

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

TUSHAWN CRAIG,	)	
MARQUETTA STOKES,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 1:23-cv-01575-TWP-MJD
	)	
CORNERSTONE TRADING GROUP, LLC,	)	
SETH SMITH,	)	
CITY OF RICHMOND, INDIANA,	)	
	)	
Defendants.	)	

ORDER GRANTING NON-PARTY'S MOTION TO QUASH SUBPOENA

This matter is before the Court on a Motion to Quash Subpoena ([Filing No. 405](#)) filed by counsel for non-party Mike Emery ("Emery"), a journalist who received a subpoena issued by Defendants Cornerstone Trading Group, LLC, and Seth Smith (collectively, the "Cornerstone Defendants"). This matter is scheduled for trial by jury beginning on Monday, September 14, 2026. The Cornerstone Defendants seek to force Emery to testify at trial on the grounds that he authored an article under the headline, "Blame for Fire's Cause, Costs Hit Property Owner" (the "Article"), because they want to get the Article into evidence so that the jury can look at it because it provides a "good summary of what happened [in this case]." ([Filing No. 405-2 at 3](#)). Emery seeks to quash the subpoena for two reasons: (1) enforcing compliance would place an undue burden on Emery; and (2) the subpoena seeks privileged or other protected matter under Indiana law (*see* [Filing No. 405-1](#)). For the reasons discussed below, the Motion to Quash Subpoena is **granted**.

I. BACKGROUND

Emery worked as a Western Wayne News reporter since December 2022 and is not a party to this action ([Filing No. 410 at 2](#)). He authored the Article, which appeared in the Western Wayne News's April 19, 2023, print edition and was published online the following day. The Cornerstone Defendants seek admission of the Article into evidence at trial because:

The Article reports, among other facts, that the City owns the properties at 310 and 358 NW F St, and that after taking title to the properties, the City "entered into an agreement with the business owner that would provide him the ability to remove these materials and sell them." (Dkt. 405-7, p. 4). The Article further reports that the City's attorney, A.J. Sickmann, stated that the City took the parcels "to eliminate interference from the business owner," obtained an EPA grant and "would have been taking materials technically owned by the bank." (Dkt. 405-7, p. 4).

([Filing No. 410 at 2](#)).

Emery was not a witness to the fire or events at issue in this case and has no firsthand knowledge whatsoever about any issue that may bear on the elements of the causes of action that are being litigated ([Filing No. 405-1 at 4](#)). The Article merely reported on the fact that a fire occurred at the 310 and 358 NW F Street properties, and Emery pulled information from public records and quoted statements from certain officials from the City of Richmond. *Id.*

The Cornerstone Defendants included the Article as Exhibit 566 on their Final Exhibit List, ([Filing No. 361 at 6](#)), but the City objects to its admission on the grounds that the Article constitutes hearsay and does not have a sponsoring witness ([Filing No. 410 at 3](#)). The City has declined on several occasions to stipulate to the admissibility of the Article at trial.

When Emery received the subpoena, his counsel emailed counsel for the Cornerstone Defendants and expressed "serious concerns about the scope of the subpoena, including but not limited to the extent it may invade constitutional and statutory reporter's privileges. In order to efficiently address those concerns and avoid potentially unnecessary motion practice, it would be

productive to have a quick discussion so we can better understand the status of the case and how this subpoena fits in." ([Filing No. 405-3 at 2](#)). In response, Mr. Lipinski wrote, "I intend to call Mr. Emery to testify to lay the foundation for an article that he wrote: Blame for Fire's Cause, Costs Hit Property Owner. The article was published on April 20, 2023." In an attempt to reach a compromise in lieu of Emery's live testimony, Emery's counsel suggested that they could provide a certification authenticating a copy of the Article as a business record maintained in the newspaper's archives pursuant to Federal Rule of Evidence 902(11), but counsel for the Cornerstone Defendants insisted that Emery be forced to testify unless the parties would "stipulate to the facts in the article itself" because it "contains truthful, valuable information to [his] clients." ([Filing No. 405-4 at 1](#)).

