

IN THE SUPREME COURT OF OHIO

In re:

OHIO STATE BAR ASSOCIATION,
Relator,

OSBA File No. 19-03
(Investigation of Unauthorized Practice of
Law)

v.

TERRANCE BOTTS D/B/A TORT DIVISION

and

TORTSRUS, LLC,

Respondents.

**OHIO STATE BAR ASSOCIATION'S MOTION TO SHOW CAUSE WHY
TORT DIVISION SHOULD NOT BE HELD IN CONTEMPT
(FIRST OFFENSE)**

KELLY HEILE (0080987)
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Bar Counsel, Ohio State Bar Association

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*Counsel for Relator,
Ohio State Bar Association*

TERRANCE BOTTS d/b/a TORT
DIVISION
P.O. Box 7601
Columbus, OH 43207

TERRANCE BOTTS d/b/a TORT
DIVISION
3549 South Champion Avenue
Columbus, OH 43207

TORTSRUS, LLC
c/o Terrance Botts, Statutory Agent
3549 South Champion Ave.
Columbus, OH 43207

OHIO STATE BAR ASSOCIATION'S MOTION TO SHOW CAUSE WHY
TORT DIVISION SHOULD NOT BE HELD IN CONTEMPT
(FIRST OFFENSE)

Movant, The Ohio State Bar Association, respectfully requests this Court to issue an Order requiring Terrance Botts d/b/a Tort Division and Tortsrus, LLC to appear and show cause as to why it and its unknown shareholders, members, officers, executives, and/or agents should not be found in contempt for failure to comply with the subpoena *duces tecum* issued by Board on the Unauthorized Practice of Law on October 1, 2020. The grounds for this motion are set forth in the attached Memorandum in Support. A copy of the subpoena *duces tecum* and Proof of Service are attached as Exhibit A.

Respectfully submitted,

/s Kelly Heile

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/s Patrick W. Skilliter

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Counsel for Relator, Ohio State Bar Association

MEMORANDUM

I. BACKGROUND

The Ohio State Bar Association is investigating Terrance Botts and his related businesses, Tort Division and Tortsrus, LLC, (collectively, “Botts”) regarding the unauthorized practice of law. Pursuant to Rule VII, § 7(C) of the Rules for the Government of the Bar and the authority of this Court, the Ohio State Bar Association’s Unauthorized Practice of Law Committee began investigating the allegations.

Pursuant to Rule VII, § 2(D)(1) of the Rules for the Government of the Bar, the Ohio State Bar Association requested the Board on the Unauthorized Practice of Law to issue a subpoena *duces tecum* to Botts ordering the production of records, electronically stored information and appearance on October 1, 2020. Personal service of the subpoena *duces tecum* was made on Botts at what is believed to be his home address, 3549 South Champion Avenue, Columbus, OH 43207 on October 6, 2020. (Copy attached as Exhibit A.) Botts did not produce any documents, object to the subpoena, or otherwise respond. Accordingly, the Ohio State Bar Association requests that this Court require Botts to appear and show cause why it should not be held in contempt.

II. LAW AND ARGUMENT

Botts is in contempt of court for failing to comply with an investigatory subpoena of the Board of Unauthorized Practice of Ohio. Rule VII, Section 2(D)(2), of the Rules for the Government of the Bar states:

The refusal or neglect of a person subpoenaed or called as a witness to obey a subpoena, to attend, to be sworn or to affirm, or to answer any proper question shall be deemed to be contempt of the Court and may be punished accordingly.

R.C. 2705.02 further defines acts in contempt of court to include:

(C) A failure to obey a subpoena duly served, or a refusal to be sworn or to answer as a witness, when lawfully required;

Contempt is "conduct which brings the administration of justice into disrespect, or which tends to embarrass, impede, or obstruct a court in the performance of its functions." *State, ex rel. Corn v. Russo* (2001), 90 Ohio St. 3d 551, 554, 740 N.E.2d 265, 269 (citation omitted).

The procedure for indirect contempt proceedings, *i.e.*, those where the offending conduct has occurred outside the presence of the court, is set forth in R.C. 2705.03, which provides in pertinent part:

In cases under section 2705.02 of the Revised Code, a charge in writing shall be filed with the clerk of court, an entry thereof made upon the journal, and an opportunity given to the accused to be heard, by himself or counsel. This section does not prevent the court from issuing process to bring the accused into court, or from holding him in custody, pending such proceedings.

