

**Affidavit of Jennifer M. Robbins regarding the
Subpoena for trial testimony to The Honorable Dulce J. Foster**

1. My name is Jennifer M. Robbins and I am one of the attorneys representing the Defendants in the matter of *United States v. Dornsbach and Kamida Inc.*, Court File 22-CR-00048-DMT (D. Minn.) (the “Dornsbach Matter”).
2. I am over the age of 18 and competent to testify to the matters in this affidavit, which is made based on my personal knowledge.
3. This affidavit is provided in an abundance of caution pursuant to Volume 20 of the Guide to Judiciary Policy and Chapter 8’s information regarding testimony of federal judicial personnel (Guide to Judiciary Policy, Vol. 20, Ch. 8, at § 830(a)) even though Defendants do not believe the regulations apply in the circumstances of this matter. Specifically, “testimony” in the regulations is defined as “[a]ny written or oral statement in any form by a witness arising out of the performance of the witness’ official duties” Guide to Judiciary Policy, Vol. 20, Ch. 8, § 810.30 (defining “testimony”) (underlining added); *id.* § 810.40 (“Applicability . . . (b) These regulations **do not** apply to: . . . (3) Legal proceedings in which federal judicial personnel are to testify while in leave or off-duty status as to matters that do not arise out of the performance of official duties. (**Note:** These regulations do not seek to deny federal judicial personnel access to the courts as citizens in their private capacities on off-duty duty.)”) (bold in original). To be clear, the subpoena to Magistrate Judge Foster does not arise out of the performance of her official duties as a Magistrate Judge. The subpoena, instead,

relates only to testimony arising out of Magistrate Judge Foster's work in private practice (as described below) before she became a Magistrate Judge.

4. In its one-count Indictment in the Dornsbach Matter, the government alleges that Defendants Dornsbach and Kamida conspired with Clarence Olson and "others" to rig bids submitted to four alleged victims over the span of approximately five years. Specifically, the government alleges that Defendants submitted rigged bids to (1) the City of Eden Prairie; (2) the City of Plymouth; (3) Eden Prairie Schools; and (4) Wayzata Public Schools with Clarence Olson, "COMPANY A," and "others" between "at least as early as September 2012 and continuing through at least as late as July 2017." (Doc. 1 at ¶ 2-12 of the Dornsbach Matter.)
5. Olson is the only alleged conspirator identified in the Indictment. (*See id.* at ¶ 9 ("Others, not made defendants in this Indictment, participated as co-conspirators in the offense charged herein and performed acts and made statements in furtherance of the conspiracy.").)
6. While still in private practice at Fredrikson & Byron, P.A., and before becoming a U.S. District Court Magistrate Judge in the District of Minnesota, Magistrate Judge Foster represented Clarence Olson. (*See, e.g., Exhibit 1* (docket from *United States v. Olson*, Court File 21-CR-00172-ECT (D. Minn.) (the "Olson Matter") (showing counsel for Olson); *see also* Doc. 96-2 in the Dornsbach Matter (Hoppe email to Robbins dated 8/22/22) ("Dulce is no longer with the firm, but I have taken over the file from Dulce, and Fredrikson still represents Clarence Olson").)

7. That representation of Olson culminated in an Information against Olson in which the government charged one count of Conspiracy to Restrain Trade under 15 U.S.C. § 1. (Doc. 1 of the Olson Matter.)
8. The following month, the government filed Olson's Plea Agreement and Sentencing Stipulations in which Olson pled guilty to violating 15 U.S.C. § 1 with "COMPANY B" and "INDIVIDUAL B." (Doc. 13 at ¶ 1 in the Olson Matter (capitalization in original).)
9. That same day, September 27, 2021, Olson appeared and pled guilty before Judge Tostrud. (**Exhibit 1**.)
10. The plea agreement confirmed that "Company A" is C. Olson Concrete because it stated that Olson was "employed by COMPANY A" which "engaged in the business of concrete repair and construction." (Doc. 13 at 2, ¶ 2 of the Olson Matter.)
11. At the time of the plea, the Honorable Dulce Foster was representing Olson. (*Id.* at 13 (plea agreement signed by "Dulce J. Foster" as "Counsel for Defendant").)
12. On October 12, 2021, Olson wrote a letter to Judge Tostrud in which he stated that he prepared bids after he "knew that [Defendant Kamida] had already been selected to do the projects, and that [Dornsbach] was asking me to submit a higher bid than his so there would be second bid in the file to meet requirements." (Doc. 49 at ¶ 110 of the Dornsbach Matter.)
13. Olson also acknowledged that he received nothing from Dornsbach for submitting Olson's bids and stated that he submitted his second bid "as a favor to

