

**BEFORE THE DEPARTMENT OF REVENUE
STATE OF TENNESSEE**

IN THE MATTER OF:)	
)	
DAVID JONATHAN TULIS,)	
)	
PETITIONER,)	
)	
v.)	Docket No. 23-004
)	
TENNESSEE DEPARTMENT OF REVENUE,)	
)	
)	
RESPONDENT.)	

MOTION TO QUASH NOTICE OF DEPOSITION

The Tennessee Department of Revenue (the “Department” or “Respondent”), respectfully submits this Motion to Quash Notice of Deposition, pursuant to TENN. R. CIV. P. 45.07, made applicable to this proceeding by Tenn. Code Ann. §§ 4-5-301, *et seq.* (the “Uniform Administrative Procedures Act” or “UAPA”) and TENN. COMP. R. & REGS. 1360-04-01-.09. In the alternative, the Department moves for an order limiting the scope of discovery, pursuant to TENN. R. CIV. P. 26.03. This matter is before the administrative judge on the petition filed by David Jonathan Tulis (the “Petitioner”) contesting the suspension of his vehicle registration for failure to comply with Tennessee financial responsibility laws, codified at TENN. CODE ANN. §§ 55-12-101, *et seq.*, and TENN. CODE ANN. §§ 55-12-201, *et seq.* (hereinafter collectively referred to as the “financial responsibility requirements” or the “Financial Responsibility Law”).

Pursuant to the Order Setting Pre-Hearing Conference entered by the administrative judge on August 7, 2023, and subsequent communications among the parties and the administrative

judge's staff, a pre-hearing conference in this matter was scheduled for September 7, 2023. On September 5, 2023, the Petitioner issued a notice of deposition (the "Notice of Deposition") in this matter to Department of Revenue Commissioner David Gerregano (the "Commissioner"). A true and correct copy of the Petitioner's Notice of Deposition is attached hereto as Exhibit 1. In the Department's view, it would be inappropriate for the Commissioner to be deposed in this matter, as he has no personal or specific knowledge of the facts relating to the suspension of the Petitioner's registration. Additionally, the demands on the Commissioner's time are immense, such that his appearance for deposition in a matter with respect to which he has no personal knowledge would amount to an unreasonable burden on the Department in the context of this proceeding. The Department therefore respectfully requests that the administrative judge enter an order quashing the Petitioner's Notice of Deposition. In the alternative, the Department requests that the administrative judge enter an order limiting the scope of discovery as permitted by TENN. R. CIV. P. 26.03, specifying that the Department's Commissioner, Deputy Commissioner, and/or Chief of Staff may not be required to appear for deposition in this matter, as briefed in more detail below.

ARGUMENT

TENN. CODE ANN. § 4-5-311(a) provides that "The administrative judge or hearing officer, at the request of any party, shall issue subpoenas, effect discovery, and issue protective orders, in accordance with the Tennessee Rules of Civil Procedure . . . [and] shall decide any objection relating to discovery under this chapter or the Tennessee Rules of Civil Procedure." TENN. R. CIV. P. 26.02(1) provides in relevant part as follows:

The frequency or extent of use of the discovery methods set forth in subdivision 26.01 and this subdivision shall be limited by the court if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative or is obtainable from some other source that is more convenient, less burdensome or less expensive; (ii)

the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or, (iii) the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation. The court may act upon its own initiative after reasonable notice or pursuant to a motion under subdivision 26.03.

TENN. R. CIV. P. 45.07 addresses the protection of witnesses commanded to give deposition testimony, with Subpart (2) providing that a witness may serve a written objection to giving testimony within 21 days of service of a subpoena (as applicable here, a notice of deposition). Subpart (4) discusses the court's authority to grant or deny motions to compel the testimony sought by the serving party, or the authority to modify where the discovery request is "unreasonable or oppressive." Here, the Commissioner has provided the Petitioner with written notice of objection to the Notice of Deposition via the Declaration and Objection of David Gerregano Regarding Petitioner's Notice of Deposition, filed herewith. Once written notice of a party's objection has been provided to the serving party, Rule 45.07 shifts the burden to the issuing party to file a motion to compel. Assuming arguendo that the Petitioner intends to move the administrative judge to compel the Commissioner's testimony, the Department would submit that an order quashing the Petitioner's Notice of Deposition is appropriate under the circumstances, as the Commissioner has no personal knowledge of the factual circumstances at issue and his appearance for deposition would cause undue burden.