Upon filing a motion for contempt, the clerk issues an order setting a hearing to show cause why the contemnor should not be held in contempt. See *State v. Local Union 5760* (1961), 172 Ohio St. 75, 82, 173 N.E.2d 331, 337.

In *Cincinnati Bar Ass'n v. Bailey*, 90 Ohio St. 3d 136, 2000 Ohio 4, 735 N.E.2d 428 (2000), a nearly identical case, the Cincinnati Bar Association commenced an investigation to determine whether respondent, Donald L. Bailey, doing business as License Resque, was engaging in the unauthorized practice of law. The Board of Commissioners on the Unauthorized Practice of Law issued a subpoena *duces tecum* requesting Bailey deliver to the bar association certain documents but Bailey failed to respond. The bar association filed a motion that Bailey show cause why he should not be held in contempt. This Court concluded that Bailey had a duty to honor the subpoena, did not do so, and therefore, was in contempt of an order of the court. *Id.* at 137, 430.

Here, the Board on the Unauthorized Practice of Law issued an investigatory subpoena *duces tecum* to Botts on October 1, 2020. It was served on October 6, 2020. Botts did not and has not produced the documents subpoenaed, nor has Botts objected or otherwise responded.

III. **CONCLUSION**

The Ohio State Bar Association respectfully requests this Court (1) enter an Order requiring Botts to appear and show cause as to why it should not be found in contempt for failure to comply with the subpoena *duces tecum*; (2) issue a penalty pursuant to R.C. 2705.05; and (3) award such other relief as the Court may deem just and equitable.

Respectfully Submitted,

/s Kelly Heile

Kelly Heile (0080987)
Ohio State Bar Association
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Bar Counsel, Ohio State Bar Association

/s Patrick W. Skilliter

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1108 City Park Avenue
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Phone: (614)737-0140
pskilliter@columbuslegalaid.org

Counsel for Relator, Ohio State Bar Association

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing has been served upon the following via regular U.S. mail this 29th day of December 2021:

TERRANCE BOTTs d/b/a TORT DIVISION
P.O. Box 7601
Columbus, OH 43207

TERRANCE BOTTs d/b/a TORT DIVISION
3549 South Champion Avenue
Columbus, OH 43207

TORTSRUS, LLC
c/o Terrance Botts, Statutory Agent
3549 South Champion Ave.
Columbus, OH 43207

Minerva B. Elizaga, Esq.
Secretary, Board on the Unauthorized Practice of Law
The Supreme Court of Ohio
65 South Front Street, 5th Floor
Columbus, OH 43215-3431

/s Kelly Heile

Kelly Heile (0080987)

The Supreme Court of Ohio

BOARD ON THE UNAUTHORIZED PRACTICE OF LAW
65 SOUTH FRONT STREET, COLUMBUS, OH 43215-3431

SUBPOENA DUCES TECUM

In the matter of:

OHIO STATE BAR ASSOCIATION, : OSBA File No. 19-03

Relator, :

TORT DIVISION, :

Respondent. :

TO: Tort Division
PO Box 7601
Columbus, OH 43207

You are hereby commanded to produce documents identified in the attached Exhibit A on or before October 30, 2020, by 5:00 p.m. True and accurate copies of all the documents identified in Exhibit A can be mailed to the Ohio State Bar Association, 1700 Lake Shore Drive, Columbus, OH 43204 or emailed to Patrick Skilliter, Counsel for Relator, at pskilliter@columbuslegalaid.org by the date and time listed.

Effect of Refusal to Testify. The refusal or neglect of a person subpoenaed or called as a witness to obey a subpoena, to attend, to be sworn or to affirm, or to answer any proper question shall be deemed to be contempt of the Supreme Court and may be punished accordingly. Gov.Bar R. VII, Sec. 12.

This subpoena is issued at the request of Patrick W. Skilliter, Esq., Legal Aid of Columbus, 1108 City Park Avenue, Columbus, Ohio, 43206, pursuant to Rule VII of the Supreme Court Rules for the Government of the Bar of Ohio.

Witness my name and the seal of said Court this 1st day of October, 2020.

Minerva B. Elizaga
Minerva B. Elizaga, Secretary

**EXHIBIT
A**

CIVIL RULE 45(C) PROTECTION OF PERSONS 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.

(2)(a) A person commanded to produce under divisions (A)(1)(b), (iii), (iv), (v), or (vi) of this rule need not appear in person at the place of production or inspection unless commanded to attend and give testimony at a deposition, hearing, or trial.

