

Feb 20 2026

S.C. SUPREME COURT

No. \_\_\_\_\_

---

---

**The Supreme Court of the State of South Carolina**

---

CHRISTOPHER E. MILLS; SPERO LAW LLC,  
PETITIONERS,

v.

ACTING CIRCUIT JUDGE JEAN H. TOAL,  
RICHLAND COUNTY CIRCUIT COURT,  
RESPONDENT.

---

**PETITION FOR WRIT OF PROHIBITION  
AND EMERGENCY MOTION FOR ADMINISTRATIVE STAY  
IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT  
(Expedited Consideration Requested)**

---

Kelly Calder Mowen  
(S.C. Bar No. 107350)  
ORNDORFF MOWEN PLLC  
135 Corporate Center Dr. #524  
Scott Depot, WV 25560  
(866) 481-2765  
Kelly.Mowen@om-pllc.com

Christopher E. Mills  
(S.C. Bar No. 101050)  
SPERO LAW LLC  
557 East Bay Street #22251  
Charleston, SC 29413  
(843) 606-0640  
cmills@spero.law

Counsel for Petitioners

---

---

**TABLE OF CONTENTS**

	<b>Page</b>
Table of Authorities .....	ii
Introduction.....	1
Statement of the Case.....	4
A.    Rule 45 protects non-party subpoena recipients. ....	4
B.    After the U.S. Supreme Court denied certiorari, opposing counsel issued a subpoena on Petitioners for litigation documents. ....	6
C.    Petitioners timely moved to quash in Charleston. ....	8
D.    Opposing counsel emailed Acting Circuit Judge Toal, who ordered that “Atlas Turner’s Motion to Quash” be heard in Richland. ....	8
E.    Petitioners timely informed the Charleston court, but the Richland judge ordered it to stand down.....	9
Legal Standard .....	12
Argument .....	13
I.    The Richland County Circuit Court lacks jurisdiction. ....	13
A.    The Richland court lacks jurisdiction over the motions to quash. ....	13
B.    The Richland court also lacked jurisdiction to issue a subpoena.....	14
C.    The asbestos litigation assignment does not alter Rule 45(c)(3)(A). ....	16
II.   Forcing Petitioners to adjudicate in Richland eviscerates Rule 45’s protections and imposes irreparable injury. ....	17
III.  Petitioners otherwise lack adequate means to protect their rights. ....	18
Conclusion .....	21

**TABLE OF AUTHORITIES**

	<b>Page(s)</b>
<b>CASES</b>	
<i>Andrews v. Sumter Com. &amp; Real Est. Co.</i> , 87 S.C. 301, 69 S.E. 604 (1910) .....	21
<i>Arnal v. Fraser</i> , 371 S.C. 512, 641 S.E.2d 419 (2007).....	16
<i>Dyar v. Georgia Power Co.</i> , 173 S.C. 527, 176 S.E. 711 (1934).....	20
<i>Evans v. Town of Edgefield</i> , 132 S.C. 380, 129 S.E. 207 (1925) .....	13
<i>Ex parte Smith</i> , 407 S.C. 422, 756 S.E.2d 386 (2014).....	3, 19
<i>Hallamore Corp. v. Capco Steel Corp.</i> , 259 F.R.D. 76 (D. Del. 2009).....	15
<i>Holladay v. Hodge</i> , 84 S.C. 91, 65 S.E. 952 (1909).....	12
<i>Hoover v. Hoover</i> , 271 S.C. 177, 246 S.E.2d 179 (1978).....	16
<i>In re Dickey</i> , 395 S.C. 336, 718 S.E.2d 739 (2011).....	6
<i>In re Subpoena Issued to Dennis Friedman</i> , 350 F.3d 65 (2d Cir. 2003).....	20
<i>Jolly v. Gen. Elec. Co.</i> , 435 S.C. 607, 869 S.E.2d 819 (Ct. App. 2021), <i>aff'd sub nom.</i> , <i>Jolly v. Fisher Controls Int'l, LLC</i> , 443 S.C. 511, 905 S.E.2d 380 (2024) .....	4, 18
<i>Liner Freedman Taitelman Cooley, LLP v. Lively</i> , No. 25-MC-289 (LJL), 2025 WL 2205973 (S.D.N.Y. Aug. 4, 2025).....	20
<i>Matter of Fabri</i> , 418 S.C. 384, 793 S.E.2d 306 (2016) .....	5, 20
<i>Matter of Owen</i> , 422 S.C. 16, 809 S.E.2d 231 (2018) .....	20
<i>New S. Life Ins. Co. v. Lindsay</i> , 258 S.C. 198, 187 S.E.2d 794 (1972).....	13
<i>Oncology &amp; Hematology Assocs. of S.C., LLC v. S.C. Dep't of Health &amp; Envtl. Control</i> , 387 S.C. 380, 692 S.E.2d 920 (2010) .....	6
<i>Pamida, Inc. v. E.S. Originals, Inc.</i> , 281 F.3d 726 (8th Cir. 2002) .....	20
<i>Probulk Carriers Ltd. v. Marvel Int'l Mgmt. &amp; Transp.</i> , 180 F. Supp. 3d 290 (S.D.N.Y. 2016) .....	18
<i>State v. Black</i> , 34 S.C. 194, 13 S.E. 361 (1891) .....	13
<i>State v. James</i> , 34 S.C. 49, 12 S.E. 657 (1891).....	19
<i>United States Catholic Conf. v. Abortion Rts. Mobilization, Inc.</i> , 487 U.S. 72 (1988) .....	16
<i>Welch v. Advance Auto Parts, Inc.</i> , 445 S.C. 640, 916 S.E.2d 320 (2025) .....	6, 20
<i>York Holding, Ltd. v. Waid</i> , 345 F.R.D. 626 (D. Nev. 2024) .....	15, 18
<b>CONSTITUTIONAL PROVISIONS</b>	
S.C. Const. art. V, § 5 .....	12

