

GENERAL ASSEMBLY

STATE OF ILLINOIS

HOUSE OF REPRESENTATIVES

SELECTE COMMITTEE ON DISCIPLINE OF THE NINETY-SEVENTH GENERAL ASSEMBLY

In re Representative Derrick Smith) **Chair**
) Representative Barbara Flynn Currie
)
)

REQUEST TO EXTEND THE SCHEDULING ORDER DATED FRIDAY, JUNE 29, 2012

Representative Derrick Smith, by and through his attorney, Victor P. Henderson of Henderson Adam, LLC, respectfully requests the Select Committee On Discipline Of The Ninety-Seventh General Assembly (“Select Committee”), to extend the Scheduling Order dated Friday, June 29, 2012 for *at least* 30 days. In support hereof, the Representative states as follows:

1. On June 29, 2012, the Select Committee issued an expedited schedule requiring that all discovery and a hearing in this matter take place within 20 days (*See*, Scheduling Order attached as Exhibit A).

2. The Scheduling Order affects both the procedural and substantive rights held by the Representative, including, but not limited to, his right to have a fair hearing, his right to fairly and adequately prepare for the hearing, and his right to present evidence in his defense.

3. The attorneys for the Representative are not able to prepare an adequate defense, nor are they able to provide effective assistance of counsel within 20 days, among other reasons, because most, if not all, of the evidence that will exonerate the Representative is subject to a protective order issued by the United States District Court For The Northern District Of Illinois (*See*, Protective Order Governing Discovery dated June 14, 2012 attached as Exhibit B).

4. The Protective Order states, in effect, that the Representative may not use any discovery that will aid in his defense before the Select Committee and that will exonerate him without leave of Court.

5. Or on around June 25, 2012, or just a few days before the Scheduling Order was issued, the United States Attorney for the Northern District of Illinois produced thousands of pages of documents and an, as of yet, unknown number of tape recordings relating to the underlying matter (*See*, letter dated June 25, 2012 attached as Exhibit C). The attorneys for the Representative are still examining this information and have not completed their review.

6. In addition, the U.S. Attorney has withheld information that is favorable to the Representative which he intends to use before the Select Committee (*See*, letter to the United States Attorney dated July 6, 2012 attached as Exhibit D). The attorneys for the Representative have requested that information and intend to file a motion before the Court if such information is not *promptly* produced.

7. Thus, without a reasonable opportunity to review the information that has been produced, and without access to the information that has been withheld, the Representative will not have the basic due process rights relating to a hearing before the Select Committee.

8. Accordingly, the Representative will be forced to challenge the results or outcome of any process that is not conducted in a “fair and deliberate” manner.

9. The Representative, therefore, respectfully requests that all dates be extended by *at least* 30 days, among other reasons, to give him a fair chance to review discovery that has been produced, to obtain all relevant discovery that has not been produced, and to appear before the United States Court Of The Northern District Of Illinois, if necessary, to obtain all relevant information.

WHEREFORE, Representative Derrick Smith, respectfully requests the Select Committee On Discipline Of The Ninety-Seventh General Assembly to extend all dates identified in the Scheduling Order by *at least* 30 days and for such other and further relief as is deemed just.

Respectfully submitted,

HENDERSON ADAM, LLC

By:



Attorney For DERRICK SMITH

Victor P. Henderson
HENDERSON ADAM, LLC
330 South Wells Street, Suite 1410
Chicago, Illinois 60606
Phone: (312) 262-2900
Facsimile: (312) 262-2901

CERTIFICATE OF SERVICE

The undersigned, Victor P. Henderson, an attorney, hereby certifies that the **REQUEST TO EXTEND THE SCHEDULING ORDER DATED FRIDAY, JUNE 29, 2012** was served on July 6, 2012 by first class mail on the following:

James B. Durkin
Arnstein & Lehr LLP
120 South Riverside Plaza
Suite 1200
Chicago, Illinois 60606

Representative Lou Lang
c/o James B. Durkin
Arnstein & Lehr LLP
120 South Riverside Plaza
Suite 1200
Chicago, Illinois 60606

By:



Victor P. Henderson
HENDERSON ADAM, LLC
330 South Wells Street, Suite 1410
Chicago, IL 60606
(312) 262-2900



