
 NORTH CAROLINA
ADMINISTRATIVE OFFICE
of the COURTS

RESPONDING TO SUBPOENAS


Magistrates' Fall Conference
September 2013



Judicial Immunity


Two prong test to determine whether your actions are protected by judicial immunity:

1. You were acting in your judicial capacity when dealing with the individual who has since filed a lawsuit or has subpoenaed you.
2. At the time you dealt with the individual were you acting within your jurisdiction. *Cole v. Summey*, 329 F. Supp. 2d 591 (2004).

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Judicial Capacity

- Conducting initial appearance
- Issuing criminal process
- Summary ejection
- Small claims
- Issue ex parte order 50B orders

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Testimonial Privilege

If you are entitled to judicial immunity, the immunity includes a "testimonial privilege". *MLC Automotive, LLC v. Town of Southern Pines*, 2007 U.S. Dist. LEXIS 2841 (2007)

Testimonial privilege protects you from being required to testify about your judicial acts and decisions.



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How to Avoid Being Subpoenaed

Do not discuss the matter with parties or their counsel about the case after you have issued a decision or order.

Do not explain your reasoning for a decision.

Be alert to attempts by parties or counsel to "talk with you for a minute about XYZ case".



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What to do When Subpoenaed

Immediately contact Pamela Weaver Best or Amy Funderburk with AOC Legal and Legislative Services.

Send subpoena (and the envelope it arrived in, if available) to Legal and provide Legal with information on how and when you were served.

Describe circumstances that you believe relate to why you are being asked to testify.



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Motions to Quash Subpoenas

AOC Legal Staff consults with the Attorney General's Office about filing a motion to quash the subpoena, so you will not have to testify.

When Motions to Quash will be sought and likely granted

If you entered an order in a case and one of the parties wants you to tell what evidence you heard, the Attorney General's office will move to quash.



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Motions to Quash Subpoenas

When Motions to Quash may not be sought or if sought, why it will likely be denied.

If you are a fact witness and your testimony will **not** relate to your judicial decision.

Ex. Was the defendant bleeding from his nose when you saw him?

The testimonial privilege has been waived by your agreement or actions.



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Motions to Quash Subpoenas

Ex. You have already discussed with the parties or their attorneys why you entered a particular order.

If testimonial privileged was waived, you will have to testify.



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