

FILED
09-15-2021
Clerk of Circuit Court
Waukesha County
2020CV001759

STATE OF WISCONSIN CIRCUIT COURT WAUKESHA COUNTY

IN RE: AFP INVESTMENTS, INC., ASSIGNOR

Case No.: 2020CV001759

Case Code: 30304

For the Issuance of an
Arizona Subpoena Under
Ariz. R. Civ. P. 45.1

**COMMISSION TO TAKE VISUALLY RECORDED (VIDEOTAPE) DEPOSITION OF
DAVID WINTHROP HASS OUTSIDE THE STATE OF WISCONSIN**

**TO: Clerk of the Superior Court of Pima County,
 State of Arizona**

YOU ARE HEREBY RESPECTUFLLY REQUESTED to accept this Commission to issue a Subpoena Duces Tecum requiring David Winthrop Hass, who resides at 7755 E. Knollward Terrace, in the City of Tucson, County of Pima, State of Arizona, to appear for a visually recorded (videotape) deposition for use at trial pursuant to Wisconsin Statute Section 887.26(4).

No prior request of this relief has been made of this Court.

This deposition shall be taken before an officer authorized to administer oaths by the laws of the United States or of this state or of the place where the examination is to be held, or before a person appointed by the court in which the action is pending, and who is not otherwise disqualified pursuant to Wisconsin Statute Section 804.03 or as provided by the laws or rules of the State of Arizona.

The parties and attorneys in this case are as follows:

Attorney Seth Dizard, Receiver
111 E. Wisconsin Ave., STE 1400
Milwaukee, WI 53202-4870

Claimant HNCO, LLC
By: Attorney Brian Romans
Krawczyk, Duginski & Rohr, S.C.
16535 W. Bluemound Rd., STE 310
Brookfield, WI 53005

Claimants:
The Palmer Family Trust,
The Leroy T. Palmer Revocable Living Trust and
The Estate of Leroy T. Palmer
By: Attorney Jeffrey J. Ek
100 S. Main St., STE 201
Oconomowoc, WI 53066

Under Wisconsin Statute Section 887.26, Wisconsin authorizes that a commission to take an out of state deposition may be signed and issued by the Clerk of the Court. A copy of Wisconsin Statute Section 887.26 is attached as an appendix hereto in its entirety in accord with Wisconsin Statute Section 887.26(4).

The Circuit Court for the County of Waukesha, hereby requests that process issue in the above-referenced place where the examination is to be held, requiring the attendance and enforcing obligations of the deponent to produce documents and answer questions for use at trial.

This Commission is intended to be that form of mandate, writ, or commission pursuant to which the Courts of the State of Arizona may issue orders, subpoenas, and process to compel the taking of testimony and production of documentary evidence for use at trial and more specifically, Rule 45.1 of the Arizona Rules of Civil Procedure.

Dated:

September 15, 2021

BY THE COURT:

Clerk of Court



Monica Parz

APPENDIX

887.26 Depositions outside state.

- (1) **HOW TAKEN.** In any civil action, proceeding, or matter in which depositions may be taken within this state, the deposition of any witness outside the state may be taken before any officer as provided in s. 804.03 (1) or (2) or as provided in the rules of the state or country where taken. Depositions outside the state may be taken orally or upon written questions as provided in this section.
- (4) **COMMISSION TO TAKE.** A commission may issue from any court of record to take the deposition of any witness outside the state, after commencement of the action, except as provided in s. 804.015 or as provided in s. 804.02 (1), for any cause that is deemed sufficient by the court, or when required for use on any trial or hearing or upon any motion or proceeding. The commission shall be signed by the clerk and sealed and shall be accompanied by a copy of subs. (4), (5), and (6).
- (5) **PROCURING COMMISSION.**
 - (am) *Oral depositions.*
 1. The person desiring a commission shall prepare a notice of intent to obtain a commission and state in the caption of the notice of intent the name of the witness and his or her residence with particularity, and shall serve a copy of the notice of intent on the opposite party, with a notice that, at the expiration of 5 days from the date of the notice of intent, a commission will be issued directed to the court of jurisdiction of the residence of the witness, requesting that a subpoena issue from that court compelling the oral deposition of the witness, and specifying the reason for taking the same. Within the 5-day period the opposite party may file with the clerk and serve upon the other party objections to the issuance of the commission.
 2. At the expiration of the 5 days, and no objection being received or sustained, the commission shall issue as provided in sub. (4). At the noticing person's expense, the commission shall be transmitted to the court of jurisdiction of residence of the witness, for issuance of the deposition subpoena in accord with the rules applicable to that court. No commission shall issue if the witness's residence is not given as required.
 - (bm) *Written questions.*
 1. The person desiring a commission shall prepare a notice of intent to obtain a commission and state in the caption of the notice of intent the name of the witness and his or her residence with particularity, and shall serve a copy of the notice of intent on the opposite party, with a notice that, at the expiration of 5 days from the date of the notice of intent, a commission will be issued directed to the court of jurisdiction of the residence of the witness, requesting that a subpoena issue from that court compelling the deposition upon written questions of the witness, and specifying the reason for taking the same. The notice of intent shall be accompanied by the questions. Within the 5-day period, the opposite party may file with the clerk and serve upon the other party any objections to the issuance of the commission and serve his or her cross-questions; and state the name and residence of any person whom the opposite party desires to act as an additional commissioner, who must reside in the county in which the commissioner first named resides, and may serve any objections to the questions and any cross-questions.
 2. If cross-questions are served, within 3 days after such service the noticing person may also serve redirect questions on the opposite party, who may, within 3 days after such service, serve objections to such redirect questions.
 3. At the expiration of the period under subs. 1. and 2., and if no objection to the issuance of the commission has been received or sustained the commission shall issue, with the written questions, direct, cross and redirect, and all objections, and transmitted to the commissioner first named by mail or express at the expense of the moving party. But when any defendant shall not have appeared and the time for the defendant to plead has expired, no notice is required to be given such defendant, and the commission may issue on filing the direct questions as provided in sub. (4). At the noticing person's expense, the commission shall be transmitted to the court of jurisdiction of the residence of

- the witness, for issuance of the subpoena in accord with the rules applicable to that court. No commission shall issue if the witness's residence is not given as required.
4. Upon issuance of the commission, the noticing person shall transmit to the officer taking or transcribing the deposition, by mail or express, the direct, cross, and redirect questions, and the objections to the questions.
- (c) *Before commencement of action.* When testimony is sought of a witness outside the state before commencement of an action as provided in s. 804.02 (1), the order issued under s. 804.02 (1) (c) shall also include a commission in the form provided by sub. (4) of this section.
- (6) DUTY OF COMMISSIONER — EXAMINATION AND CROSS-EXAMINATION; RECORD.
- (am) *Oral examination.* Testimony shall be taken in the manner provided by s. 804.05 (4) to (6).
- (bm) *Examination by written questions.* Testimony shall be taken in the manner provided by s. 804.06 (2).
- (cm) *Certification and service by officer; exhibits; copies; notice of service.* The commissioner first named taking or transcribing the deposition shall have charge of and return the deposition, which return shall be in the same form and manner directed by the commission or as provided by s. 804.05 (7). If either commissioner shall not attend at the time and place so fixed, the other may execute the commission with like effect as if both were present, but such commissioner must certify in the return that the other had due notice but failed to attend.
- (7) FEES. The persons who take or transcribe the depositions and the witness shall be entitled to the fees allowed court reporters under s. 814.69 (1) and witnesses for similar service by the law of this state, or as may be prescribed by the law of the state or country where taken.

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF PIMA

In Re: AFP INVESTMENTS, INC., ASSIGNOR

CASE NO.: 2020CV1759

TO: David Winthrop Hass
7755 E. Knollwood Terrace, City of Tucson, County of Pima, State of Arizona.

Pursuant to §887.26 and §885.43 of the Wisconsin Statutes, you are hereby commanded to appear for a visually recorded (videotape) deposition for use at trial as follows:

BEFORE: Notary Public Reporter, Bartlet/Nix Reporting, LLC

PLACE: 5151 E. Broadway Blvd., STE 1600, Tucson, AZ 85711

DATE: October 28, 2021

TIME: 9:00 a.m.

This Subpoena relates to the above-captioned action in Waukesha County, State of Wisconsin, in which you are a witness, pursuant to §887.26 of the Wisconsin Statutes, attached to this Subpoena in the foreign Subpoena issued in Waukesha County, Wisconsin.