**STATUTES**

S.C. Code Ann. § 14-3-310..... 12

**RULES**

Rule 11, SCRCF..... 8, 12  
Rule 81, SCRCF..... 16  
Rule 245, SCACR..... 12  
Rule 3.4(d), Rule 407, SCACR..... 8, 21

**OTHER AUTHORITIES**

2013 Notes of Advisory Committee, Fed. R. Civ. P. 45 ..... 18  
James F. Flanagan et al., *South Carolina Civil Procedure* § 45.B.2 (4th ed.)..... 14  
Note to Rule 45, SCRCF..... 15, 18  
Note to 1993 Amendment, Rule 45, SCRCF ..... 5, 14, 18  
Note to 1995 Amendment, Rule 45, SCRCF ..... 4

## INTRODUCTION

This case involves an imminent disregard of Rule 45’s protections for a non-party subpoena recipient—here, an attorney and his law firm who were issued a subpoena for parts of their litigation file *by opposing counsel* in the case. South Carolina Rule of Civil Procedure 45(c)(3)(A) protects such non-party subpoena recipients, guaranteeing that they can move in “the court in the county where the non-party resides” to “quash or modify the subpoena.” That is just what Petitioners—located in Charleston—did, when presented with an unprecedented subpoena with a host of facial deficiencies, among them being issued from the wrong court, requiring production and inspection more than 50 miles away, demanding irrelevant communications, and violating fundamental attorney-client and work product privileges. Thus, Petitioners initiated a separate proceeding to quash in the Charleston County Circuit Court, as is their right under the text of Rule 45(c)(3)(A).

The Richland County Circuit Court, however, has now purported to take control of this separate proceeding, ordering “Defendant Atlas Turner”—by which the court apparently means Petitioners, non-party subpoena recipients who represented Atlas Turner at the U.S. Supreme Court and have never appeared in the Richland County Circuit Court proceeding—to argue the motion to quash in that court. That effort plainly violates Rule 45, in at least two respects.

First, Rule 45(c)(3)(A) provides a jurisdictional right for a non-party subpoena recipient to be heard in “the court in the county where the non-party resides.” Rule 45 contains no provision for a transfer of such an action. To the contrary, Rule 45 protects against burdens on the non-party recipient by *mandating* that the court in the recipient’s home county *quash* the subpoena if it requires production and inspection “more than 50 miles” away—as this subpoena does. The Richland County Circuit Court’s purported assumption of jurisdiction thus not only violates the plain

text of Rule 45(c)(3)(A), but it also imposes the precise injury that Rule 45(c)(3)(A) guards against: unreasonably burdening a non-party subpoena recipient.

Second, the Richland County Circuit Court never had jurisdiction to issue the subpoena to Charleston-based Petitioners in the first place. Again, Rule 45 is clear: “a subpoena to a person who is not a party” commanding “production or inspection shall issue from the court for the county in which the non-party resides.” Rule 45(a)(2), SCRCPP. Though the Richland court pointed to an administrative order appointing Acting Circuit Judge Toal to oversee asbestos litigation in South Carolina, that order does not modify the requirements of Rule 45.

Thus, the Richland County Circuit Court lacks jurisdiction over this matter in every respect. It lacks jurisdiction to hear Petitioners’ motion to quash, under Rule 45(c)(3)(A). And it lacks jurisdiction to order Petitioners to do anything, under Rule 45(a)(2). Petitioners have never appeared in Richland County in the proceeding involving Atlas Turner—indeed, they do not even receive docket notifications when that court purports to issue orders about Petitioners’ motion to quash. The Richland County Circuit Court lacks jurisdiction.

This disregard for Rule 45’s protections for non-party subpoena recipients requires this Court’s immediate intervention. Absent a writ of prohibition, Petitioners will be forced to incur the exact irreparable injury that Rule 45(c)(3)(A) guards against: forcing a non-party subpoena recipient to travel outside his home county, halfway across the State, to deal with a subpoena. That subpoena is egregious in its own right, given its utter disregard for attorney privileges and Rule 45(c)(3)(A)’s limitations. But the Court can leave that problem to the only court with jurisdiction: the Charleston County Circuit Court. This Court need only reiterate that Rule 45(c)(3)(A) means what it says.