[Dornsbach] because he was my friend. He did not compensate me for submitting the bids in any way and I did not share in the work.” (*Id.*)

14. The Honorable Dulce Foster was still representing Olson at the time he wrote the above-described letter to the Court. (*See* Doc. 28 of the Olson Matter (showing the “withdrawal of Dulce J. Foster as counsel for Defendant Clarence Olson” and substitution of Lousene Hoppe as Olson’s counsel on May 31, 2022).)

15. Also during the Honorable Dulce Foster’s representation of Olson, she represented the following information to the government, which was provided to counsel for Dornsbach and Kamida in a government disclosure letter:

- Counsel for Clarence Olson indicated her belief that Olson’s memory is poor and his recollection of certain topics is incomplete, not the most reliable, and/or that Olson may have difficulty remembering specifics, including: (1) the specifics regarding the bids Kamida asked Olson to send; (2) conversations, including those that occurred years prior; (3) exact statements made from Dornsbach to Olson regarding the rigged bids; (4) the specifics of which proposals Olson sent and/or faxed to Dornsbach versus those Olson sent and/or faxed directly to the city agency; and (5) the city administrators.
- Counsel for Clarence Olson indicated her understanding that Olson was part of a special education program growing up, and he is not able to read above a sixth-grade level; Olson tended to get confused very easily and he may not be able to follow along with complex topics; Olson does not have clear communication skills.

16. Olson’s memory, and lack thereof, as observed by Magistrate Judge Foster during her representation of Olson, is relevant to Defendants Dornsbach and Kamida’s defenses against the bid-rigging claim for which Olson is the only identified alleged conspirator with Defendants.

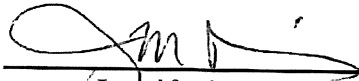
17. Defendants anticipate calling Magistrate Judge Foster, as Olson’s counsel during relevant times, to testify for purposes of impeaching either Olson or his counsel

based on the information provided to the government (summarized above) and the information in his plea agreement or otherwise related to his plea of guilty, including to show that Olson had ulterior motives to plead guilty and his claim that he was not coerced to enter his guilty plea.

18. To date, Defendants have been foreclosed from obtaining any other documents related to the anticipated testimony of Magistrate Judge Foster whether from her former firm, Fredrikson & Byron, or from the government.
19. Even if Defendants' objection to the most recent order regarding these matters was sustained such that Defendants were provided documents from Fredrikson that may touch on the information contained in the government's disclosure letter, quoted above, Defendants still have no way of obtaining the relevant testimony from any person other than Magistrate Judge Foster. In short, the relevant information from Magistrate Judge Foster is not readily available, from any other sources or by any other means.
20. It was on the basis of Defendants' anticipated subpoena to Magistrate Judge Foster that all U.S. District Judges and U.S. Magistrate Judges of the U.S. District Court for the District of Minnesota were ordered "disqualified from presiding over" this matter. (Doc. 98 ("Disqualification Order") of the Dornsbach Matter (stating "Because criminal case number 22-cr-48 ECT/ECW involves U.S. Magistrate Judge Dulce J. Foster as a potential trial witness, it is hereby determined that all U.S. District Judges and U.S. Magistrate Judges of the above Court are disqualified from presiding over the matter.")).

FURTHER AFFIANT SAYETH NOT.

I affirm, under penalty of perjury, that the foregoing is true and correct.