GENERAL ASSEMBLY

STATE OF ILLINOIS

HOUSE OF REPRESENTATIVES

SELECT COMMITTEE ON DISCIPLINE OF THE NINETY-SEVENTH GENERAL ASSEMBLY

Chair

Rep. Barbara Flynn Currie

Minority Spokesman

Rep. Chapin Rose

Members

Rep. Edward J. Acevedo
Rep. Michael G. Connelly
Rep. Kimberly du Buclet
Rep. Greg Harris
Rep. Renée Kosel
Rep. Camille Y. Lilly
Rep. Sidney H. Mathias
Rep. Chris Nybo
Rep. Al Riley
Rep. Joe Sosnowski

Scheduling Order

The Chairperson having heard the arguments and positions of the parties at the hearing of the Select Committee on Discipline on June 27, 2012, and having conferred and deliberated with the Members, IT IS HEREBY ORDERED THAT:

1. On or before **Friday, July 6, 2012**, the parties shall disclose to one another in writing, with a copy sent by e-mail to the Counsel to the Committee, all evidence they intend to introduce at the Final Hearing, in accordance with Rule 6 of the Procedural Rules of the Select Committee on Discipline for the 97th General Assembly (the "Procedural Rules");
2. On or before **Friday, July 13, 2012**, each party may raise objections in writing to any or all of the evidence disclosed by the opposing party, with copies to the opposing party and to the Counsel to the Committee by e-mail, in accordance with Rule 7 of the Procedural Rules;
3. On or before **Monday, July 16, 2012**, each party may respond in writing to any evidentiary objections raised by the opposing party, with copies to the opposing party and to the Counsel to the Committee by e-mail;
4. The parties are strongly encouraged to stipulate to admissibility of evidence and to the applicable facts and law;
5. The Chairperson may rule on objections by a written order or may issue her rulings at the Final Hearing;



6. The Final Hearing of this matter shall take place on **Thursday, July 19, 2012**, at 9:30 A.M. in Room C-600 of the Michael A. Bilandic Building, Chicago, Illinois;

7. The Chairperson may, in her discretion, schedule additional hearings prior to the Final Hearing for the purpose of attending to any preliminary matters.

8. The parties may contact the Counsel to the Committee, by email or cell phone, with any questions or concerns.

Submitted this 29th day of June, 2012.



BARBARA FLYNN CURRIE
Chairperson
Select Committee on Discipline

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

DERRICK SMITH

Defendant.

No. 12 CR 175

Judge Sharon Johnson Coleman

PROTECTIVE ORDER GOVERNING DISCOVERY

Upon the motion of the government, pursuant to Fed. R. Crim. P. 16(d), it is hereby ORDERED:

1. All of the materials provided by the United States in preparation for, or in connection with, any stage of the proceedings in this case (collectively, "the materials") are subject to this protective order and may be used by defendant and defendant's counsel (defined as counsel of record in this case) solely in connection with the defense of this case, and for no other purpose, and in connection with no other proceeding, without further order of this Court.

2. Defendant and defendant's counsel shall not disclose the materials or their contents directly or indirectly to any person or entity other than persons employed to assist in the defense, persons who are interviewed as potential witnesses, counsel for potential witnesses, and other persons to whom the Court may authorize disclosure (collectively, "authorized persons"). Potential witnesses and their counsel may be shown copies of the materials as necessary to prepare the defense, but may not retain copies without prior permission of the Court.

EXHIBIT

B

3. Certain materials disclosed or to be disclosed by the government contain particularly sensitive information. These materials shall be plainly marked as sensitive by the government prior to disclosure. No such materials, or the information contained therein, may be disclosed to any persons other than defendant, counsel for defendant, persons employed to assist the defense, or the person to whom the sensitive information solely and directly pertains, without prior notice to the government and authorization from the Court. Absent prior permission from the Court, information marked as sensitive shall not be included in any public filing with the Court, and instead shall be submitted under seal (except if the defendant chooses to include in a public document sensitive information relating solely and directly to the defendant).

4. Defendant, defendant's counsel, and authorized persons shall not copy or reproduce the materials except in order to provide copies of the materials for use in connection with this case by defendant, defendant's counsel, and authorized persons. Such copies and reproductions shall be treated in the same manner as the original materials.

