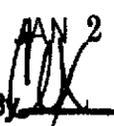


FILED
Court Administrator

JAN 20 2009
By  Deputy

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT

In the Matter of the Contest of General
Election held on November 4, 2008 for the
purpose of electing a United States Senator
from the State of Minnesota,

File No. 62-CV-09-56

**NOTICE OF MOTION AND MOTION TO
QUASH SUBPOENA AND FOR
PROTECTIVE ORDER**

Cullen Sheehan and Norm Coleman,

Contestants,

v.

Al Franken,

Contestee.

TO: Contestants Cullen Sheehan and Norm Coleman and their counsel, Frederic W. Knaak, Esq., Knaak & Kantrud, P.A., 3500 Willow Lake Boulevard, Vadnais Heights, Minnesota 55110; Tony Trimble, Esq., Trimble & Associates, Ltd., Suite 130, 10201 Wayzata Boulevard, Minnetonka, Minnesota 55305; and Roger J. Magnuson, Esq., Dorsey & Whitney PLLP, Suite 1500, 50 South Sixth Street, Minneapolis, Minnesota 55402-1498 and Contestee Al Franken and his counsel David Lillehaug, Esq., Fredrikson & Byron, P.A., Suite 4000, 200 South Sixth Street, Minneapolis, Minnesota 55402-1425.

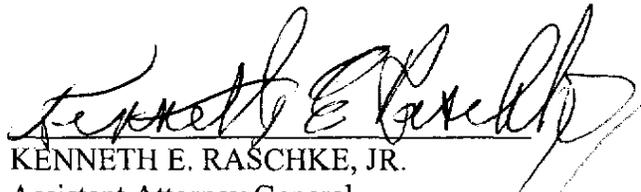
PLEASE TAKE NOTICE, that on a date and at a time to be determined by the Court, and in a courtroom to be designated by the Court, the undersigned will apply on behalf of Gary Poser for an order quashing the attached Subpoena purporting to require Mr. Poser to appear for the taking of a deposition in the above-captioned matter on January 21, 2009.

This Motion is brought pursuant to Minn. R. Civ. P. 45.03(c) and is based upon the attached memorandum of law and upon all of the files and records herein.

Dated: January 19, 2007

Respectfully submitted,

LORI SWANSON
Attorney General
State of Minnesota


KENNETH E. RASCHKE, JR.
Assistant Attorney General
Atty. Reg. No. 0089643

445 Minnesota Street, Suite 1800
St. Paul, Minnesota 55101-2134
(651) 297-1141 (Voice)
(651) 282-2525 (TTY)

ATTORNEYS FOR GARY POSER

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

In the Matter of the Contest of General Election held on November 4, 2008 for the purpose of electing a United States Senator from the State of Minnesota,

File No. 62-CV-09-56

Cullen Sheehan and Norm Coleman,

Contestants,

SUBPOENA IN A CIVIL CASE

(COMMAND TO APPEAR)

Minn. R. Civ. Pro. 45

v.

Al Franken,

Contestee.

TO: Gary Poser, Deputy Secretary of State c/o Lori Swanson, Minnesota Attorney General's Office, 1400 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101

Name

Address

- You are commanded to appear as a witness in the district court to give testimony at the place, date, and time specified below.

Place of Testimony	Courtroom
	Date and Time

- You are commanded to appear at the place, date and time specified below to testify at the taking of a deposition in the above case.

Place of Deposition Dorsey & Whitney LLP 50 South Sixth Street, Suite 1500 Minneapolis, MN 55402-1498	Date and Time January 21, 2009 at 8:30 a.m.
--	--

- You are commanded to produce and permit inspection and copying of the listed documents or objects at the place, date and time specified below (attach list of documents or objects if necessary): See attached Schedule A

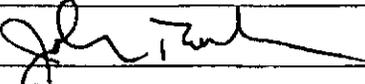
Place Attn: John Rock Dorsey & Whitney LLP 50 South Sixth Street, Suite 1500 Minneapolis, MN 55402	Date and Time As soon as possible, but no later than Tuesday, January 20, 2009 at 12:00 p.m.
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- You are commanded to permit inspection of the following premises at the date and time specified below.

Premises	Date and Time
----------	---------------

rec'd 1/16/09
PHK
9:03 am

NOTE: FAILURE TO OBEY A SUBPOENA WITHOUT BEING EXCUSED IS A CONTEMPT OF COURT.

 Signature of Contestants' Attorney	January 15, 2009 Date
John Rock Dorsey & Whitney LLP 50 South Sixth Street, Suite 1500 Minneapolis, MN 55402 612-340-2600 Name, Address and Phone Number (if issued by Attorney as an Officer of the Court)	SEAL (if issued by Court Administration)

RETURN OF SERVICE

State of Minnesota

County of _____

I hereby certify and return that on _____ I served a copy of this subpoena upon the person named thereon. Service was made by:

- personally handing to and leaving with him or her a true and correct copy; or
- leaving a true and correct copy at his or her usual place of residence

Address

with _____ a person of suitable age and discretion.
Name of Person

NOTARY STAMP, SIGNATURE AND DATE
Subscribed and Sworn/Affirmed to before me on

_____, 20____

Date _____

By _____

Title _____

NOTE: If served by someone other than a Law Enforcement Officer, signature must be notarized.