In the alternative, TENN. R. CIV. P. 26.03 permits parties to move for the entry of an order "to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense." Orders entered in response to a Rule 26.03 motion may require that "discovery only be had on specified terms and conditions" or may provide that "the scope of discovery be limited." Here, the Department would submit that an order limiting the scope of discovery is needed to shield the Department's Commissioner, Deputy Commissioner, and Chief of Staff from the undue

burden that would be caused by the Petitioner's proposed deposition, which is entirely unnecessary and avoidable in the context of this proceeding.¹

Persuasive case law exists to support the proposition that the Commissioner should not be deposed in this proceeding, weighing in favor of granting the Department's motion to quash the notice of deposition or in the alternative, limiting discovery as permitted by Rule 26.03. The deposition of an agency head or an entity's chief executive is often referred to as an "apex deposition," and requests to prohibit them are often granted on the basis described above. See *Anwar v. Dow Chemical Company*, 876 F.3d 841, 854 (6th Cir. 2017)(upholding district court decision denying party's request to depose a chief executive officer, noting that "prohibiting the deposition of a witness who 'has no personal knowledge of the events or investigation underlying the case' and 'who [cannot] provide relevant testimony' is appropriate")(quoting *Graves v. Bowles*, 419 Fed.Appx. 640, 6545-46 (6th Cir. 2011). See also *Thomas v. Int'l Bus. Machines*, 48 F.3d 478, 483 (10th Cir. 1995)(precluding deposition of high-level executive at IBM, due to the executive's testimony of having no personal knowledge of the relevant facts, failure to depose the appropriate supervisors first, the location and timing of the deposition, and the executive's scheduling conflicts); *Braga v. Hodgson*, 605 F.3d 58, 60 (1st Cir. 2010)(affirming protective order prohibiting the deposition of a sheriff where plaintiff failed to put forth evidence that the Sheriff had any personal knowledge of claim, as the discovery did not appear reasonably calculated to lead to the discovery of admissible evidence); *Elvis Presley Enterprises v. Elvisly Yours, Inc.*, 936 F.2d 889, 894 (6th Cir. 1991)(upholding grant of protective order prohibiting deposition of plaintiff's president as undue burden and unnecessary given lack of personal knowledge).

¹ On August 15, 2023, the Petitioner verbally expressed to the undersigned counsel an intent to issue a subpoena in this matter for the Commissioner's deposition. During this communication, The Petitioner stated that he intended to subpoena the Commissioner for deposition for the purpose of questioning him about "his misreading of the law." On at least one occasion, the Petitioner referred to the proposed deposition as an interrogation.

Here too, the Commissioner has no personal knowledge relating to the suspension of the Petitioner's motor vehicle registration for failure to comply with financial responsibility requirements. The Department's administration of the Electronic Insurance Verification System ("EIVS") is managed by a unit of employees within the Vehicle Services division consisting of one manager, two supervisors, and approximately 15 customer service representatives (the "EIVS Unit"). These employees manage EIVS day to day operations, including efforts to confirm registrant liability insurance coverage, system provision of registrant notices for non-compliance with financial responsibility requirements, and registration suspensions where non-compliance is not cured, as directed by TENN. CODE ANN. § 55-12-210(c). To the extent the Petitioner has a need to take discovery to establish facts relevant to his claim, these employees would be the Department representatives likely to have relevant factual information, not the Commissioner.

Notwithstanding the above, the Petitioner's initial submissions do not indicate a dispute with regard to the factual circumstances surrounding the suspension of his motor vehicle registration. Rather, the Petitioner disputes that Title 55, Chapter 12 of the Tennessee Code Annotated imposes a requirement on registrants to provide proof of financial responsibility prior to a registrant becoming involved in a motor vehicle accident. The Department would submit that the Petitioner is free to pursue this argument in pleadings, motions, or during the hearing in this matter. However, in the Department's view, the Petitioner is not entitled to utilize UAPA procedures intended to facilitate fact discovery for the purpose of deposing the Commissioner regarding the Department's legal interpretation of the Financial Responsibility Laws.