Petitioners have no other adequate remedy. As soon as the Richland County Circuit Court unilaterally tried to take over the case—prompted by an email from opposing counsel directly to Acting Circuit Judge Toal—Petitioners filed a proper motion in Charleston attaching the Richland order and seeking a hearing to show why Rule 45 precluded this takeover. But Acting Circuit Judge Toal emailed the clerk’s office in Charleston, ordered it to hold the case in abeyance pending a hearing in Richland County, and inexplicably accused Petitioner Mills personally of “trying to pull a fast one.” The Richland County court remained adamant that this matter be heard in Richland County even after opposing counsel finally said they would issue an “amended” subpoena from Charleston and had no objection to the matter being heard there.<sup>1</sup>

This Court’s intervention is needed. Facing an improper non-party subpoena for parts of their litigation file, Petitioners seek only what Rule 45(c)(3)(A) guarantees: a hearing in their home county before a judge sitting in Charleston County. The Richland County Circuit Court lacks jurisdiction over Petitioners’ motion to quash and Petitioners themselves, and allowing that court to impose the precise burdens that Rule 45(c)(3)(A) protect against would irreparably harm Petitioners. This Court has not hesitated to step in to protect attorneys from such non-party subpoenas, and it should do so here. *See Ex parte Smith*, 407 S.C. 422, 423, 756 S.E.2d 386, 386 (2014).

Thus, under Rule 245(b) of the South Carolina Appellate Court Rules, Petitioners hereby seek a Writ of Prohibition to issue in the original jurisdiction of the Supreme Court, prohibiting Acting Circuit Judge Toal in the Richland County Circuit Court from adjudicating Petitioners’

---

<sup>1</sup> Petitioners received an “amended” subpoena on February 15, 2026. Petitioners filed a motion to quash the amended subpoena on February 20, 2026, as the amended subpoena, but for the substitution of “Issued by the Common Pleas Court in the County of Charleston” and a different return date, is substantively the same as the original subpoena. Petitioners have received no indication that the motion to quash the amended subpoena will be heard in Charleston County or provided a hearing date separate from the March 5, 2026, date in Richland County on the motion to quash the original subpoena.

motions to quash. Given the Richland County Circuit Court’s plan to hold a hearing March 5, Petitioners respectfully request an emergency administrative stay of the Richland County Circuit Court’s order setting a hearing on March 5, if necessary to allow this Court to give these important issues adequate consideration.

### **STATEMENT OF THE CASE**

#### **A. Rule 45 protects non-party subpoena recipients.**

Discovery is primarily intended for parties in litigation to exchange relevant information. The South Carolina Rules of Civil Procedure carefully protect the rights of non-parties, stating that “[a] person not a party may be compelled to produce documents or things or submit to an inspection only as provided in Rule 45.” Rule 34(c), SCRPC. Rule 45, in turn, has several “special provisions” that give non-parties meaningful recourse against intrusive subpoenas. *Jolly v. Gen. Elec. Co.*, 435 S.C. 607, 674, 869 S.E.2d 819, 855 (Ct. App. 2021) (quoting Note to 1995 Amendment, Rule 45), *aff’d sub nom., Jolly v. Fisher Controls Int’l, LLC*, 443 S.C. 511, 905 S.E.2d 380 (2024).

*First*, “a subpoena to a person who is not a party or an officer, director or managing agent of a party, commanding attendance at a deposition or production or inspection shall issue from the court for the county in which the non-party resides or is employed or regularly transacts business in person.” Rule 45(a)(2), SCRPC. In other words, only the court in the non-party recipient’s home county has jurisdiction to issue a subpoena for these purposes. So important is this principle that Rule 45 repeats it verbatim in subsections (a)(2) and (b)(2).

*Second*, a non-party subpoena recipient has the right to bring a “timely motion” to “quash or modify the subpoena” in “the court in the county where the non-party resides, is employed or regularly transacts business in person.” Rule 45(c)(3)(A), SCRPC. The Rule carefully distinguishes party subpoenas—which may be considered in “the court by which a subpoena was

issued”—from non-party subpoenas—which are assigned to the court in the recipient’s home county. *Id.*

*Third*, the court in the non-party recipient’s home county “shall quash or modify the subpoena if it:

- (i) fails to allow reasonable time for compliance; or
- (ii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or
- (iii) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or
- (iv) subjects a person to undue burden.”

Rule 45(c)(3)(A), SCRCP. So if a non-party subpoena requires travel more than 50 miles away, the recipient’s home county court *must* quash the subpoena. Attorneys that issue a subpoena in violation of these strictures are subject to sanctions. Rule 45(c)(1), SCRCP.<sup>2</sup>

Together, these provisions delineate extensive procedural rights for non-party subpoena recipients. In the circumstances described, such recipients are *never* required to go more than 50 miles outside their home county, and have the absolute right to move to quash or modify the subpoena in the court in their home county. These protections are intentionally given to non-party subpoena recipients via amendments over time that “enlarged and clarified” “the non-party’s rights.” Note to 1993 Amendment, Rule 45, SCRCP. Indeed, the official Note describes them as “major changes” guaranteeing that any “subpoena for a non-party deposition, production or

---

<sup>2</sup> Further, this Court has affirmed decisions of the Office of Disciplinary Counsel recommending discipline against attorneys who failed to comply with the notice requirements of Rule 45 and certified that they had. *E.g.*, *Matter of Fabri*, 418 S.C. 384, 392, 793 S.E.2d 306, 310 (2016).

inspection [would be] issued by the court in the county where the person resides”—and that “the non-party can object to the subpoena in his home county, if different from the place where the action is pending.” *Id.*

Last, Rule 45’s protections are read in conjunction with Rule 26, which authorizes courts to limit discovery that is unreasonably cumulative or duplicative, intended for annoyance or oppression, or obtainable from a more convenient, less burdensome, or less expensive source. *Oncology & Hematology Assocs. of S.C., LLC v. S.C. Dep’t of Health & Envtl. Control*, 387 S.C. 380, 388, 692 S.E.2d 920, 924–25 (2010); *see also In re Dickey*, 395 S.C. 336, 357–59, 718 S.E.2d 739, 750–51 (2011) (affirming quashing of subpoenas where Rule 45 requirements were not met and testimony was not shown to be necessary or unavailable by other means).

