



STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2022 CA 1133

Consolidated With

NO. 2023 CA 0059

JEFF HUGHES

VERSUS

CAPITAL CITY PRESS, L.L.C., D/B/A THE ADVOCATE

Judgment Rendered: JUN 02 2023

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On Appeal from the
18th Judicial District Court
Parish of Iberville, State of Louisiana
Trial Court No. 79,978

The Honorable J. Kevin Kimball, Judge Presiding

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Richard C. Stanley
Eva J. Dossier
New Orleans, Louisiana

Attorneys for Nonparty-Appellee,
Judiciary Commission of Louisiana

Scott L. Sternberg
M. Suzanne Montero
Michael S. Finkelstein
Graham Williams
New Orleans, Louisiana

Attorneys for Defendant-Appellant,
Capital City Press, L.L.C.,
d/b/a The Advocate

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BEFORE: WOLFE, MILLER, AND GREENE, JJ.

WOLFE, J.

These consolidated appeals arise out of a defamation action brought by the plaintiff, Jefferson Davis Hughes, III (“Justice Hughes”). The defendant, Capital City Press, L.L.C., d/b/a *The Advocate* (“*The Advocate*”), challenges two district court rulings concerning pretrial discovery motions involving the Judiciary Commission of Louisiana (“the Commission”), a nonparty appellee. For the following reasons, we affirm one of the related district court judgments and dismiss the other as moot.¹

FACTS AND PROCEDURAL HISTORY²

In 2013, Justice Hughes was elected and is currently serving as an Associate Justice of the Louisiana Supreme Court. Prior to his election to the supreme court, Justice Hughes was a judge at the Louisiana First Circuit Court of Appeal and, before that, he was a district court judge at the 21st Judicial District Court for Livingston, St. Helena, and Tangipahoa Parishes. *The Advocate* published an article in its daily Baton Rouge newspaper on June 25, 2019, about Justice Hughes’s actions while he was the presiding district court judge over a child custody case in 1998 and 1999, and his romantic relationship with an attorney who had appeared before him at the district court. *The Advocate’s* journalists also discovered and reported on three apology letters purportedly written by Justice Hughes to litigants who had appeared before him on matters that were interwoven with the child custody case.

On June 23, 2020, Justice Hughes filed a defamation action against *The Advocate*, alleging that *The Advocate* published a series of articles in 2019 that were

¹ Each of the judgments mistakenly identify the year as 2021; however, the records in each appeal clearly reflect that the hearings occurred in 2022 and the judgments were rendered and signed in 2022. We will reference the correct date for each judgment throughout this opinion.

² This opinion summarizes the facts and procedural history of the underlying lawsuit. A more thorough recitation of the background of the defamation action is outlined in our prior opinion, **Hughes v. Capital City Press, L.L.C.**, 2021-0201 (La. App. 1st Cir. 12/7/21), 332 So.3d 1198, writ denied, 2022-00023 (La. 2/22/22), 333 So.3d 444.

designed to cast him in a negative light. Justice Hughes specifically alleged that the June 25, 2019 article contained false and defamatory language and that *The Advocate* article was published with a reckless disregard for the truth and actual malice. Justice Hughes further alleged, as an elected public official, he suffered embarrassment and damage to his reputation due to *The Advocate's* publication of the defamatory articles.

The Advocate filed an answer to the defamation suit on August 5, 2020, raising several affirmative defenses asserting that Justice Hughes could not prove that the published articles are false or that he suffered any damage as a result of *The Advocate's* publication of the articles. As the lawsuit progressed, *The Advocate* sought discovery related to possible investigations by the Commission and any correlation with the apology letters written by Justice Hughes. In connection with this discovery, *The Advocate* requested that a subpoena *duces tecum* be issued to the Commission, a nonparty to the underlying defamation suit. The subpoena sought production of any document in the custody of the Commission that was related to Justice Hughes over a thirty-two-year period from 1990 to 2022. In response, the Commission filed a motion to quash the subpoena as overly broad and burdensome, and cited Louisiana law requiring the Commission to maintain the confidentiality of all of its documents. *The Advocate* opposed the motion to quash. After a hearing on June 1, 2022, the district court adopted the Commission's memoranda as reasons and ruled in favor of the Commission, granting the motion to quash and assessing costs to *The Advocate*. A judgment was signed on June 13, 2022, and *The Advocate* appealed; that appeal bears docket number 2022 CA 1133.