The names, addresses and telephone numbers of all counsel of record in the above-captioned action are as follows:

Attorney Seth Dizard, Receiver
111 E. Wisconsin Ave., STE 1400
Milwaukee, WI 53202-4870
414-276-5000

Claimant: HNCO, LLC
By: Attorney Brian Romans
Krawczyk, Duginski & Rohr, S.C.
16535 W. Bluemound Rd., STE 311
Brookfield, WI 53005
262-827-5800

Claimants:
The Palmer Family Trust,
The Leroy T. Palmer Revocable Living Trust and
The Estate of Leroy T. Palmer
By: Attorney Jeffrey J. Ek

100 S. Main St., STE 201
Oconomowoc, WI 53066
262-567-0018

YOUR DUTIES IN RESPONDING TO THIS SUBPOENA

Attendance at a Trial. If this subpoena commands you to appear at a trial, you must appear at the place, date and time designated in the subpoena unless you file a timely motion with the court and the court quashes or modifies the subpoena. See Rule 45(b)(5) and Rule 45(e)(2) of the Arizona Rules of Civil Procedure. See also “Your Right To Object To This Subpoena” section below. Unless a court orders otherwise, you are required to travel to any part of the state to attend and give testimony at a trial. See Rule 45(b)(3)(A) of the Arizona Rules of Civil Procedure.

Attendance at a Hearing or Deposition. If this subpoena commands you to appear at a hearing or deposition, you must appear at the place, date and time designated in this subpoena unless either: (1) you file a timely motion with the court and the court quashes or modifies the subpoena; or (2) you are not a party or a party’s officer and this subpoena commands you to travel to a place other than: (a) the county in which you reside or you transact business in person; or (b) the county in which you were served with the subpoena or within forty (40) miles from the place of service; or (c) such other convenient place fixed by a court order. See Rule 45(b)(3)(B) and Rule 45(e)(2)(A)(ii) of the Arizona Rules of Civil Procedure. See also “Your Right To Object To This Subpoena” section below.

Production of Documentary Evidence or Inspection of Premises. If this subpoena commands you to produce and permit inspection, copying, testing or sampling of designated documents, electronically stored information, or tangible things, you must make the items available at the place, date and time designated in this subpoena, and in the case of electronically stored information, in the form or forms requested, unless you provide a good faith written objection to the party or attorney who served the subpoena. See Rule 45(c)(5) of the Arizona Rules of Civil Procedure. See also “Your Right To Object To This Subpoena” section below. Similarly, if this subpoena commands you to make certain premises available for inspection, you must make the designated premises available for inspection on the date and time designated in this subpoena unless you provide a good faith written objection to the party or attorney who served the subpoena. See Rule 45(c)(5) of the Arizona Rules of Civil Procedure. See also “Your Right To Object To This Subpoena” section below.

You should note that a command to produce certain designated materials, or to permit the inspection of premises, *may* be combined with a command to appear at a trial, hearing or deposition. See Rule 45(b)(2) of the Arizona Rules of Civil Procedure. You do not, however, need to appear in person at the place of production or inspection unless the subpoena *also* states that you must appear for and give testimony at a hearing, trial or deposition. See Rule 45(c)(3) of the Arizona Rules of Civil Procedure.

If the subpoena commands you to produce documents, you have the duty to produce the designated documents as they are kept by you in the usual course of business, or you may

organize the documents and label them to correspond with the categories set forth in the subpoena. *See* Rule 45(c)(4) of the Arizona Rules of Civil Procedure.

YOUR RIGHT TO OBJECT TO THIS SUBPOENA

Generally. If you have concerns or questions about this subpoena, you should first contact the party or attorney who served the subpoena. The party or attorney serving the subpoena has a duty to take reasonable steps to avoid imposing an undue burden or expense on you. The justice court enforces this duty and may impose sanctions upon the party or attorney serving the subpoena if this duty is breached. *See* Rule 45(e)(1) of the Arizona Rules of Civil Procedure.

Procedure for Objecting to a Subpoena for Attendance at a Hearing, Trial or Deposition. If you wish to object to a subpoena commanding your appearance at a hearing, trial or deposition, you must file a motion to quash or modify the subpoena with the court to obtain a court order excusing you from complying with this subpoena. *See* Rules 45(b)(5) and 45(e)(2) of the Arizona Rules of Civil Procedure. The motion must be filed in the Justice Court precinct in which the case is pending or from which the subpoena was issued. *See* Rule 45(e)(2)(A) and (B) of the Arizona Rules of Civil Procedure. The motion must be filed before the time specified for compliance or within 14 days after the subpoena is served, whichever is earlier. *See* Rule 45(e)(2)(D) of the Arizona Rules of Civil Procedure. You must send a copy of any motion to quash or modify the subpoena to the party or attorney who served the subpoena. *See* Rules 45(e)(2)(E) of the Arizona Rules of Civil Procedure.