**B. After the U.S. Supreme Court denied certiorari, opposing counsel issued a subpoena on Petitioners for litigation documents.**

Petitioners Christopher E. Mills and Spero Law LLC are an attorney and law firm that served as counsel for Atlas Turner, Inc. in a recent proceeding seeking a petition for certiorari at the U.S. Supreme Court. *Atlas Turner, Inc. v. Welch*, U.S. No. 25-213. That proceeding sought review of one of this Court’s decisions, *Welch v. Advance Auto Parts, Inc.*, 445 S.C. 640, 648, 916 S.E.2d 320, 324 (2025), which stemmed from *Welch v. Advance Auto Parts, Inc., et al.*, No. 2022-CP-40-03834, in the Richland County Court of Common Pleas. Petitioners have never appeared in the Richland County proceeding. Nor are they parties to the underlying dispute, and they have no independent involvement in the facts giving rise to the claims apart from their role as appellate counsel to a defendant.

A few days after the U.S. Supreme Court denied certiorari, around January 21, 2026, counsel for a plaintiff in the Richland County case (*Welch*) caused a subpoena duces tecum to be issued and purportedly served on Petitioners under Rule 45, SCRCP. *See Exhibit A.* The subpoena

commands Petitioners to produce documents and information relating to Atlas Turner’s legal representation, including materials concerning attorney communications, information received about Atlas Turner, and financial and payment-related records of counsel. It demands “any and all communications” between Spero Law LLC and “any third party” relating to Atlas Turner. These demands necessarily encompass any communications with co-defense counsel, consultants, experts, and other participants in a coordinated defense. Even worse, these requests define “third party” as “including, but not limited to any attorney, person or entity not employed by, retained by, or otherwise representing Atlas Turner, Ltd.” If third parties are *not* limited to those “not employed by, retained by, or otherwise representing Atlas Turner, Ltd.,” then the subpoena necessarily encompasses those who *are* “employed by, retained by, or otherwise representing Atlas Turner, Ltd.”<sup>3</sup>

The subpoena states that it was issued out of Richland County and commands Petitioners to produce documents and permit inspection and copying at a location in Columbia, Richland County, South Carolina. *See* Exhibit A. The subpoena identifies the recipient as “Christopher E. Mills; Spero Law, LLC”—a non-party to the *Welch* litigation—and claims service on Christopher E. Mills, principal at Spero, located in Charleston, South Carolina, in Charleston County. Charleston is well in excess of 50 miles from the place in Richland County specified in the subpoena. The subpoena was received on January 28, 2026, with a due date of February 3, 2026, thus requiring a response only six days later after receipt. The subpoena apparently was not served on all parties, as required by Rule 45(a)(4)—even though Welch’s counsel certified on the subpoena that the required notice “has been given to all parties.”

---

<sup>3</sup> Though the subpoena refers to “Atlas Turner, Ltd.,” Petitioners appeared on behalf of Atlas Turner, Inc. in the U.S. Supreme Court.

**C. Petitioners timely moved to quash in Charleston.**

Before the subpoena's return date, Petitioners timely moved to quash in the Charleston County Court of Common Pleas, invoking Rules 45(c)(3) and 26(c), SCRPC. *See Exhibit B.* This filing initiated a new proceeding in Charleston, *In re Christopher E. Mills, Spero Law LLC*, No. 2026-CP-10-00563. The motion explained that the subpoena is defectively issued from the wrong court and also subject to mandatory quashing under Rule 45(c)(3)(A), because it (i) commands production and inspection more than 50 miles from Petitioners' residence, (ii) provides an unreasonably short compliance period of six days, (iii) imposes an undue burden on a non-party attorney without showing of relevance, and (iv) necessarily seeks material protected by the attorney-client privilege, work-product doctrine, and common-interest protections. The motion alternatively sought a protective order under Rule 26(c). And the motion sought sanctions under Rule 45(c)(1), given the subpoena's facial deficiencies and apparent purpose to harass opposing counsel. *See also* Rule 11(a), SCRPC; Rule 3.4(d), Rule 407, SCACR. Petitioners timely supplemented the motion when they obtained information that the subpoena may not have been served on all parties, as Rule 45(a)(4) requires.

**D. Opposing counsel emailed Acting Circuit Judge Toal, who ordered that "Atlas Turner's Motion to Quash" be heard in Richland.**

Rather than respond in the Charleston County action, Welch's counsel sent an email directly to Acting Circuit Judge Toal in the Richland County Circuit Court "asking that you hear this motion"—even though the motion to quash proceeding was properly filed and pending under Rule 45(c)(3)(A) in Charleston County. Fifteen minutes later, Acting Circuit Judge Toal replied: "I will hear this Motion to Quash. Please suggest times for your Response and Mr. Mills Reply. I will set times and hear this matter ASAP." This email correspondence is attached as **Exhibit C.**

On the same day, the Richland County Circuit Court entered an order on the *Welch* docket purporting to schedule a hearing on “Defendant Atlas Turner’s Motion to Quash”—a non-existent motion, as the subpoena was directed at non-party counsel, not Atlas Turner. Consistent with the briefing schedule suggested to the court by Welch’s counsel, the court ordered that “Defendant Atlas Turner’s Reply will be due on February 19, 202[6],” and the matter would be “heard before [Acting Circuit Judge Toal] in the Richland County Judicial Center on March 5, 2026.”<sup>4</sup> That order is attached as **Exhibit D**. Petitioners have never appeared in the Richland County proceeding (much less as a party) and are not subject to any motion there, so they do not even receive docket notifications from that case.

