SUPREME COURT OF OHIO

COLUMBUS

ANNOUNCEMENT

FRIDAY
March 19, 1999

MOTION DOCKET

99-333. Whitehall ex rel. Fennessy v. Bambi Hotel, Inc.
Franklin App. No. 98AP-384. This cause is pending before the court as a discretionary appeal and claimed appeal of right. Upon consideration of the motions to quash subpoena by city of Whitehall and Dennis J. Fennessy,

IT IS ORDERED by the court that the motions to quash subpoena be, and hereby are, denied.

Resnick and Lundberg Stratton, JJ., concur separately.

LUNDBERG STRATTON, J., concurring. Although I agree with the majority's ultimate disposition of the plaintiff city of Whitehall's and former Whitehall City Attorney Dennis J. Fennessy's respective motions to quash, I write separately because I believe that the court should *sua sponte* strike the motions to quash as improperly filed in this court, as opposed to denying the motions.

Both Fennessy and the plaintiff moved to quash the subpoenas pursuant to Civ. R. 45(C)(3). Civ. R. 45(C)(3) states:

"On timely motion, *the court from which the subpoena was issued* shall quash or modify the subpoena * * * if the subpoena does any of the following * * *." (Emphasis added.)

The subpoenas in this case were issued by common pleas and municipal courts. Therefore, pursuant to the plain language of Civ.R. 45(C)(3), this court has no authority to quash the subpoenas because it did not issue them.

Accordingly, I believe it is more proper to *sua sponte* strike the motions to quash as improperly filed in this court, as opposed to dismissing them.

RESNICK, J., concurs in the foergoing concurring opinion.