5. Defendant, defendant's counsel, and authorized persons shall not disclose any notes or records of any kind that they make in relation to the contents of the materials, other than to authorized persons, and all such notes or records are to be treated in the same manner as the original materials.

6. Before providing materials to an authorized person, defense counsel must provide the authorized person with a copy of this Order.

7. Upon conclusion of all stages of this case, all of the materials and all copies made thereof shall be disposed of in one of three ways, unless otherwise ordered by the Court. The materials may be (1) destroyed; (2) returned to the United States; or (3) retained in defense

counsel's case file. The Court may require a certification as to the disposition of any such materials. In the event that the materials are retained by defense counsel, the restrictions of this Order continue in effect for as long as the materials are so maintained, and the materials may not be disseminated or used in connection with any other matter without further order of the Court.

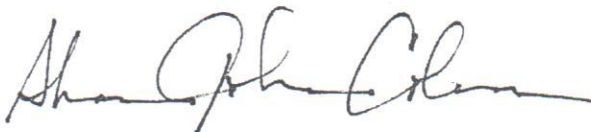
8. To the extent any material is produced by the United States to defendant or defendant's counsel by mistake, the United States shall have the right to request the return of the material and shall do so in writing. Within five days of the receipt of such a request, defendant and/or defendant's counsel shall return all such material if in hard copy, and in the case of electronic materials, shall certify in writing that all copies of the specified material have been deleted from any location in which the material was stored.

9. The restrictions set forth in this Order do not apply to information revealed by the United States to third parties without the restrictions imposed by this order; information known by defendant or defense counsel prior to commencement of these proceedings; documents that are or become part of the public court record, including documents that have been received in evidence at other trials, nor do the restrictions in this Order limit defense counsel in the use of discovery materials in judicial proceedings in this case, except that any document filed by any party which attaches or otherwise discloses specially identified sensitive information as described in Paragraph 3, above, shall be filed under seal to the extent necessary to protect such information, absent prior permission from this Court.

10. Nothing contained in this Order shall preclude any party from applying to this Court for further relief or for modification of any provision hereof. Discovery provided by defendant to the United States shall be governed by a separate order.

So ordered.

June 14, 2012

A handwritten signature in black ink, appearing to read "Sharon Johnson Coleman", written over a horizontal line.

SHARON JOHNSON COLEMAN
District Judge



U.S. Department of Justice

United States Attorney
Northern District of Illinois

J. Gregory Deis
Assistant United States Attorney

Dirksen Federal Building
219 South Dearborn Street, 5th Floor
Chicago, Illinois 60604

(312) 886-7625
Fax: (312) 886-0657
E-mail: greg.deis@usdoj.gov

June 25, 2012

Victor Henderson, Esq.
330 South Wells Street, Suite 1410
Chicago, Illinois 60606

Re: ***United States v. Derrick Smith, No. 12 CR 175***

Dear Mr. Henderson:

Pursuant to Federal Rule of Criminal Procedure 16 and Local Criminal Rule 16.1, and the protective order that governs discovery in this matter, enclosed please find the materials identified on the attached index. We identified a limited set of documents as "Confidential/Sensitive" pursuant to paragraph 3 of the protective order.

In addition to the materials identified in the index, we have documents from the investigative files of the City of Chicago, Office of Inspector General. These documents will be made available for your inspection upon request.

The government has prepared draft summaries/linesheets of the recorded phone calls relevant to this case. These are only rough summaries of the recordings and therefore are subject to revision. We are willing to provide you with copies of these linesheets for your convenience, provided that you agree that you will not use these drafts for any purpose whatsoever (including as substantive evidence, for impeachment, or to refresh the recollection of any witness) at trial or in any other proceeding in this case. If you are willing to agree to these conditions, please let me know in writing or by email, and we will provide you with the available linesheets. The government will provide draft transcripts of the recordings we intend to introduce in our case-in-chief one week prior to trial, subject to the same conditions set forth above.

The government recognizes its ongoing obligation to supplement these disclosures if new material becomes available or changing circumstances warrant additional disclosures. Consistent with Local Criminal Rule 12.1(b), if you have any additional discovery requests, or questions regarding the materials that have been produced, please contact me about them before filing discovery motions so that we can avoid unnecessary litigation.

