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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION

ATIKU ABUBAKAR, )  
)  
Petitioner, )  
v. ) No. 2023 L 006854  
)  
CHICAGO STATE UNIVERSITY, )  
)  
Respondent. )

**MOTION TO QUASH SUBPOENA, STRIKE PETITION, & FOR SANCTIONS**

Intervenor Bola Ahmed Tinubu, pursuant to Illinois Supreme Court Rule 201(c), 219(d), and 735 ILCS 5/2-1101, moves to quash the subpoena issued unilaterally by Petitioner without the Court’s permission. Intervenor also moves, pursuant to 735 ILCS 5/2-615, to strike the Petition to issue the subpoena because there is no pending action in Illinois or another State and Petitioner’s personal curiosity is not a basis to utilize the Court’s subpoena power. Finally, Intervenor, pursuant to Illinois Supreme Court Rules 219(d) and 137, moves to sanction counsel for the Petitioner for unilaterally issuing a subpoena without the Court’s permission, without an underlying legal action, and without any legal basis.

**Introduction**

Petitioner filed a “Petition to Issue a Subpoena” on July 11, 2023 in the Circuit Court of Cook County seeking to obtain records about the President of Nigeria’s educational history. (**Exhibit 1**, Docket Report; **Exhibit 2**, Petition.) Also, on July 11,

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2023, Petitioner's counsel issued a subpoena to Chicago State University requiring Chicago State to produce a witness to testify about Bola Ahmed Tinubu's attendance at Chicago State. (**Exhibit 3**, Subpoena.)

No Judge of the Circuit Court of Cook County heard the Petition or granted Petitioner the ability to issue the subpoena. (*See Exhibit 1.*) Nevertheless, two days after filing the Petition, on July 13, 2023, counsel for Petitioner served the subpoena demanding that a deposition occur six days later on July 19, 2023. (*See Exhibit 3.*)

### **Argument**

The Petition seeks the records of Intervenor, although the Petitioner did not name the Intervenor and avoided providing notice to Intervenor.<sup>1</sup> Pursuant to Section 2-408(a)(2) of Code of Civil Procedure (735 ILCS 5/2-408(a)(2)), intervention by Mr. Tinubu is a matter of right because the petition concerns him, personally, and seeks access to his educational and personal information. Mr. Tinubu has a clear and adverse interest to Petitioner, and the proceedings would affect his rights. *Redmond v. Devine*, 152 Ill.App.3d 68, 74 (1st Dist. 1987). Based on Mr. Tinubu's interest, he has the right to seek the relief requested herein.

#### **1. The Subpoena Should Be Quashed.**

The Petitioner's counsel cannot unilaterally self-grant the relief sought in the Petition and issue the subpoena without this Court's approval. Illinois Supreme Court

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<sup>1</sup> Chicago State University advised Intervenor that his records were being sought.

Rule 204(b) makes clear that the Court must grant the petition before a subpoena can issue. Ill. S.Ct. R. 204(b) (“The court may hear and act upon the petition with or without notice as the court directs.”). A lawyer cannot simply file a petition and issue his or her own subpoena and force a third-party to comply without a judge having reviewed the petition. Unfortunately, that is what occurred here. For this reason alone, the subpoena is invalid and must be quashed.

Moreover, the subpoena is presumptively invalid for providing less than 14 days for compliance. Illinois Supreme Court Rule 204 establishes a presumptive 14 days for compliance, but Petitioner provided only 6 days from the time of service. By shorting the time for compliance, Petitioner forced the respondent into potentially complying with an invalid subpoena.

The subpoena should also be quashed because there was no legal basis for issuing it in the first place. Illinois courts may “quash or modify any subpoena” for “good cause shown.” 735 ILCS 5/2-1101. And, Illinois courts have power to enter a protective order “as justice requires, denying . . . discovery to prevent unreasonable annoyance, expense, embarrassment, disadvantage, or oppression.” Ill. S. Ct. R. 201(c)(1). As the First District noted, “[t]he use of subpoenas is a judicial process, and courts have broad and flexible powers to prevent abuses of their process.” *Parkway Bank & Trust Co. v. Korzen*, 2013 IL App (1st) 130380, ¶ 62.