The Advocate then filed two separate motions to seek discovery pursuant to La. Code Evid. arts. 508 and 519, from all of the Louisiana Supreme Court Justices, as well as the Commission. The nonparty justices and the Commission filed oppositions to *The Advocate's* motions. Another hearing was held on August 3,

2022, after which the district court ruled in favor of the nonparty justices and the Commission, denying *The Advocate's* discovery motions concerning the Commission as moot, for the oral reasons assigned at the two hearings, in a judgment dated September 21, 2022. *The Advocate* appealed from that judgment as well, which was lodged in this court as docket number 2023 CA 0059. On March 13, 2023, this court granted *The Advocate's* motion to consolidate the related appeals, 2022 CA 1133 (motion to quash subpoena) and 2023 CA 0059 (hearing on pretrial discovery motion), arising out of the same district court number and involving the same parties, nonparties, facts, and circumstances.³ We will address each district court ruling separately.

MOTION TO QUASH SUBPOENA

The basic premise of *The Advocate's* appeal in docket number 2022 CA 1133 is that the confidentiality surrounding the Commission's investigations and documents does not preclude discovery of pertinent evidence necessary to the defense asserted by a party. *The Advocate* also maintains that any doubt about the production of confidential documents should be resolved in favor of the public's right to see the documents. The Commission insists that it has a mandatory obligation pursuant to Louisiana law to maintain the confidentiality of its documents and privilege of its proceedings, which is the basis for its motion to quash.

Appellate courts review a district court's ruling on a motion to quash concerning a subpoena *duces tecum* under an abuse of discretion standard. **Jimmy's Discount Meat Market, Inc. v. DiMarco Five, LLC**, 2021-178 (La. App. 5th Cir. 5/18/22), ___ So.3d ___, ___, 2022 WL 1564525, *5; **McMaster v. Union Carbide Corp.**, 2019-0592 (La. App. 4th Cir. 7/18/19), ___ So.3d ___, ___, 2019 WL

³ *The Advocate* may appeal these limited judgments as they resolve all issues surrounding discovery of confidential information from a nonparty. See **Green v. Canal Ins. Co.**, 2022-0384 (La. App. 4th Cir. 11/14/22), 352 So.3d 99, 102 (noting that a judgment on a motion to quash a deposition subpoena of a nonparty is a "final and appealable judgment").

3243992, *1. Further, a district court has broad discretion in ruling on discovery matters, which will not be disturbed on appeal absent a clear showing of abuse of that discretion. **Bell v. Treasure Chest Casino, LLC**, 2006-1538 (La. 2/22/07), 950 So.2d 654, 656; **Porter v. Baton Rouge Police Dept.**, 2016-0625 (La. App. 1st Cir. 4/12/17), 218 So.3d 150, 157. Additionally, the district court in its discretion may vacate or modify the subpoena *duces tecum* request if it is unreasonable or oppressive. La. Code Civ. P. art. 1354(A). The subpoena request must be limited to information that is relevant or necessary to the case before the court. See Lee v. USAA Cas. Ins. Co., 540 So.2d 1083, 1087 (La. App. 1st Cir.), writs denied, 542 So.2d 514 & 515 (La. 1989); **Bank of New Orleans and Trust Co. v. Reed Printing & Custom Graphics, Ltd.**, 399 So.2d 1260, 1261 (La. App. 4th Cir. 1981).

The Louisiana Constitution created the Commission to handle allegations of misconduct involving state court judges, to investigate disciplinary cases within the judiciary, and to recommend disciplinary actions to the state supreme court. See La. Const. Art. V, § 25(C); **In re Whitaker**, 463 So.2d 1291, 1296 (La. 1985). The Constitution provides that the state supreme court has rule-making authority to implement Section 25, including rules “providing for confidentiality and privilege of [C]ommission proceedings.” La. Const. Art. V, § 25(C). Under those rules, all documents filed with, and evidence and proceedings before the Commission are confidential, unless the Commission files disciplinary proceedings before the supreme court. La. S. Ct. Rule XXIII, § 23(a)(1).⁴ However, even if the Commission files a notice of hearing, pre-hearing status conferences, deliberations of the Commission, and the Commission’s internal papers and correspondence shall

⁴ Commission proceedings in which a notice of hearing was filed before May 1, 2020, are governed by the rules in place prior to that date. Prior to that date, Commission proceedings were confidential unless the Commission filed a recommendation of discipline with the supreme court. See Rule XXIII, § 23(a)(1).

remain confidential. **Id.** If there is no notice of hearing filed, all documents and evidence of the Commission remain confidential. See La. S. Ct. Rule XXIII, § 23(a)(2).