EXHIBIT

C

In return, the government requests all discovery to which it is entitled pursuant to Federal Rules of Criminal Procedure 12.1, 12.2, 12.3, and 16, and Local Criminal Rule 16.1, including but not limited to:

1. The opportunity to inspect and copy any tangible item or document that may be offered as an exhibit at trial, pursuant to Rule 16(b)(1)(A);
2. The results of any examination or test that may be introduced by the defendant at trial, pursuant to Rule 16(b)(1)(B);
3. A written summary of any expert testimony that the defendant intends to use, including the expert's opinions, the bases and reasons for those opinions, and the expert's qualifications, pursuant to Rule 16(b)(1)(C);
4. Notice of any alibi or similar defense the defendant intends to raise, including any defense asserting the defendant's unavailability on or near the dates, times, and places named in the indictment, pursuant to Rule 12.1;
5. Notice of any defense, or of an intent to offer expert testimony, concerning a mental defect or condition inconsistent with the state of mind required for the offense charged, pursuant to Rule 12.2; and
6. Notice of a defense of public authority, pursuant to Rule 12.3.

As to the matters addressed by Local Criminal Rule 16.1, the government makes the following representations:

1. The government agrees to preserve the written notes of government agents, to the extent they still exist.
2. Two weeks prior to trial, the government will notify you of evidence it intends to offer pursuant to Federal Rule of Evidence 404(b).
3. Two weeks prior to trial, the government will file a proffer pursuant to *United States v. Santiago*, 582 F.2d 1128 (7th Cir. 1978), if applicable.
4. No later than two weeks prior to trial, the government will provide all materials required by 18 U.S.C. § 3500 and *Giglio v. United States* for those witnesses whom we intend at that time to call, subject to two exceptions: first, if we obtain § 3500 or *Giglio* material less than two weeks prior to trial, we will provide that information promptly upon receipt; second, if we determine that certain information should be withheld for witness safety or other reasons,

we will notify you that information is being withheld and will provide it as soon as possible and in time for its use at trial. In exchange, the government requests that you provide any statements or reports relating to defense witnesses two weeks prior to trial as well. If this is not acceptable to you, please let me know prior to the date for the filing of pretrial motions, and I will file a motion with the Court requesting the same. The government's enclosed production includes material falling within 18 U.S.C. § 3500 and *Giglio v. United States* for certain potential witnesses, including, but not limited to, documents marked with the 1023, 302 and CSCH prefixes.

An additional matter for your consideration is the subject of plea negotiations. As you know, a defendant's timeliness in manifesting an acceptance of responsibility is one of the elements considered in determining whether to reduce the adjusted offense level under the Sentencing Guidelines. Based upon our assessment of the evidence in this case, we will need to begin trial preparation no later than two weeks before the scheduled trial date. Please note that once we begin trial preparation, the defendant may become ineligible for a reduction for timely acceptance of responsibility under Guideline § 3E1.1(b).

Very truly yours,

PATRICK J. FITZGERALD
United States Attorney

By:



J. Gregory Deis
Assistant United States Attorney

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July 6, 2012

VIA FACSIMILE

J. Gregory Deis
United States Attorney's Office
219 South Dearborn Street, Suite 500
Chicago, Illinois 60604

**Re: USA v. Derrick Smith
Court No. 12 cr 175**

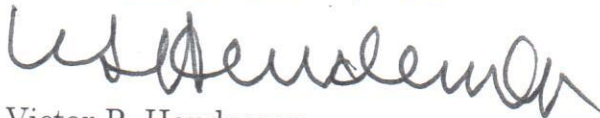
Dear Mr. Deis:

Pursuant to our conversation on Friday, July 6, 2012, and in response to your letter dated June 25, 2012, there is additional discovery that we would like. First, please give me an index, similar to the index you provided on June 25, 2012, which identifies all materials you have withheld. As we discussed, we want to be able to confirm that you have complied with all of your obligations to produce discovery and we cannot do that if we do not know what you have withheld. Second, we would like a list of all information you have withheld regarding CS-1, especially the information referred to in your letter to Magistrate Nan Nolan dated April 10, 2012. Third, please give us all information you have obtained from the City of Chicago, Inspector General and any other agencies, including State agencies, that you have worked with. Fourth, we would like the linesheets of the recorded conversations.

Should you have comments or questions, please call.

Very truly yours,

HENDERSON ADAM, LLC



Victor P. Henderson

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