Moreover, the Department's legal position that all registrants are required to maintain satisfactory proof of financial responsibility has been well documented to the public via notices on

the Department's website² and is supported by applicable legal authority. Attorney General Opinion No. 03-084 examines the Financial Responsibility Laws and explains the manner in which the law imposes an ongoing compliance requirement on all vehicles operated on Tennessee roads, regardless of whether an accident has occurred:

These questions concern the duty of drivers in Tennessee to provide evidence of financial responsibility as set forth in Tenn. Code Ann. § 55-12-139, effective January 1, 2002. Before this statute was enacted, the Tennessee Financial Responsibility Law of 1977, Title 55, Chapter 12 (TFRL), mandated filing proof of financial responsibility with the State primarily after a motorist had a qualifying accident (*see* Tenn. Code Ann. § 55-12-104), and Tennessee was not characterized as a "compulsory insurance" state. Financial responsibility could be demonstrated to the Tennessee Department of Safety by filing information *after* an accident had occurred, in connection with that Department's authority over the licensing of drivers and registration of vehicles. This accident-related system in essence allowed a motorist a "first bite at the apple" before requiring that he or she carry insurance or meet any particular insurance coverage requirements. *McManus v. State Farm Mut. Auto. Ins. Co.*, 225 Tenn. 106, 109, 463 S.W.2d 702, 703 (1971).

Tenn. Code Ann. § 55-12-139 changes the obligations of drivers in Tennessee by imposing an ongoing requirement that all vehicles operated on the highways of Tennessee comply with the TFRL. Moreover, Tenn. Code Ann. § 55-12-139(b) relies for its enforcement on the requirement that drivers of such vehicles show law enforcement officers on-the-spot evidence of current financial responsibility in connection with traffic citations, regardless whether an accident has occurred. This Opinion concerns the standards for showing evidence of financial responsibility when an insurance policy provides the driver with coverage.

Honorable Joe McCord, Tenn. Op. Atty. Gen. No. 03-084 at *2 (2003). A true and correct copy of Attorney General Opinion No. 03-084 is attached hereto as Exhibit 2.

As the Department's legal position is adequately detailed on its public-facing platform and is supported by the statutory framework and an opinion from the Attorney General's Office addressing the Petitioner's specific critique, the Department would submit that discovery on this

² Drive Insured Tennessee, <https://revenue.support.tn.gov/hc/en-us/categories/200926075-Drive-Insured-Tennessee> (last accessed September 5, 2023).

point is entirely unnecessary. Certainly, there is no need for the Department's Commissioner, or most senior staff, to devote resources to this endeavor.

For the foregoing reasons, the Department respectfully requests that the administrative judge enter an order quashing the Petitioner's Notice of Deposition, or in the alternative limiting the scope of discovery such that the Petitioner may not subpoena the Department's Commissioner, Deputy Commissioner, and/or Chief of Staff for deposition in this matter. The Department waives oral argument, instead electing to rely upon the legal argument set forth in this motion, the attached exhibits hereto, the Declaration and Objection of David Gerregano filed herewith, and all other documents submitted in support of the motion.

Respectfully submitted,

/s/ Camille C. Cline
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CERTIFICATION OF GOOD FAITH ATTEMPT TO RESOLVE DISPUTE

Pursuant to TENN. COMP. R. & REGS. 1360-04-01-11(3)(c), the undersigned counsel hereby certifies that she has conferred with the Petitioner in a good faith effort to resolve the discovery dispute described herein by agreement and that such effort has not been successful. In particular, the undersigned counsel requested on September 7, 2023, that the Petitioner voluntarily withdraw his notice of deposition and proceed to obtain the desired discovery through alternative means. As of the date of this filing, the Petitioner has not responded to this request. To preserve its objections under TENN. R. CIV. P. 45.07 and TENN. R. CIV. P. 26.03, the Department was unable to further delay its filing of this motion.

/s/ Camille C. Cline
Camille C. Cline
Senior Associate Counsel

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing was sent to the following via electronic mail:

David Jonathan Tulis
10520 Brickhill Lane
Soddy-Daisy, Tennessee 37379
davidtuliseditor@gmail.com

on this the 19th day of September, 2023.

/s/ Camille C. Cline
Camille C. Cline
Senior Associate Counsel