Emery's counsel also met and conferred with counsel for the Cornerstone Defendants and communicated with counsel for the City of Richmond in an attempt to resolve this dispute without motions practice.¹ However, counsel for the Cornerstone Defendants remained resolute that the Cornerstone Defendants will not withdraw the subpoena and will oppose the relief sought by this Motion. Thereafter, Emery filed the instant Motion to Quash Subpoena ([Filing No. 405](#)) and Cornerstone Defendants filed a Response in Opposition to Non-Party Mike Emery's Motion to Quash Subpoena ([Filing No. 410](#)).

II. LEGAL STANDARD

District courts have discretion to grant, deny, or modify a motion to quash a subpoena. *Griffin v. Foley*, 542 F.3d 209, 223 (7th Cir. 2008). "The moving party bears the burden of demonstrating that the subpoena requires the disclosure of privileged information or subjects the

¹ The City of Richmond stated that, given the self-authenticating nature of news articles, if Emery submitted a business records affidavit, then the City would not object to the authenticity of the Article on the grounds that there was no sponsoring witness ([Filing No. 405-2 at 4](#)).

party to an undue burden." *Acuity v. Kerstiens Home & Designs, Inc.*, No. 1:16-cv-2800, 2018 WL 3375015, at *1 (S.D. Ind. July 10, 2018) (citing *Heckler & Koch, Inc. v. German Sport Guns GmbH*, No. 1:11-cv-1108, 2014 WL 12756174 (S.D. Ind. Sept. 12, 2024)). "In determining whether a Rule 45 subpoena is unduly burdensome, a court may examine a number of factors, including 'relevance, the need of the party for documents, the breadth of the document request, the time period covered by it, the particularity with which the documents are requested, and the burden imposed.'" *Id.* (quoting *WM High Yield v. O'Hanlon*, 460 F. Supp. 2d 891, 895 (S.D. Ind. 2006)). "Additionally, non-party status is a significant factor to be considered when assessing undue burden for the purpose of a Rule 45 motion." *Id.* (citations omitted).

Even if the subpoena's request is relevant, a court may quash it if there is an easier way for the requesting party to obtain the information. Fed. R. Civ. P. 26(b)(2)(C)(i). A party's ability to obtain documents from a party with which it is litigating is a good reason to prevent it from burdening a non-party with production of the same documents. *Acuity*, 2018 WL 3375015, at *2 (citations omitted).

III. DISCUSSION

Emery contends that the subpoena should be quashed (1) pursuant to Fed. R. Civ. P. 45(d)(1) and (3)(a)(iv), because it places an undue burden on a non-party, and (2) under Fed. R. Civ. P. 45(d)(3)(a)(iii), because it seeks disclosure of unpublished newsgathering information protected from disclosure by the Indiana shield law, Ind. Code §§ 34-46-4-1 et seq., and the qualified reporter's privilege under the U.S. Constitution ([Filing No. 405-1](#)). The Court need only discuss the first argument as it is dispositive.

In evaluating whether the Cornerstone Defendant's subpoena is unduly burdensome, the Court looks to the factors laid out in *O'Hanlon*, 460 F. Supp 2d at 895. First, there is little, if any,

relevant or probative information that can be obtained through Emery's testimony at trial. Emery has no personal knowledge of the fire at issue nor any issue that may bear on the elements of the causes of action in this case. Rather, his news article merely recites that the fire happened and reports on information that he pulled from public records already available to the parties in this case. To the extent that Emery possesses any information relevant to the claims and defenses in this lawsuit, that information is more easily obtainable through party witnesses and documentary evidence held by the parties, which makes Emery's testimony unnecessary. *See Patterson v. Burge*, No. 03 C 4433, 2005 WL 43240, at *2 (N.D. Ill. Jan. 6, 2005) (granting a motion to quash subpoenas to various news outlets because requesting party "cannot establish that their subpoenas seek information they do not already have or that is not readily available from other sources.").