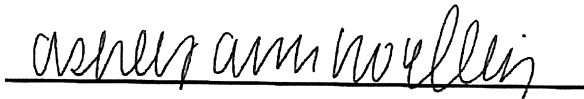


Jennifer M. Robbins

3-27-23

Date

Affirmed to and subscribed before me on
This the 27 day of MARCH, 2023.



Notary Signature



EXHIBIT 1

0:21cr172, USA v. Olson

US District Court Criminal Docket
United States District Court, Minnesota
(DMN)

This case was retrieved on 03/16/2023

Header

Date Filed: 08/11/2021
Other Docket: None

Class Code: Open
Closed:

Participants

Defendant

Name

Clarence Olson

Attorneys

Lousene M Hoppe
LEAD ATTORNEY;ATTORNEY TO BE NOTICED
Fredrikson & Byron, PA
200 S 6th St Ste 4000
Mpls, MN 55402-1425
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612-492-7402
Fax: 612-492-7077
Designation: Retained

Dulce J Foster
05/31/2022
Fredrikson & Byron, PA
200 S 6th St Ste 4000
Mpls, MN 55402-1425
USA
dfoster@fredlaw.com
612-492-7110 Fax: 612-492-7077 Designation: Retained

Charges

Complaints: none

Pending: 15:1 CONSPIRACY TO RESTRAIN TRADE(1)

Offense Level (Opening): Felony

Terminated: none

Case Assigned To: Judge Eric C. Tostrud

Disposition

U.S. Attorneys

Jennifer Robbins

0:21cr172, USA v. Olson

Sandra Talbott

LEAD ATTORNEY; ATTORNEY TO BE NOTICED

DOJ-Atr

Antitrust Division 209 S. LaSalle Ste 600

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Jonathan A. Clow

09/01/2021

DOJ-USAO

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314-539-7650

Designation: Retained

Mary T. McCarthy

10/07/2022

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Designation: Retained

Proceedings

#	Date	Proceeding Text	Source
1	08/11/2021	FELONY INFORMATION by USA's Jonathan Clow, Mary T. McCarthy, and Sandra Talbott as to Clarence Olson (1) count 1 assigned to Judge Eric C. Tostrud (KDS) Document QC'd on 8/11/2021 (KDS). (Entered: 08/11/2021)	
2	08/11/2021	Defendant Information Sheet as to Clarence Olson. (Attachments: # 1 Cover Letter) (KDS) Document QC'd on 8/11/2021 (KDS). (Entered: 08/11/2021)	
3	08/18/2021	(Text-Only) NOTICE to Judge Eric C. Tostrud: I have met with my client. Clarence Olson consents to a Video Conference for a Plea Agreement Hearing. (Foster, Dulce) (Entered: 08/18/2021)	
4	08/19/2021	FILED IN ERROR - WILL BE RE-FILED. Summons Issued in case as to Clarence Olson. Arraignment, Initial Appearance, and Plea Agreement Hearing set for 9/27/2021 at 10:00 AM via Video	

