motions to quash filed in the wrong court provide no excuse.<sup>18</sup>

12. The Response questions the filing of a "third motion to compel,"<sup>19</sup> but there has been only one motion to compel, and it was filed in this Court.

13. The Response makes much of the fact that, on April 21, 2008, Plaintiff filed a lawsuit in state district court including some of the same parties and some of the same

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<sup>15</sup> Response paragraph 9.

<sup>16</sup> Rule 26 does not even relate to a Motion to Quash. Even if Rule 26 did apply, the Turners cannot avail themselves of the rule because they failed to comply with the requirement of Rule 26 that the movants certify that they have in good faith conferred with opposing counsel.

<sup>17</sup> Response paragraph 11 n.2.

<sup>18</sup> As for Rose Turner's alleged but unsubstantiated illness (Response, para. 2), that is neither an excuse for noncompliance with a subpoena nor a defense to defamation lawsuit. The subpoena does not command Rose Turner to appear anywhere. The Response does not allege that Kenneth Turner is ill.

<sup>19</sup> Response paragraph 10.

allegations as in the federal case in Judge Rosenthal's court.<sup>20</sup> The Response fails to tell this Court that the state court filing was necessitated by the need to avoid a limitations issue. The Plaintiff has sought to add new defendants, including Rose Turner, to the federal case. Because Judge Rosenthal took the matter under advisement and because the anniversary of one of the defamatory publications fell on April 19, 2008, one day after the hearing on the matter in Judge Rosenthal's court, Plaintiff filed suit in state court in order to avoid the possible limitations issue.<sup>21</sup> The Turners' attempt to make the state court filing into something sinister is disingenuous.

14. A civil litigant, such as Ms. Arthur in the present case, has a right to obtain evidence through a subpoena, and the Response does not attempt to explain what makes the Turners special, so that they do not fall under the usual exercise of the subpoena power for electronic discovery under Rule 45, FED. R. CIV. P.

**Prayer**

Plaintiff prays that the Motion to Compel be granted.

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<sup>20</sup> Response paragraph 12.

<sup>21</sup> Texas has a one-year limitations period for libel and slander. Tex. Civ. Prac. & Rem. Code sec. 16.002. April 19, 2008, the one-year anniversary of a defamatory story published on TMZ.com, fell on a Saturday. "If the last day of a limitations period under any statute of limitations falls on a Saturday, Sunday, or holiday, the period for filing suit is extended to include the next day that the county offices are open for business." Tex. Civ. Prac. & Rem. Code sec. 16.072. That made April 21, 2008 the last day to file to avoid any question about limitations.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

This is to certify that on the 13th of May, 2008, a true and correct copy of the foregoing Plaintiff's Reply to Response to Motion to Compel Subpoena was served upon the following counsel via certified mail return receipt requested; and

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