Here, there is no basis for the petition or subpoena because the Petition does not identify the existence of an action pending in Illinois or another state. The existence of a pending action is required to utilize the court process and subpoena power of the Court. In addressing compelling the appearance of a deponent, Illinois Supreme Court Rule 204 describes, as a prerequisite, that there be an action “pending in this state” or an action pending in another state. Ill. S.Ct. R. 204(a), (b). Likewise, the Uniform Interstate Depositions and Discovery Act requires the submission of the subpoena from the action pending in the other state. *See* 735 ILCS 35/3, 735 ILCS 35/2. A prerequisite to invoking the subpoena powers of the Court is the existence of a pending action.

Petitioner is engaged in an improper fishing expedition about a foreign public official utilizing the Illinois Court’s subpoena power. *See Firebaugh v. Traff*, 353 Ill. 82, 85 (1933) (holding that “no right is given to compel the submission of records to a general inspection and examination, for fishing purposes . . .”); *In re All Asbestos Litigation*, 385 Ill.App.3d at 391-92 (vacating order to compel discovery described as a “fishing expedition”). Illinois Supreme Court Rule 219(d) allows a court to prevent this abuse: “If a party wilfully obtains or attempts to obtain information by an improper discovery method, wilfully obtains or attempts to obtain information to which that party is not entitled, or otherwise abuses these discovery rules, the court may enter any order provided for in paragraph (c) of this rule.” ILL. S. CT. R. 219(d); *see Low Cost Movers, Inc. v. Craigslist, Inc.*, 2015 IL App (1st) 143955, ¶ 12 (“Involvement of the trial court

protects against abuses of the discovery process and guards against 'fishing expeditions.'"). The subpoena clearly fits Rule 219's definition of an improper information gathering tool.

**2. The Petition Should Be Stricken.**

The Illinois Code of Civil Procedure empowers the Court to strike "a pleading or portion thereof be stricken" because it is "substantially insufficient in law". 735 ILCS 5/2-615. The Petition is substantially legally deficient. No attorney may take it upon him or herself to unilaterally invoke the Court's powers and issue subpoenas on a petition without the Court's approval. In addition, as set forth above, a pending action is required to issue a subpoena in this state, but none is referenced in the petition.

Moreover, the Petition improperly seeks confidential records protected by federal and state law. *See* 105 ILCS 10/6(a) (prohibiting the release, transfer, disclosure and dissemination of school student records); *see also* 20 U.S.C. § 1232(g) (purpose of the Federal Educational Records and Privacy Act of 1974 is to protect students from a school's unauthorized release of a student's records). Petitioner is improperly utilizing the subpoena power of the Illinois Courts to negate protections that Congress and the General Assembly created. The Petition provides no legal basis to overcome these protections and should be stricken.

3. **Counsel Should Be Sanctioned.**

Both Illinois Supreme Court Rule 137 and 219 impose an obligation upon counsel filing actions in this State and issuing subpoenas to comply with the law and not utilize the Court's powers for improper purposes. *See* Ill. S.Ct. R. 137 (providing that the signature of an attorney constitutes a certificate by him or her that the document, *i.e.*, subpoena, to the best of his or her knowledge has a basis in law and fact); Ill. S.Ct. R. Rule 219(d); Ill. S.Ct. R. Rule 219(c) (providing for an appropriate sanction to be directly imposed upon an offending attorney). Here, counsel unilaterally issued a subpoena immediately after filing a Petition, despite the rule clearly requiring the Court's act on the Petition.<sup>2</sup> Moreover, the Petition is a fishing expedition that is legally baseless.

**Conclusion**

The subpoena should be quashed and the Petition stricken, pursuant to the Illinois Supreme Court Rules and Code of Civil Procedure. Counsel should be sanctioned in an amount sufficient to deter such conduct and compensate for the costs incurred to respond to the petition and subpoena.

Respectfully submitted,

**INTERVENOR BOLA AHMED TINUBU,**

By: /s/ Victor P. Henderson

One of his Attorneys

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<sup>2</sup> Counsel also violated Illinois Supreme Court Rule 138 by including social security numbers and dates of birth in a public filing.

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**CERTIFICATE OF SERVICE**

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, the undersigned certifies that on **July 19, 2023**, a copy of the **MOTION TO QUASH SUBPOENA, STRIKE PETITION, & FOR SANCTIONS** was filed with the Clerk of the Circuit Court of Cook County using the Odessey efile and serve system and also served via electronic mail upon the following counsel of record:

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