Rule 45, Minnesota Rules of Civil Procedure, provides that:

- A subpoena may be served by any person who is not a party and is not less than 18 years of age.
- Service of a subpoena shall be made by delivering a copy to the person named in the subpoena or by leaving a copy at the person's usual place of abode with some person of suitable age and discretion who resides there.
- A witness who is not a party to the action or an employee of a party (except a person appointed pursuant to Rule 30.02(f) and who is required to give testimony or produce documents relating to a profession, business, or trade, or relating to knowledge, information, or facts obtained as a result of activities in such profession, business, or trade, is entitled to reasonable compensation for the time and expense involved in preparing for and giving such testimony or producing such documents and is entitled to have the amount of those expenses determined prior to complying with the subpoena.
- A person is not obligated to attend as a witness in a civil case unless one day's attendance and travel fees are paid or tendered in advance (see fees below), unless the subpoena is issued on behalf of the state of Minnesota, or the state's officer or agent.

Fees to be paid to witnesses shall be as follows (Minn. Stat. § 357.22):

- For attending in any action or proceeding in any court of record or before any officer, person or board authorized the take examination of witnesses, \$20 for each day.
- For roundtrip travel estimated from the witness's residence at 28 cents per mile. If a witness lives outside the state, travel costs shall be estimated from the boundary line of the state where the witness crossed into Minnesota at 28 cents per mile. (Additional fees may be available for out of state witnesses).

In any proceeding where a parent or guardian attends the proceeding with a minor witness and the parent or guardian is not a witness, one parent or guardian shall be compensated in those cases where witness compensation is mandatory under Minn. State. § 357.22, and may be compensated when compensation is discretionary under those sections. No more than a combined total of \$60 may be awarded to the parent or guardian and minor witness. Minn. Stat. § 357.242.

SCHEDULE A

I. INSTRUCTIONS

1. In responding to these requests, you shall produce all responsive documents which are in your possession, custody or control, or in the possession, custody or control of your agents, employees, attorneys, accountants or other representatives. A document shall be deemed to be within your control if you have the right to secure the document or a copy of the document from another person having possession or custody of the document.

2. Pursuant to the Minnesota Rules of Civil Procedure, you are to produce complete copies of the documents as they are kept in the usual course of business. Contestants also reserve the right, pursuant to the Minnesota Rules of Civil Procedure, to inspect and copy *original* documents as they are kept in the usual course of business at a later date. All non-identical copies which differ from the original or from the other copies produced for any reason, including, but not limited to, the making of notes thereon, are to be produced.

3. If any responsive document was, but is no longer in your possession or subject to your control, state whether it is: (a) missing or lost; (b) destroyed; (c) transferred voluntarily or involuntarily to others; or (d) otherwise disposed of, and in each instance identify the name and address of its current or last known custodian, and the circumstances surrounding such disposition.

4. If any document responsive to these requests is withheld under a claim of privilege or upon any other ground, as to each such document, identify the privilege being asserted and provide the following information in sufficient detail to permit the Court to rule on your claim:

(a) the date, author, primary addressee and secondary addressees or persons copied, including the relationship of those persons to the client and/or author of the document;

(b) a brief description sufficient to identify the type, subject matter and purpose of the document;

(c) all persons to whom its contents have been disclosed; and

(d) the party who is asserting the privilege.

5. If a portion of any document responsive to these requests is withheld under the claim or privilege pursuant to Instruction 4, any non-privileged portion of such document must be produced with the portion claimed to be relevant or responsive to the request.

6. In responding to these requests, you shall produce all responsive documents available at the time of production.

7. You are to produce each document requested herein in its entirety without deletion or excision (except as qualified by the preceding Instructions concerning privilege) regardless of whether you consider the entire document to be relevant or responsive to the request.

8. Where a document is not produced in full or is produced in redacted form, so indicate on the document, state with particularity the reason it is not being produced in full, and describe to the best of your knowledge, information and belief, and with as much particularity as possible, those portions of the document which are not being produced or are being redacted.

II. DEFINITIONS

Unless otherwise stated, the terms set forth below are defined as follows:

1. "Election" refers to the election for the office of United States Senator from the State of Minnesota held on November 4, 2008 ("Election Day").

2. "Absentee ballots" includes ballots sent to individuals who indicated that they could not vote in person on Election Day, including individuals serving in the military, and specifically includes UOCAVA ballots.

3. "All" shall include the term "each" and vice-versa, as necessary to bring within the scope of the request all responses that might otherwise be construed to be outside the scope of the request.

4. "Document" or "documents" is intended to have the broadest possible meaning under Rule 34.01 of the Minnesota Rules of Civil Procedure and includes, without limitation, any form, application, writing, drawing, graph, chart, photography, phonorecord, electronic data or digitally encoded data, database, graphic, and/or other data compilations from which information can be obtained, translated if necessary, by the respondent through detection devices into reasonably usable form, or other information, including originals, translations and drafts thereof and all copies bearing notations and marks not found on the original.

5. "And" and "or." The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the request all responses that might otherwise be construed to be outside of the scope of the request.

6. "Including" means including but not limited to.

7. "You" or "Your" refers to the person or entity responding to these requests.

III. RELEVANT TIME PERIOD

All requests herein refer to all documents and information that relate to the November 4, 2008 Election, even though prepared, documented, completed or published before or after Election Day.

IV. DOCUMENTS REQUESTED

1. All documents (including but not limited to handwritten or typed notes) and correspondence (including but not limited to emails, letters, or electronic messages) drafted by you or any other person that discuss, refer or relate to issues that arose during the 2008 Recount for the Office of United States Senator, including, but not limited to:

- (a) The treatment of duplicate and original ballots.
- (b) The treatment of rejected absentee ballots.

2. All correspondence (including but not limited to emails, letters, or electronic messages) drafted by you or any other person that discuss, refer or relate to issues that arose during the 2008 Recount for the Office of United States Senator, including, but not limited to:

- (a) The Rules adopted for the 2008 Recount.
- (b) Challenged ballots.
- (c) Recount summary statements.
- (d) Recount incident reports.
- (e) Reconciliation of Secretary of State website numbers with recount numbers.