Jennifer Robbins

0:21cr172, USA v. Olson

#	Date	Proceeding Text	Source
		Conference (no courtroom) before Judge Eric C. Tostrud. (KDS) Modified text on 8/20/2021 (KDS). (Entered: 08/19/2021)	
5	08/20/2021	Summons Issued in case as to Clarence Olson. Arraignment, Initial Appearance, and Plea Agreement Hearing set for 9/27/2021 at 10:00 AM via Video Conference (no courtroom) before Judge Eric C. Tostrud. (KDS) (Entered: 08/20/2021)	
7	09/01/2021	NOTICE OF WITHDRAWAL FROM CASE as to Clarence Olson (Clow, Jonathan) (Entered: 09/01/2021)	
8	09/16/2021	Joint MOTION for CARES Act Findings by USA as to Clarence Olson. (McCarthy, Mary) (Entered: 09/16/2021)	
9	09/16/2021	PROPOSED ORDER TO JUDGE re 8 Joint MOTION for CARES Act Findings by USA as to Clarence Olson (McCarthy, Mary) (Entered: 09/16/2021)	
10	09/17/2021	NOTICE Rule 12.4 Disclosure Statement by USA as to Clarence Olson (Talbot, Sandra) (Entered: 09/17/2021)	
11	09/27/2021	Minute Entry for proceedings held before Judge Eric C. Tostrud: Initial appearance, arraignment and plea hearing as to Clarence Olson (1) on Count 1 of the Information held on 9/27/2021. (Court Reporter Tim Willette) (RMM) (Entered: 09/27/2021)	
12	09/27/2021	WAIVER OF INDICTMENT by Clarence Olson. (lmb) (Entered: 09/27/2021)	
13	09/27/2021	PLEA AGREEMENT as to Clarence Olson. (lmb) (Entered: 09/27/2021)	
14	09/27/2021	ORDER Setting Conditions of Release as to Clarence Olson. Signed by Judge Eric C. Tostrud on 9/27/2021. (lmb) (Entered: 09/27/2021)	
15	09/27/2021	DOCUMENT FILED IN ERROR-WILL REFILE. Appearance Bond Entered as to Clarence Olson. Signed by Judge Eric C. Tostrud on 9/27/2021. (lmb) Modified text on 9/29/2021 (lmb). (Entered: 09/27/2021)	
17	09/27/2021	Appearance Bond Entered as to Clarence Olson. Signed by Judge Eric C. Tostrud on 9/27/2021. (lmb) (Entered: 09/29/2021)	
16	09/28/2021	TRANSCRIPT REQUEST for an Expedited 14-Day Transcript of 11 Order on Motion for Miscellaneous Relief, Arraignment, Change of Plea Hearing and Plea Entered, Initial Appearance to Court Reporter Tim Willette. (JGK) (Entered: 09/28/2021)	
18	11/15/2021	Letter to the Court re: Preliminary Notice as to Clarence Olson. (GMS) (Entered: 11/15/2021)	
19	11/15/2021	PRELIMINARY PRESENTENCE REPORT as to Clarence Olson (Restricted Document). (GMS) (Entered: 11/15/2021)	
23	12/03/2021	TRANSCRIPT REQUEST for a 30-Day Transcript of 11 Order on Motion for Miscellaneous Relief, Arraignment, Change of Plea Hearing and Plea Entered, Initial Appearance to Court Reporter Tim Willette. (Barry, Kaitlyn) (Entered: 12/03/2021)	
24	01/13/2022	TRANSCRIPT of Initial Appearance, Arraignment, and Plea to Information held on 9/27/2021 before Judge Eric C. Tostrud as to Clarence Olson. (38 pages). Court Reporter: Tim Willette. For a copy of the transcript, please file a Transcript Request under Other Filings/Other Documents. Parties have 7 days to file a Notice of Intent to Request Redaction. In accordance with Judicial Conference policy and Local Rule 80.1, the transcript may be released and made remotely electronically available to the public in 90 days. For further information on redaction procedures, please review Local Rule 5.5 and Case Information > Transcripts, Court Reporters and Digital Audio Recordings. Notice Intent/No Intent to Request Redactions due 1/20/2022. Redaction Request due 2/3/2022. Redacted Transcript Deadline set for 2/14/2022. Release of Transcript Restriction set for 4/13/2022. (TJW)	

0:21cr172, USA v. Olson

#	Date	Proceeding Text	Source
		(Entered: 01/13/2022)	
25	01/18/2022	EXPEDITED DAILY TRANSCRIPT SERVICES REQUEST to Court Reporter Tim Willette. (Foster, Dulce) (Entered: 01/18/2022)	
26	01/20/2022	NOTICE THAT NO REDACTION IS REQUIRED by Clarence Olson re 24 Transcript,,,, . Attn: Court Reporter Tim Willette. (Foster, Dulce) (Entered: 01/20/2022)	
27	03/14/2022	TRANSCRIPT REQUEST for a 30-Day Transcript for a COPY OF 24 Transcript(s) to Court Reporter Tim Willette. (JGK) (Entered: 03/14/2022)	
28	05/31/2022	NOTICE OF ATTORNEY SUBSTITUTION for Clarence Olson. (Foster, Dulce) (Entered: 05/31/2022)	
29	10/07/2022	NOTICE OF WITHDRAWAL FROM CASE as to Clarence Olson (McCarthy, Mary) (Entered: 10/07/2022)	

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UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

United States of America,

Court File No. 22-cr-48 (DMT)

Plaintiff,

v.