Similarly, the Louisiana Public Records Law, codified at La. R.S. 44:1, *et seq.*, specifically exempts from disclosure Commission investigations that do not result in disciplinary recommendations. See La. R.S. 44:10 (“All documents filed with, and evidence and proceedings before the [C]ommission are confidential. The record filed by the [C]ommission with the supreme court and proceedings before the supreme court are not confidential.”) In this case, the Commission argues that the subpoena issued to it requested information that is designated as confidential without identifying any exception to the rule of confidentiality. *The Advocate’s* subpoena sought five categories of information from the Commission:

- (1) Any documents relative to “any investigation” of Justice Hughes from 1990 to present.
- (2) Any documents provided to the Office of Disciplinary Counsel that in “any way” relate to Justice Hughes from 1990 to present.
- (3) Any communication or correspondence to the FBI, U.S. Attorney, and Louisiana Supreme Court that “in any way relate” to Justice Hughes from 1990 to present.
- (4) Any communication or correspondence to or from Justice Hughes “which relate in any way to his service or actions as a member of the judiciary” from 1990 to present.
- (5) Any documents which reflect “any final disposition, recommendations, or consent resolution” with Justice Hughes.

We agree with the Commission that the subpoena seeks information designated as privileged and confidential. When questioned at the hearing before this court, *The Advocate’s* counsel acknowledged that the subpoena request was overly broad but *The Advocate* maintains the district court erred in failing to analyze the relevancy of the items requested in the subpoena or to modify the subpoena. However, because the Louisiana Constitution clearly prohibits the production of the

documents requested, and *The Advocate* failed to identify any exception that would allow the alleged documents to be produced, we find no error or abuse of the district court's broad discretion in the June 13, 2022 judgment quashing the unreasonable and oppressive subpoena *duces tecum*, rather than modifying it in some way. See La. Code Civ. P. art. 1354(A). Furthermore, we find no abuse of discretion in the district court's assessment of costs against *The Advocate* in that judgment.

HEARING ON PRETRIAL DISCOVERY MOTION

The Advocate's related appeal in docket number 2023 CA 0059 concerns the action taken by *The Advocate* after the subpoena *duces tecum* was quashed. On July 28, 2022, *The Advocate* filed a motion seeking discovery from the nonparty Commission pursuant to La. Code Evid. arts. 508 and/or 519, as suggested by the Commission at the motion to quash hearing. *The Advocate* also sought discovery from each of the sitting Justices of the Louisiana Supreme Court, and the district court denied that motion after a hearing on August 3, 2022. *The Advocate* did not appeal that particular ruling. However, regarding the motion seeking discovery from the Commission, *The Advocate* basically re-urged the same arguments as to why it was entitled to the discovery. The district court denied *The Advocate's* July 28, 2022 discovery motion as moot in a judgment signed September 21, 2022, and *The Advocate* appealed.

An issue is "moot" when a judgment or decree on that issue has been "deprived of practical significance" or "made abstract or purely academic." **Cat's Meow, Inc. v. City of New Orleans Through Dept. of Finance**, 98-0601 (La. 10/20/98), 720 So.2d 1186, 1193. Herein, we find that the issue of whether *The Advocate* may discover confidential documents that may or may not be in the possession of the Commission was rendered moot by the district court's judgment quashing *The Advocate's* subpoena *duces tecum* seeking the same information. We find no merit to *The Advocate's* argument that it is entitled to another contradictory

hearing on its discovery motion. The record reveals that the confidentiality of the requested documents was the subject of a contradictory hearing when the district court ruled on the Commission's motion to quash. An additional hearing concerning whether *The Advocate* is permitted to obtain confidential documents from the Commission prior to a subpoena being issued to the Commission can serve no useful purpose or have any practical effect, and would thus constitute an advisory opinion. The district court has already ruled that *The Advocate* is not entitled to the confidential documents and this court has found no error in that ruling. It is well-settled that courts will not decide abstract, hypothetical or moot controversies, or render advisory opinions with respect to such controversies. **Cat's Meow, Inc.**, 302 So.3d at 1193. Moreover, if the case is moot, then there is no subject matter on which the judgment of the court can operate. **Id.** As we have determined that the issues raised by *The Advocate* in the appeal of docket number 2023 CA 0059 and the district court's ruling thereon have been rendered moot, we dismiss that appeal.

CONCLUSION

For the assigned reasons, we affirm the district court's June 13, 2022, judgment at issue in appeal docket number 2022 CA 1133 and we dismiss the appeal in docket number 2023 CA 0059 as moot. All costs of these consolidated appeals are assessed to the defendant/appellant, Capital City Press, L.L.C., d/b/a *The Advocate*.

**APPEAL 2022 CA 1133 AFFIRMED; APPEAL 2023 CA 0059
DISMISSED AS MOOT.**