**E. Petitioners timely informed the Charleston court, but the Richland judge ordered it to stand down.**

At this point, Petitioners’ motion to quash remained pending in Charleston, and Welch’s counsel did not notify that court of the Richland County Circuit Court’s order purportedly scheduling “Defendant Atlas Turner’s Motion to Quash” for a hearing. Thus, Petitioners filed an emergency motion seeking a hearing in the Charleston proceeding, attached as **Exhibit E**. That motion explained that the Richland County Circuit Court’s apparent effort to transfer the Charleston proceeding would nullify several of Rule 45’s express jurisdictional limitations related to non-party subpoenas. Indeed, it would subject Petitioners to the precise irreparable injury that Rule 45 guards against: forcing non-party subpoena recipients to undertake the burdens of appearing or asserting their rights far outside their home county.

---

<sup>4</sup> The order states: “I have advised the parties that Plaintiff’s Response to Defendant’s Motion to Quash Plaintiff’s Subpoena will be due on February 12, 2026, and that Defendant Atlas Turner’s Reply will be due on February 19, 202[6].” But the only “advisement” of those dates was Welch’s counsel’s unilateral email suggestion, without consultation with Petitioners. *See* Exhibit C. And again, “Defendant Atlas Turner” is not a party to this non-party subpoena proceeding.

The motion also explained that Rule 45 provides no mechanism for a transfer of a non-party subpoena proceeding outside the recipient's home county. And the motion explained that this Court's order appointing Acting Circuit Judge Toal over asbestos litigation did not affect the county jurisdictional limitations of Rule 45—and that this non-party subpoena proceeding was not an asbestos suit, regardless. The motion argued that “[a]bsent prompt intervention, [Petitioners] will be forced either to violate Rule 45(c)(3)(A) by appearing in an unauthorized forum or to risk adverse consequences for declining to participate in proceedings conducted without jurisdiction.” Exhibit E, at 6. The motion thus requested an emergency hearing.

The clerk's office in Charleston appears to have emailed the emergency motion to Acting Circuit Judge Toal, asking whether “this should be heard by Justice Toal or scheduled with one of our duty judges to make a ruling.” Less than an hour later, Acting Circuit Judge Toal responded—but did not address Rule 45. This email correspondence is attached as **Exhibit F**. In it, Acting Circuit Judge Toal “direct[ed]” the clerk's office to “hold in abeyance any further activity in the Mills v. Welch Matter filed in your Charleston County Circuit Court until I have Conducted the hearings in the Richland case.” Acting Circuit Judge Toal further stated that “Mr. Mills is trying to pull a fast one.”

This statement, by a former Chief Justice of the South Carolina Supreme Court, is hard to understand. Petitioners (and no other party) timely informed the Charleston court of the Richland court's order. Petitioners filed properly-supported motions explaining Rule 45 on open dockets, rather than engage in email communications to seek ultra vires transfers. Petitioners sought—and continue to seek—nothing more than compliance with Rule 45's clear jurisdictional protections for non-party subpoena recipients.

Accordingly, Petitioners responded to the Charleston clerk's office, explaining again that "[u]nder Rule 45(a)(2), such a non-party subpoena can only issue from the Charleston County court." "And under Rule 45(c)(3)(A), non-party subpoena recipients (like [Petitioners]) may bring a motion to quash to be decided in their home county." Petitioners thus "respectfully reiterate[d] [their] request for an emergency review and hearing by the chief administrative judge for the Ninth Judicial Circuit in Charleston County." This correspondence is attached as **Exhibit G**. No other communications or orders have issued from the Charleston court.

Acting Circuit Judge Toal sent another email stating that Petitioners' jurisdictional contentions in their emergency motion could be raised in the Richland court hearing, and that "I have directed the Charleston Clerk to hold in abeyance all proceedings in your Charleston Filing until I complete the proceedings in Welch," the Richland case. This email is attached as **Exhibit H**.

In a separate email to Acting Circuit Judge Toal, Welch's counsel later said that they would be issuing "an amended subpoena" "to clarify that this is issued from Charleston County." Of course, that is no "clarification"; the original subpoena was "Issued by the Common Pleas Court in the County of Richland." Exhibit A. Welch's counsel even suggested that the motion be heard in Charleston or via electronic means, but Acting Circuit Judge Toal responded that "I will be hearing these matters in Richland County." This correspondence is attached as **Exhibit I**. And notwithstanding this email from one of Welch's counsel, the attorney who issued the subpoena simultaneously filed an opposition to Petitioners' motion to quash, asking Acting Circuit Judge Toal to order Petitioners "to fully and completely respond to the" facially defective original

subpoena.<sup>5</sup> The “amended” subpoena, attached as **Exhibit J**, is substantively the same as the original one, other than the substitution of “Issued by the Common Pleas Court in the County of Charleston” and a different return date. The original subpoena has not been withdrawn, and in any event, Petitioners’ request for sanctions would remain pending. Further, though another motion to quash has been filed addressing the amended subpoena, nothing suggests that the March 5 hearing will not address both subpoenas—the initial subpoena and the amended one—as briefing has continued despite the submission of an amended subpoena, and the hearing has not been cancelled.