Even if Emery's testimony was relevant, mere relevance is not enough to subpoena the fruits of a news outlet's investigation. *See id.* at 3 ("Since the press is involved in collecting information about all manner of things and circumstances that frequently end up in litigation, if there is no standard higher than mere relevance which civil lawyers must satisfy to help themselves to reporters' records, news organizations will be very busy responding to civil subpoenas.").

The Cornerstone Defendants provide no justification for burdening Emery. They simply state that the fact that Emery authored the Article is sufficient to supply the principle foundational facts and thus, the Court should admit the Article over the City's objection and address any objection to particular statements in context. The article is replete with out-of-court statements from city officials—including Mayor Dave Snow, City Attorney Andrew Sickmann, Fire Department Chief Tim Brown, and others—which appear to be offered for the truth of the matters asserted ([Filing No. 405-7](#)). For obvious reasons, the Court will not bypass the Federal Rules of Evidence and admit an exhibit over a hearsay objection simply because the offering party can

authenticate the exhibit. As the Cornerstone Defendants admit in their Response brief, Emery's counsel's proposed authentication through certification "would not overcome the City's hearsay objection." ([Filing No. 410 at 5](#)). Indeed, the Cornerstone Defendants go on to say that the parties could not stipulate to the admission of the Article because the City of Richmond objects on grounds other than foundation. The Cornerstone Defendants proffered no hearsay exception in their Response brief. The Court cannot simply admit an exhibit into evidence over a proper hearsay objection, even if the exhibit is authenticated.

Finally, the burden of forcing Emery to testify at trial outweighs any benefit of his testimony. All facts contained in the Article are otherwise available to the parties and may be offered into evidence by the parties. The only information that likely does not appear in the parties' own records are quotes from public officials from the City of Richmond. However, the City of Richmond is a party to this litigation, and those officials—Mayor Dave Snow, City Attorney Andrew Sickmann, and Fire Department Chief Tim Brown—are already listed on each of the parties' witness lists (*see* [Filing No. 334](#), [Filing No. 349](#), [Filing No. 359](#)). Thus, Emery's testimony is neither relevant nor probative especially given that the Cornerstone Defendants' reasoning for subpoenaing his testimony is "placing the Article before the jury," ([Filing No. 410 at 3](#)), and because it provides a "good summary of what happened [in this case]." ([Filing No. 405-2 at 3](#)). But forcing a journalist with no personal knowledge of any issues in this case to testify as to the authenticity of a news article, which is already self-authenticating pursuant to Federal Rule of Evidence 902(6), the contents of which are already available from various other sources, including the parties in the litigation, is not a proper use of the subpoena power under Rule 45. Accordingly, the Motion to Quash Subpoena is **granted**.

Because the Court finds that the subpoena is unduly burdensome, the Court need not reach the issue of whether the subpoena seeks privileged or protected material.

Finally, Emery contends that if the Court quashes the subpoena as an undue burden, it should award him his reasonable attorney's fees ([Filing No. 405-1 at 15](#)). He points out that attorney's fees are an available and appropriate sanction for the court to impose when a part fails to "take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena." Federal Rule Civil Procedure 45(d)(1). Because the Court has found that the Cornerstone Defendant's subpoena is unduly burdensome, it will allow the Cornerstone Defendants an opportunity to properly respond to the fee request. A response is due no later than **October 2, 2026**.

IV. CONCLUSION

For the reasons discussed above, non-party Mike Emery's Motion to Quash Subpoena ([Filing No. 405](#)) is **GRANTED**. Emery's request for attorney's fees is taken under advisement and Cornerstone Defendants may respond to the fee request by no later than **October 2, 2026**.

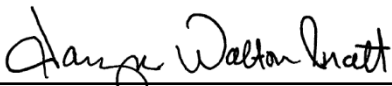
SO ORDERED.

Date: September 11, 2026

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