

depose. Mot. at 5. JM states that on or about that time, it informed IDOT that Mr. Peterson resides out of State and was not a JM employee “yet took no steps in Illinois or Ohio in the following year to make that happen.” *Id.*

In JM’s conclusion, it also requests that I “enter an order clarifying that JM will not be barred from calling Mr. Peterson at hearing or from using documents authored by him at hearing...solely because IDOT does not take or is unable to take his deposition.” Mot. at 6.

IDOT’S Response to Motion to Quash

First, IDOT states that JM has misrepresented facts in its motion where “documents clearly demonstrate that Mr. Peterson has worked in Waukegan for JM for the past 18 years as the company’s sole Resident Site Engineer.” Resp. at 4-5. Second, IDOT states that it has yet to file the return of service because it has not yet received it from Mr. Peterson. Mot. at 5.

IDOT next argues that Mr. Peterson may have documents that IDOT has requested, including “copies of all drafts of your November 2017 Construction Completion Report” and “copies of all other documents related to your November 2017 Construction Completion Report.” *Id.* IDOT alleges that it was not until April 18, 2018, that JM produced a copy of Mr. Peterson’s November 2017 Construction Completion Report. *Id.* IDOT contends that the documents are relevant. *Id.*

Finally, IDOT argues that assuming *arguendo* the out-of-state subpoena is ineffective, the Board or the hearing officer should require JM to make Mr. Peterson available for deposition in Ohio. Mot. at 7. IDOT contends that for there to be a full and complete discovery, IDOT must be allowed to depose Mr. Peterson and allow the parties to address the Board’s concerns found in its December 15, 2016, order. *Id.*

Discussion and Ruling

JM concedes that Mr. Peterson is a non-party, is not an employee of JM nor does JM control Mr. Peterson. Notwithstanding the parties’ silence on the issue of standing, I find that JM lacks standing to file a motion to quash Mr. Peterson’s subpoena.

When the Board’s procedural rules are silent and Board caselaw does not appear to address an issue, I may look elsewhere for guidance. *See generally Pattermann v. Boughton Trucking and Materials*, PCB 99-187 (February 17, 2005)(Board may look to Code of Civil Procedure and Supreme Court Rules where Board’s procedural rules are silent). The Board’s procedural rules are silent on this issue as is Board caselaw. I have not found anything in the Illinois Code of Civil Procedure or the Supreme Court Rules that would assist me in deciding the merits of this issue and the parties have not brought any to my attention.

In Parker v. Four Seasons Hotels, LTD., 291 F.R.D. 181 (N.D. Illinois May 6, 2013), however, a federal court addressed an issue where a party requested the court to quash subpoenas the opposing party issued to non-parties. The movant cited The Federal Rules of Civil Procedure

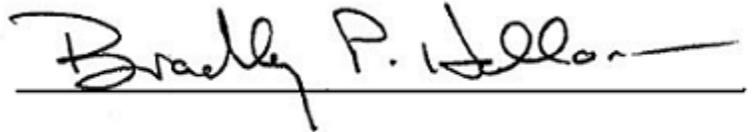
in support. Quoting Kessel v. Cook County, U.S Dist. LEXIS 4185 at 5-6 (N.D. Ill. Mar. 13, 2002), the court found that “[o]rdinarily, a party has no standing to seek to quash a subpoena issued to someone who is not a party to the action unless the party claims some personal right or privilege to the documents sought.” JM has claimed no personal right or privilege.

Finding guidance in this federal court decision, I find that JM has no standing to file a motion to quash Mr. Peterson’s subpoena.

JM also requested that I “enter an order clarifying that JM will not be barred from calling Mr. Peterson at hearing or from using documents authored by him at hearing (which are otherwise admissible) solely because IDOT does not take or is unable to take his deposition.” Mot. at 6. I informed the parties that I am reserving my ruling on JM’s request as it is not ripe. I also implored the parties to make a concerted effort in obtaining Mr. Peterson’s deposition because the alternative may protract this case even more.

The parties or their legal representatives are directed to participate in a telephonic status conference with the hearing officer on June 14, 2018, at 11:30 a.m. The telephonic status conference must be initiated by the complainant, but each party is nonetheless responsible for its own appearance.

IT IS SO ORDERED.

A handwritten signature in black ink that reads "Bradley P. Halloran". The signature is written in a cursive style and is positioned above a solid horizontal line.

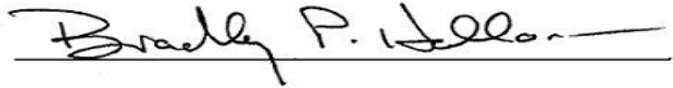
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CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing order were e-mailed on May 8, 2018, to each of the persons on the attached service list.

It is hereby certified that a true copy of the foregoing order was e-mailed to the following on May 8, 2018:

Don Brown
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph St., Ste. 11-500
Chicago, Illinois 60601

A handwritten signature in black ink, reading "Bradley P. Halloran", written over a horizontal line.

Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
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@ Consents to electronic service

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