In sum, the Richland County Circuit Court has ordered Petitioners to appear for a hearing on March 5, and submit to that court’s adjudication of Petitioners’ motions to quash Welch’s subpoenas—even though those motions were filed exclusively under Rule 45(c)(3)(A) in a separate proceeding in Charleston County. Thus, the Richland County Circuit Court has denied Petitioners’ ability to obtain redress in their home county, as guaranteed by Rule 45(c)(3)(A).

### LEGAL STANDARD

This Court may issue a writ of prohibition in its original jurisdiction. S.C. Const. art. V, § 5; S.C. Code Ann. § 14-3-310; *see* Rule 245(b), SCACR. “The writ of prohibition is an extraordinary prerogative writ, as old as the common law itself. It lies to prevent the encroachment, excess, or improper assumption of jurisdiction on the part of an inferior court or tribunal.” *Holladay v. Hodge*, 84 S.C. 91, 65 S.E. 952, 953 (1909). It is proper where “existing remedies are inadequate or inapplicable.” *Id.* This Court has issued the writ when a circuit court is “without jurisdiction to

---

<sup>5</sup> Acting Circuit Judge Toal directed Petitioners to “meet and confer” “as the SCRCF requires and try to work this matter out.” Exhibit H; *see* Exhibit I. Petitioners’ counsel has done so, though Rule 45 contains no conferral requirement. Petitioners’ motions have contained all certifications required by Rule 11(a), SCRCF. *See* Exhibit B, at 3 n.1; Exhibit E at 7 n.4.

entertain [an] action.” *New S. Life Ins. Co. v. Lindsay*, 258 S.C. 198, 205, 187 S.E.2d 794, 799 (1972).

## **ARGUMENT**

### **I. The Richland County Circuit Court lacks jurisdiction.**

Under Rule 45, the Richland County Circuit Court lacks jurisdiction over both Petitioners’ motions to quash and Petitioners. That court’s planned adjudication of Petitioners’ motion thus violates Rule 45 in multiple respects, and that adjudication would eviscerate the protections guaranteed to non-party subpoena recipients.

#### **A. The Richland court lacks jurisdiction over the motions to quash.**

Petitioners’ separate motion-to-quash proceeding in Charleston is not properly before the Richland County Circuit Court, which lacks jurisdiction. Under Rule 45(c)(3)(A), non-party subpoena recipients like Petitioners may timely move to quash a subpoena in “the court in the county where the non-party resides, is employed or regularly transacts business in person.” Petitioners thus properly filed their action in Charleston County, and there can be dispute that this choice of jurisdiction was proper. Rule 45(c)(3)(A) gives that court power to rule on the motion and “quash or modify the subpoena.”

The Richland County Circuit Court, by contrast, lacks jurisdiction over Petitioners’ action, because it is not “the court in the county where the non-party resides, is employed or regularly transacts business in person”—and no motion was filed before it. Rule 45(c)(3)(A), SCRPC. It is black-letter law that “the court of common pleas, while sitting in one circuit, has no jurisdiction over a case pending in another circuit.” *State v. Black*, 34 S.C. 194, 13 S.E. 361, 364 (1891); *see also, e.g., Evans v. Town of Edgefield*, 132 S.C. 380, 129 S.E. 207, 210 (1925).

Nor is there any mechanism for the motion-to-quash proceeding in Charleston County to be transferred to the Richland County Circuit Court. The administrative order appointing Acting

Circuit Judge Toal as presiding judge over South Carolina’s asbestos litigation does not address or override Rule 45’s mandate. Putting aside that Welch’s counsel never filed a motion to transfer, the South Carolina rules have no mechanism for such a transfer. South Carolina could have adopted a rule like Federal Rule of Civil Procedure 45(f), which permits transfers of subpoena-related motions in some circumstances (albeit none that would apply here), but it has not. That choice and the Rule’s plain text must be respected. Under Rule 45(c)(3)(A), the only court with jurisdiction over Petitioners’ motions to quash is the Charleston County Circuit Court.

**B. The Richland court also lacked jurisdiction to issue a subpoena.**

What’s more, the Richland County Circuit Court lacked authority to issue a subpoena in the first place. Though the face of the original subpoena says it was issued by that court against Charleston-based Petitioners, Rule 45(a)(2) plainly precludes that issuance: “a subpoena to a person who is not a party or an officer, director or managing agent of a party, commanding . . . production or inspection shall issue from the court for the county in which the non-party resides or is employed or regularly transacts business in person.” *See also* Rule 45(b)(2), SCRCF. As the 1993 Note to Rule 45 summarized, “a non-party subpoena can only be issued and served in the county where the non-party resides, is employed or regularly transacts business in person.”

This deficiency also precludes the exercise of jurisdiction by the Richland Court Circuit Court. Once again, it is black-letter law that “[t]he attorney issuing the subpoena must select the correct court because only that court has jurisdiction to enforce or modify the subpoena.” James F. Flanagan et al., *South Carolina Civil Procedure* § 45.B.2 (4th ed.). Thus, “[a] wrongly issued subpoena cannot be enforced against a non-party.” *Id.*

Here again, Petitioners’ home is within Charleston County. Thus, the Richland County Circuit Court could not lawfully issue a subpoena requiring production by Petitioners, much less hear their out-of-county motions to quash the subpoenas. Indeed, the Richland County Circuit

Court has no jurisdiction whatsoever over Petitioners: Petitioners have never appeared in the action there (much less as a party), and under Rule 45(a)(2), that court could not issue a subpoena against Petitioners.