**NOTICE OF MOTION AND
MOTION TO QUASH SUBPOENA**

Steven Dornsbach and Kamida, Inc.,

Defendants.

PLEASE TAKE NOTICE that United States Magistrate Judge Dulce J. Foster, by and through her counsel, moves the Court for an Order Quashing the Subpoena attached hereto as **Exhibit A**, pursuant to Federal Rule of Criminal Procedure 17(c).

This motion is based upon the accompanying memorandum of law, as well as the arguments of counsel at any hearing and all the files, records, and proceedings herein.

Dated: April 21, 2023

Jon M. Hopeman (#0047065)
Hopeman Law LLC
333 S. Seventh Street
Suite 3020
Minneapolis, MN 55402
(612) 326-0656 (office)
(612) 840-5480 (cell)

*Attorney for United States Magistrate Judge
Dulce J. Foster*

AO 89 (Rev. 08/09) Subpoena to Testify at a Hearing or Trial in a Criminal Case

UNITED STATES DISTRICT COURT

for the

District of Minnesota

United States of America)

v.)

STEVEN DORNSBACH; KAMIDA, INC.)
Defendant)

Case No. 22-CR-00048

SUBPOENA TO TESTIFY AT A HEARING OR TRIAL IN A CRIMINAL CASE

To: MAGISTRATE JUDGE DULCE J. FOSTER

YOU ARE COMMANDED to appear in the United States district court at the time, date, and place shown below to testify in this criminal case. When you arrive, you must remain at the court until the judge or a court officer allows you to leave.

Place of Appearance: WARREN E. BURGER 310 ROBERT ST. N. COURTHOUSE ST. PAUL, MN 55101	Courtroom No.: EDWARD J. DEVITT
	Date and Time: MAY 1, 2023; 9:30 AM CST

You must also bring with you the following documents, electronically stored information, or objects (blank if not applicable):

(SEAL)

Date: 3-20-23

CLERK OF COURT

Kate M. Fogarty

Signature of Clerk or Deputy Clerk

The name, address, e-mail, and telephone number of the attorney representing (name of party) STEVEN DORNSBACH; KAMIDA, INC., who requests this subpoena, are:

CHRISTOPHER W. MADEL
JENNIFER M. ROBBINS
800 PENCE BUILDING
800 HENNEPIN AVENUE
MINNEAPOLIS, MN 55403
612-605-0630

CMADEL@MADELLAW.COM
JROBBINS@MADELLAW.COM

AO 89 (Rev. 08/09) Subpoena to Testify at a Hearing or Trial in a Criminal Case (Page 2)

Case No. _____

PROOF OF SERVICE

This subpoena for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I served the subpoena by delivering a copy to the named person as follows: _____
_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____
_____.

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

MADEL PA

800 PENCE BUILDING
800 HENNEPIN AVENUE
MINNEAPOLIS, MINNESOTA 55403
(612) 605-0630
WWW.MADELLAW.COM

CHRISTOPHER W. MADEL
DIRECT DIAL
(612) 605-6601
CMADEL@MADELLAW.COM

March 31, 2023

Magistrate Judge Dulce J. Foster
United States District Court
300 South Fourth Street
Minneapolis, MN 55415

Via Email

Re: *United States of America v. Steven Dornsbach and Kamida, Inc.*
Case No. 22-CR-00048

Dear Magistrate Judge Foster,

The above-captioned case has been set for trial starting on May 1, 2023 and we will be potentially calling you as a witness. Trial will likely last 10 days. Enclosed with this letter is a trial subpoena set for the first day of trial, and we will work with you as trial approaches on your specific testimony dates.

Please give me or Jennifer Robbins a call at your earliest convenience at 612-605-0630 or via email at cmadel@madellaw.com and jrobbins@madellaw.com

Very truly yours,

/s/ Christopher W. Madel

Christopher W. Madel

Enclosures

Exhibit A