

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

COMMONWEALTH

v.

WESLEY CLAY SMITH,

Defendant.

MI-2005-0001559

NOTICE OF NON-PARTY JACK D. DALE'S
MOTION TO QUASH TRIAL SUBPOENA

PLEASE TAKE NOTICE that on Tuesday, October 4, 2005 at 8:30 a.m., or as soon thereafter as counsel may be heard, non-party Jack D. Dale, by counsel, shall appear before the Calendar Control Judge to schedule a hearing on his Motion to Quash the trial subpoena served upon him by Defendant Wesley Clay Smith.

Respectfully submitted,

JACK D. DALE

By: _____

Counsel

Thomas J. Cawley (VSB No. 04612)
Sona Rewari (VSB No. 47327)
HUNTON & WILLIAMS
1751 Pinnacle Drive, Suite 1700
McLean, Virginia 22102
(703) 714-7400 (telephone)
(703) 714-7410 (fax)

CERTIFICATE OF SERVICE

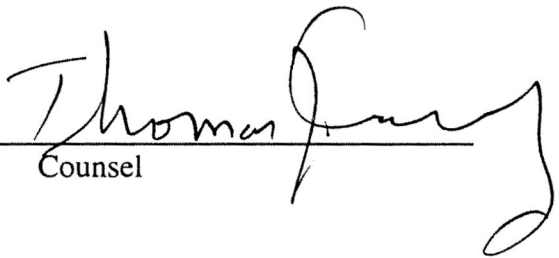
I hereby certify that, on the 3rd day of October, 2005, a true and exact copy of the foregoing Notice of Non-party Jack D. Dale's Motion To Quash Trial Subpoena was sent by first class U.S. mail and by facsimile to:

Robert D. McClain, Esq.
Ian Rodway, Esq.
Office of the Commonwealth Attorney
4110 Chain Bridge Road, Suite 123
Fairfax, Virginia 22030

and by first-class U.S. mail and electronic mail to:

Wesley Clay Smith
5347 Landrum Road, Apartment 1
Dublin, Virginia 24084-5603

Defendant, Pro se



Counsel

VIRGINIA:

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NON-PARTY JACK D. DALE'S MOTION TO QUASH TRIAL SUBPOENA

Non-party Jack D. Dale ("Dr. Dale"), by counsel, hereby requests the Court quash the witness subpoena served upon him by Defendant Wesley Clay Smith ("Mr. Smith"). The reasons for this Motion to Quash are as follows:

1. This case involves an appeal by Mr. Smith of his conviction in the General District Court of Fairfax County on a charge of criminal trespass, in violation of Virginia Code 18.2-119. Mr. Smith was arrested on June 17, 2005, on the grounds of Spring Hill Elementary School. The case is set for a jury trial on October 5, 2005.

2. Dr. Dale is the Division Superintendent of the Fairfax County Public Schools. On September 30, 2005, Mr. Smith caused a trial subpoena to be served on Dr. Dale, commanding his presence at Mr. Smith's trial. A copy of the subpoena is attached as Exhibit "A."

3. The Court should quash the subpoena served upon Dr. Dale because it is overly burdensome, oppressive, and unnecessary. Dr. Dale can provide no testimony material to any of the issues in this case. He has no first-hand knowledge of the events of June 17, 2005, leading to Mr. Smith's arrest. He was not present at Spring Hill Elementary School when those events transpired. Dr. Dale has never met Mr. Smith. Dr. Dale only learned of Mr. Smith's arrest from

his staff after the fact. Moreover, Mr. Smith already has served trial subpoenae on five staff members at Spring Hill Elementary School, including the principal, two teachers, and two members of the administrative staff, who did witness some or all of the events leading to Mr. Smith's arrest.

4. Requiring Dr. Dale's presence at the trial will interfere with Dr. Dale's important duties with respect to the administration and operation of the Fairfax County Public Schools, and will be highly disruptive to the orderly function of the Fairfax County Public School system. As Division Superintendent of the Fairfax County Public Schools, Dr. Dale is charged with the supervision and administration of 234 schools and more than 21,000 employees. The Fairfax County Public Schools are attended by over 164,000 students. Dr. Dale's required presence at the trial would be harassing and highly disruptive to the affairs of the Fairfax County Public Schools.

5. There is no countervailing reason for requiring Dr. Dale to attend Mr. Smith's criminal trespass trial.

WHEREFORE, Dr. Dale requests the Court to quash the trial subpoena issued to him by Mr. Smith.

Respectfully submitted,

JACK D. DALE

By: _____

Counsel

Thomas J. Cawley (VSB No. 04612)
Sona Rewari (VSB No. 47327)
HUNTON & WILLIAMS
1751 Pinnacle Drive, Suite 1700
McLean, Virginia 22102

(703) 714-7400 (telephone)
(703) 714-7410 (fax)

Counsel to Jack D. Dale

CERTIFICATE OF SERVICE

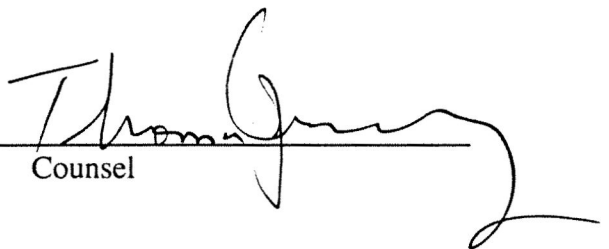
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Robert D. McClain, Esq.
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and by first-class U.S. mail and electronic mail to:

Wesley Clay Smith
5347 Landrum Road, Apartment 1
Dublin, Virginia 24084-5603

Defendant, Pro se



Counsel

EXHIBIT A

Circuit Court of Fairfax County
4110 Chain Bridge Road
Fairfax, Virginia 22030
703-691-7320
Press 3 (for Circuit Court) then press 2

SUBPOENA

Case No. MI-2005-0001559

TO THE SHERIFF OF: **Fairfax County**
Or any other Authorized Officer

You are commanded to Summon: **Jack Dale**
FCPS
10700 Page Ave
Fairfax VA 22030

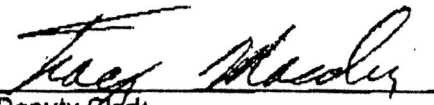
Jack Dale, you are commanded to appear in the Circuit Court of the county of Fairfax at the Judicial Center, 4110 Chain Bridge Road Fairfax, Virginia, on **10/5/2005 at 9:15 a.m.** To testify in the case of **Commonwealth of Virginia vs. Wesley Clay Smith.**

Upon the time of your arrival on 10/5/2005 please check the Docket on the 4th or 5th floor to see which courtroom this case has been assigned to.

This subpoena is issued on application of the **Defendant** in the case of **Commonwealth of Virginia vs. Wesley Clay Smith.**

Date Issued: 29th day of September, 2005

John T. Frey, Clerk


Deputy Clerk