As courts interpreting the substantially similar federal rule have explained, “subpoenas issued from the wrong court are void under Rule 45,” meaning that such subpoenas are “invalid, unenforceable, and cannot be amended.” *Hallamore Corp. v. Capco Steel Corp.*, 259 F.R.D. 76, 80 (D. Del. 2009). And “it would eviscerate the entire purpose of these provisions in Rule 45 to interpret them” to allow a subpoenaing party to “force a subpoenaed nonparty to litigate a subpoena-related dispute in an inconvenient district by simply listing that location on the face of the subpoena.” *York Holding, Ltd. v. Waid*, 345 F.R.D. 626, 629 (D. Nev. 2024).<sup>6</sup>

Again, Welch appears to concede this point, submitting an “amended” subpoena referencing the Common Pleas Court in the County of Charleston as the issuing court, which Petitioners received on February 15, 2026. Exhibit I. As just explained, one cannot “amend” a void subpoena. And Welch’s filed opposition continues to defend the original subpoena, and Acting Circuit Judge Toal has set Petitioners’ motion to quash that subpoena for a hearing on March 5. Even under any purported “amendment” to reflect that it was issued out of Charleston County, this matter is proceeding in Richland County, before an Acting Circuit Court Judge in Richland County, in contravention of Rule 45.

In sum, the Richland County Circuit Court lacks jurisdiction over the motion-to-quash proceeding *and* over Petitioners. Any orders it enters with respect to these issues—including its order requiring a hearing in Richland County—are void ab initio and cannot be enforced, deferred to, or

---

<sup>6</sup> The official Note to Rule 45, SCRCF, states that “[t]his Rule 45 is substantially the same as the Federal Rule,” though South Carolina’s Rule 45(a)(2) is modeled after the pre-2013 federal version, and South Carolina is missing a transfer provision like federal Rule 45(f).

cured through later participation. The Richland court lacks jurisdiction to take its planned actions in adjudicating the motions to quash. *See Hoover v. Hoover*, 271 S.C. 177, 180, 246 S.E.2d 179, 180 (1978) (“the acts of a court with respect to a matter over which it has no jurisdiction are void”); *Arnal v. Fraser*, 371 S.C. 512, 522, 641 S.E.2d 419, 424 (2007); *see also United States Catholic Conf. v. Abortion Rts. Mobilization, Inc.*, 487 U.S. 72, 76 (1988) (“[T]he subpoena power of a court cannot be more extensive than its jurisdiction.”).

**C. The asbestos litigation assignment does not alter Rule 45(c)(3)(A).**

The Richland County Circuit Court’s order purporting to assume jurisdiction invoked this Court’s order assigning Acting Circuit Judge Toal administration of “asbestosis and asbestos litigation filed within the state court system.” May 28, 2019 Order; *see* Exhibit D. That administration, however, does not affect anything about Rule 45(c)(3)(A)’s assignment of jurisdiction for non-party subpoena recipients to the court in the recipient’s home county, or the conclusion that the Richland County Circuit Court lacks jurisdiction over both the motion-to-quash proceeding and Petitioners. *See, e.g.*, Rule 81, SCRCP (“These rules, or any of them, shall apply to every trial court of civil jurisdiction within this state . . .”).

This Court’s order appointing Acting Circuit Judge Toal over asbestos litigation does not amend or affect the text of Rule 45(c)(3)(A). As explained, that rule enables a non-party subpoena recipient to be heard in an independent action in his home county. Rule 45’s text has not been amended, and Petitioners have an absolute right under that rule for their motions to quash to be heard in Charleston County. The Richland County Circuit Court has no jurisdiction, and nothing in the Court’s assignment of asbestos litigation to Acting Circuit Judge Toal changes that conclusion. This Court’s order does not mention particular county courts.

The Richland County Circuit Court’s order purporting to assume jurisdiction also stated that “[t]his case was filed in Richland County.” Exhibit D. But as noted, an action by a non-party

subpoena recipient is a separate proceeding brought in the recipient's home county. Other than serving as appellate counsel in the U.S. Supreme Court, Petitioners have no involvement with "this case" in Richland Court, either as an attorney or as a party. The court's order reflected a belief that at issue is "Defendant Atlas Turner's Motion to Quash." Exhibit D. But the subpoena here was not directed at or served on Atlas Turner; it was directed at and purportedly served on non-party Christopher E. Mills and Spero Law LLC. *See* Exhibit A. Petitioners thus initiated a separate proceeding in Charleston County under Rule 45(c)(3)(A). And that proceeding is not an asbestos suit, in the first place: the litigation is solely related to the improper, defective subpoena directed to Petitioners. But regardless, the point is that Rule 45 establishes that the Richland County Circuit Court lacks jurisdiction over Petitioners' motions to quash—and lacked jurisdiction to issue a subpoena. The asbestos assignment order does not affect that conclusion.