(b) Subject to division (D)(2) of this rule, a person commanded to produce under divisions (A)(1)(b), (iii), (iv), (v), or (vi) of this rule may, within fourteen days after service of the subpoena or before the time specified for compliance if such time is less than fourteen days after service, serve upon the party or attorney designated in the subpoena written objections to production. If objection is made, the party serving the subpoena shall not be entitled to production except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena, upon notice to the person commanded to produce, may move at any time for an order to compel the production. An order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the production commanded.

(3) On timely motion, the court from which the subpoena was issued shall quash or modify the subpoena, or order appearance or production only under specified conditions, if the subpoena does any of the following:

- (a) Fails to allow reasonable time to comply;
- (b) Requires disclosure of privileged or otherwise protected matter and no exception or waiver applies;
- (c) Requires disclosure of a fact known or opinion held by an expert not retained or specially employed by any party in anticipation of litigation or preparation for trial as described by Civ.R. 26(B)(5), if the fact or opinion does not describe specific events or occurrences in dispute and results from study by that expert that was not made at the request of any party;
- (d) Subjects a person to undue burden.

(4) Before filing a motion pursuant to division (C)(3)(d) of this rule, a person resisting discovery under this rule shall attempt to resolve any claim of undue burden through discussions with the issuing attorney. A motion filed pursuant to division (C)(3)(d) of this rule shall be supported by an affidavit of the subpoenaed person or a certificate of that person's attorney of the efforts made to resolve any claim of undue burden.

(5) If a motion is made under division (C)(3)(c) or (C)(3)(d) of this rule, the court shall quash or modify the subpoena unless 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.

CIVIL RULE 45(D) DUTIES IN RESPONDING TO SUBPOENAS

(1) A person responding to a subpoena to produce documents shall, at the person's option, produce them as they are kept in the usual course of business or organized and labeled to correspond with the categories in the subpoena. A person producing documents or electronically stored information pursuant to a subpoena for them shall permit their inspection and copying by all parties present at the time and place set in the subpoena for inspection and copying.

(2) If a request does not specify the form or forms for producing electronically stored information, a person responding to a subpoena may produce the information in a form or forms in which the information is ordinarily maintained if that form is reasonably useable, or in any form that is reasonably useable. Unless ordered by the court or agreed to by the person subpoenaed, a person responding to a subpoena need not produce the same electronically stored information in more than one form.

(3) A person need not provide discovery of electronically stored information when the production imposes undue burden or expense. On motion to compel discovery or for a protective order, the person from whom electronically stored information is sought must show that the information is not reasonably accessible because of undue burden or expense. If a showing of undue burden or expense is made, the court may nonetheless order production of electronically stored information if the requesting party shows good cause. The court shall consider the factors in Civ. R. 26(B)(4) when determining if good cause exists. In ordering production of electronically stored information, the court may specify the format, extent, timing, allocation of expenses and other conditions for the discovery of the electronically stored information.

(4) 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.

(5) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a receiving party must promptly return, sequester, or destroy the specified information and any copies within the party's possession, custody or control. A party may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim of privilege or of protection as trial-preparation material. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

In re Tort Division
OSBA File No. 19-03

EXHIBIT A

1. All articles of organization, operating agreements, and other corporate formation documents related to Tort Division.
2. All “review cover letters” and attachments to those letters that you received from January 1, 2017 to the present.
3. All client or customer lists.
4. Records related to any payments you received for any services described on your website, tortdivision.com and any sub-pages.
5. All files, including correspondence, court filings, filings with courts and governmental agencies including the secretary of state, receipts, financial records, and all other documents in those files.
6. The names, addresses, telephone numbers, and email addresses of your owners, members, shareholders, officers, executives, and any other person involved in the creation or maintenance of your website.

The Supreme Court of Ohio

BOARD ON THE UNAUTHORIZED PRACTICE OF LAW
65 SOUTH FRONT STREET, COLUMBUS, OH 43215-3431

SUBPOENA RETURN OF SERVICE

In the matter of:

OHIO STATE BAR ASSOCIATION,

OSBA File No. 19-03

Relator,

TORT DIVISION,

Respondent.

I received a subpoena on 10/06/2020 and served **Tort Division**, the party named on the subpoena:

by personal service;
 by residence service;
 by serving _____,

an agent of the party; or,

I was unable to complete service for the following reason:

Chuck Bower
Signature of Serving Party

Chuck BOWER
Name (print)

Fees:	
Service:	
Mileage:	
Copy:	
Total:	

Check One:

Deputy Sheriff
 Attorney
 Process Server
 Other _____