

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

VIRGIE ARTHUR,

Plaintiff,

vs.

HOWARD K. STERN,  
CBS STUDIOS, INC.,  
and KPRC HOUSTON,

Defendants.

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CIVIL ACTION NO.:  
4:07-cv-03742

**OBJECTION TO PLAINTIFF VIRGIE ARTHUR’S UNSIGNED  
SUBPOENA DUCES TECUM TO LYNDAL  
ON THE GROUND THAT DISCOVERY HAS NOT YET COMMENCED**

COMES NOW Howard K. Stern (“Stern”), Defendant in the above-styled action, and hereby objects to the production, inspection, and/or copying of documents designated in the subpoena duces tecum purportedly served by Plaintiff Virgie Arthur (“Arthur”) upon Lyndal on or about January 28, 2008, in the above-referenced matter (the “Subpoena”) on the ground that, pursuant to Federal Rule of Civil Procedure 26(d), discovery has not yet started in this matter. (A true and correct copy of the Subpoena is attached hereto as Exhibit A.) The parties have not yet conferred as required by Rule 26(f) and, therefore, Arthur may not seek discovery from any source.

**Objection to Arthur’s ‘Secret Subpoena’**

Contrary to the ‘Notice of Service of Subpoena’ accompanying the Subpoena, Arthur did not provide “prior notice of [the] commanded production of documents and things . . . on each party in the manner prescribed by Rule 5(b).” See Fed. R. Civ. P. 45(b)(1). Neither counsel for Stern nor counsel for the Media Defendants was provided with prior notice of Arthur’s subpoena

to Lyndal Tellingly, counsel for Arthur did not date the purported ‘Notice of Service of Subpoena.’ Arthur has thus violated the clear language of Federal Rule of Civil Procedure 45(b)(1) by purportedly serving a “secret subpoena.”

**Arthur’s Other Procedural Errors**

In addition to its invalidity as a ‘secret subpoena,’ the Subpoena is unsigned and, based on the facsimile heading at the top of the subpoena, apparently was not served in the manner prescribed by Federal Rule of Civil Procedure 45(b). Thus, the subpoena is invalid on its face.

**No Admission of Jurisdiction**

Stern objects to the Subpoena to the extent that serving this objection to the Subpoena on the ground that discovery has not yet commenced may be improperly used by Arthur to erroneously imply that the United States District Court for the Southern District of Texas has personal jurisdiction over Stern in the above-captioned action. Stern’s serving of this objection to the Subpoena on the ground that discovery has not yet commenced should in no way be considered an admission that the United States District Court for the Southern District of Texas has personal jurisdiction over him in the above-captioned action or that Stern consents to jurisdiction in the United States District Court for the Southern District of Texas. Stern specifically incorporates herein his Rule 12(b)(2) Motion to Dismiss for Lack of Personal Jurisdiction, supporting memorandum of law, and supporting affidavit, all filed on November 19, 2007, by this express reference thereto. Stern further specifically incorporates herein his reply memorandum of law in support of his Rule 12(b)(2) Motion to Dismiss for Lack of Personal Jurisdiction, supporting affidavit, and supporting Declaration of L. Lin Wood, all filed on January 18, 2008, by this express reference thereto.