The court *must* quash or modify a subpoena:

- (1) if the subpoena does not provide a reasonable time for compliance;
- (2) unless the subpoena commands your attendance at a trial, if you are not a party or a party's officer and if the subpoena commands you to travel to a place other than: (a) the county in which you reside or transact business in person; (b) the county in which you were served with a subpoena, or within forty (40) miles from the place of service; or (c) such other convenient place fixed by a court order; or
- (3) if the subpoena requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (4) if the subpoena subjects you to undue burden.

See Rule 45(e)(2)(A) of the Arizona Rules of Civil Procedure.

The court *may* quash or modify a subpoena:

- (1) if the subpoena requires you to disclose a trade secret or other confidential research, development or commercial information;

- (2) if you are an unretained expert and the subpoena requires you to disclose your opinion or information resulting from your study that you have not been requested by any party to give on matters that are specific to the dispute;
- (3) if you are not a party or a party's officer and the subpoena would require you to incur substantial travel expense; or
- (5) if the court determines that justice requires the subpoena to be quashed or modified.

See Rule 45(e)(2)(B) of the Arizona Rules of Civil Procedure.

In these last four circumstances, a court may, instead of quashing or modifying a subpoena, order your appearance or order the production of material under specified conditions if: (1) the serving party or attorney shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and (2) if your travel expenses or the expenses resulting from the production are at issue, the court ensures that you will be reasonably compensated. See Rule 45(e)(2)(C) of the Arizona Rules of Civil Procedure.

Procedure for Objecting to Subpoena For Production of Documentary Evidence. If you wish to object to a subpoena commanding you to produce documents, electronically stored information or tangible items, or to permit the inspection of premises, you may send a good faith written objection to the party or attorney serving the subpoena that objects to: (1) producing, inspecting, copying, testing or sampling any or all of the materials designated in the subpoena; (2) inspecting the premises; or (3) producing electronically stored information in the form or forms requested. You must send your written objection to the party or attorney who served the subpoena before the time specified for compliance or within 14 days after the subpoena is served, whichever is earlier. See Rule 45(c)(5)(A)(ii) of the Arizona Rules of Civil Procedure.

If you object because you claim the information requested is privileged, protected or subject to protection as trial preparation material, you must express the objection clearly, and support each objection with a description of the nature of the document, communication or item not produced so that the demanding party can contest the claim. See Rule 45(c)(5)(C) of the Arizona Rules of Civil Procedure.

If you object to the subpoena in writing, you do not need to comply with the subpoena until a court orders you to do so. It will be up to the party or attorney serving the subpoena to first personally consult with you and engage in good faith efforts to resolve your objection and, if the objection cannot be resolved, to seek an order from the court to compel you to provide the documents or inspection requested, after providing notice to you. See Rule 45(c)(5)(B) of the Arizona Rules of Civil Procedure.

If you are not a party to the litigation, or a party's officer, the court will issue an order to protect you from any significant expense resulting from the inspection and copying commanded. See Rule 45(c)(6)(B) of the Arizona Rules of Civil Procedure.

Instead of sending a written objection to the party or attorney who served the subpoena, you have the option of raising your objections in a motion to quash or modify the subpoena. See Rule

45(e)(2) of the Arizona Rules for Civil Procedure. The procedure and grounds for doing so are described in the section above entitled "Procedure for Objecting to a Subpoena for Attendance at a Hearing, Trial or Deposition."

If the subpoena *also* commands your attendance at a hearing, trial or deposition, sending a written objection to the party or attorney who served the subpoena does not suspend or modify your obligation to attend and give testimony at the date, time and place specified in the subpoena. See Rule 45(c)(5)(A)(iii) of the Arizona Rules of Civil Procedure. If you wish to object to a portion of this subpoena requiring your attendance at a hearing, trial or deposition, you must file a motion to quash or modify the subpoena as described in the section above entitled "Procedure for Objecting to a Subpoena for Attendance at a Hearing, Trial or Deposition." See Rule 45(b)(5) and 45(c)(5)(iii) of the Arizona Rules of Civil Procedure.

ADA Notification

Requests for reasonable accommodation for persons with disabilities must be made to the court by parties as soon as possible in advance of a scheduled court proceeding.

SIGNED AND SEALED this date OCT 7 2021

GARY L. HARRISON

By: _____

Justice of the Peace
Stephanie May