

ORDER TO APPEAR (SUBPOENA)

Case Number
CV-2003-0286

Form C-13 (front) Rev. 6/07

IN THE Circuit COURT OF Jackson County, ALABAMA
(Circuit, District, or Municipal) (Name of County or Municipality)

State of Alabama
 Municipality of _____ v. _____ Defendant
 Plaintiff Robert Wendell Smith v. National Collegiate Athletic Association, et al. Defendant

(For Juvenile cases only):
In the Matter of: _____, a child

Phillip Fulmer
1000 Riverchase Galleria
Hoover, AL 35244

wool/cool

BLANK COOLA

A. Issued at the request of:

- 1. Plaintiff/State
- 2. Defendant
- 3. Grand jury

B. Special Instructions

You are ordered to:

- 1. Appear at trial
- 2. Produce records or documents-See attached schedule(s)
- 3. Appear at deposition
- 4. Other _____

You may contact: Brandon L. Blankenship /Gregory D. Harrelson, 2001 Park Place North, Ste 825, Birmingham, AL 35203

YOU ARE ORDERED TO APPEAR to give testimony before the court or by deposition; and/or produce and permit inspection and copying of books, documents, or tangible things; and /or permit inspection of premises as stated below until otherwise excused. Failure to obey this subpoena may be deemed a contempt of court from which the subpoena was issued.

DATE: September 25, 2008

TIME: 10:00 A.M.

ROOM: _____

ADDRESS: Blankenship, Harrelson & Wollitz, LLC

2001 Park Place North, Ste 825

Birmingham, AL 35203

JUL 23 2008

[Handwritten Signature]
Signature of Court Clerk

[Handwritten Initials]
Deputy Clerk Initials

ADDITIONAL INSTRUCTIONS

Any inspection or production of documents or records must be completed within 15 days.

STATE OF ALABAMA
SHERIFF'S OFFICE
08 JUL 23 AM 10:43
CIRCUIT COURT
REAR PERRELL
INSTITUTION WAS FILED

TO ANY SHERIFF OF THE STATE OF ALABAMA OR ANY AUTHORIZED PERSON: You are ordered to serve this Order on the above-named person and make return to this court.

RETURN ON SERVICE

I certify that I personally delivered a copy of this order to _____ on _____

Signature and Title of Server

(For Criminal cases only)

Served by mail
Date mailed _____

Sheriff Deputy Sheriff

NOTICE

With respect to a subpoena which seeks only a production of documents or tangible things or an inspection of premises, as provided in Ala.R.Civ.P. 45(a) (3) (C), the production of documents or tangible things or the inspection of premises pursuant to this subpoena shall take place where the documents or tangible things are regularly kept or at some other reasonable place designated by the recipient of this subpoena. As recipient of this subpoena, you have the option to deliver or mail legible copies of the documents or things to the party causing issuance of this subpoena, and the preparation of copies may be conditioned on the payment in advance of the reasonable cost of making such copies. Other parties involved in this lawsuit have the right to be present at the time of the production or inspection. The recipient of this subpoena has the right to object to the production or inspection at any time prior to the date of production or inspection set forth in this subpoena. See Ala. R.Civ.P. 45(c) (2) (B), which is set out below.

Rule 45, Ala.R.Civ.P., subdivisions (c) & (d)

(c) Protection of person subject to subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court from which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying at any time before the time specified for compliance may serve upon the party or attorney designed in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. "Serve" as used herein means mailing to the party or attorney. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expenses resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a resident of this state who is not a party or an officer of a party to travel to place more than one hundred (100) miles from the place where that person resides, is employed or regularly transacts business in person, or requires a nonresident of this state who is not a party or an officer of a party to travel to a place within this state more than one hundred (100) miles from the place of service or, where separate from the place of service, more than one hundred (100) miles from the place where that person is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expenses to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in responding to subpoena.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.