Thus, the Richland County Circuit Court lacks jurisdiction, and its orders purporting to assume adjudicatory authority over Petitioners' motions to quash and require Petitioners' appearance are contrary to law. Especially because that court has invoked this Court's order as a reason to nullify Rule 45's protections, this Court's intervention is needed.

## **II. Forcing Petitioners to adjudicate in Richland eviscerates Rule 45's protections and imposes irreparable injury.**

The Richland court's unlawful assumption of jurisdiction would irreparably harm Petitioners by forcing them to incur the precise burdens from which Rule 45 protects non-parties. As explained, Rule 45(c)(3)(A) gives a non-party who receives a subpoena demanding production the right to bring a separate action in his home county and be heard on that action in "the court in the county where the non-party resides." For Petitioners, that is Charleston County. And such a non-party subpoena *must* be quashed if it requires the non-party "to travel more than 50 miles from the

county where that person resides, is employed or regularly transacts business.” Rule 45(c)(3)(A)(ii), SCRCF.

In other words, the entire point of the Rule is to free a non-party from “the travel burden” of having to appear—whether for production or litigation about the subpoena—outside his home county. *Jolly*, 435 S.C. at 673, 869 S.E.2d at 855. The Rule’s 1993 Note explained that these parts of Rule 45(c)(3)(A) “enlarged and clarified” “[t]he rights of a non-party” by ensuring that “the non-party can object to the subpoena in his home county.”

The relevant part of the federal rule “is substantially the same,” Note to Rule 45, SCRCF, and authorities interpreting that rule agree that “[t]o protect local nonparties, local resolution of disputes about subpoenas is assured by the limitations of Rule 45(c).” 2013 Notes of Advisory Committee, Fed. R. Civ. P. 45. The rule is “designed to ensure local resolution of subpoena disputes as a means to protect the subpoenaed nonparty, a purpose that would be thwarted by requiring subpoenaed nonparties to adjudicate a subpoena-related dispute in a distant forum.” *York*, 345 F.R.D. at 628–30; *see also, e.g., Probulk Carriers Ltd. v. Marvel Int’l Mgmt. & Transp.*, 180 F. Supp. 3d 290, 293 (S.D.N.Y. 2016) (“The point . . . of those provisions is to avoid imposition of unreasonable travel burdens.”).

The Richland County Circuit Court’s purported order would eviscerate Rule 45(c)(3)(A)’s express protection, as it would force a non-party to incur the precise injury that the rule guards against—requiring travel outside his home county—to litigate the subpoena. The order’s imminent effects on core attorney-client and work product privileges also threaten irreparable injury, as detailed next.

### **III. Petitioners otherwise lack adequate means to protect their rights.**

As explained, Petitioners have diligently sought a hearing in accord with Rule 45(c)(3)(A), to no success. Rather, a former Chief Justice of this Court stated that they were “trying to pull a

fast one” for timely informing the Charleston court of the Richland court’s order and seeking clarification about the jurisdictional issues here. Exhibit F. It is apparent that the Richland court plans to follow through with its order and hold a hearing—despite the subpoena’s jurisdictional defects. The Richland court’s effort to force attendance by Petitioners to defend against an invalid non-party subpoena outside their home county is contrary to Rule 45’s repeated protections. Only this Court’s intervention can safeguard Rule 45’s protections for Petitioners.

This Court has rightly intervened in other cases to protect litigants’ rights under Rule 45, especially when it comes to attorneys presented with intrusive non-party subpoenas. *See State v. James*, 34 S.C. 49, 12 S.E. 657, 660 (1891) (emphasizing that “the rule of evidence which holds as inviolable professional communications between attorney and client is one of the most important, and in all forms must be maintained in all its integrity”). Forcing a non-party attorney to face contempt by a court without jurisdiction for a facially deficient subpoena that implicates attorney privileges is unjustified. In *Ex parte Smith*, the Supreme Court quashed subpoenas duces tecum issued to attorneys across the state, finding they imposed an undue burden under Rule 45(c)(3)(A) and were not reasonably related to the issues before the court. 407 S.C. 422, 423–24, 756 S.E.2d 386, 387 (2014). The Court also entered prophylactic relief under Rule 26(c), prohibiting the re-issuance of subpoenas absent prior court approval.

Thus, the intrusion into attorney-client and work product privileges here reinforces the need for intervention. “Courts have been especially concerned about the burdens imposed on the adversary process when lawyers themselves have been the subject of discovery requests, and have resisted the idea that lawyers should routinely be subject to broad discovery.” *In re Subpoena Issued to Dennis Friedman*, 350 F.3d 65, 70 (2d Cir. 2003). A subpoena directed to a party’s counsel raises special concerns because it threatens intrusion into attorney-client communications, work

product, and the attorney-client relationship. Courts therefore evaluate subpoenas to opposing counsel with heightened scrutiny and generally require a strong showing that the information sought is relevant, non-privileged, and not reasonably obtainable from the party through ordinary discovery. *See, e.g., Pamida, Inc. v. E.S. Originals, Inc.*, 281 F.3d 726, 729–30 (8th Cir. 2002); *Liner Freedman Taitelman Cooley, LLP v. Lively*, No. 25-MC-289 (LJL), 2025 WL 2205973, at \*4 (S.D.N.Y. Aug. 4, 2025).

These subpoenas on Petitioners contain many deficiencies. Apparently without even notice to the parties,<sup>7</sup> the original subpoena was issued against opposing counsel in litigation without any showing of relevance to any issue presently before the court.<sup>8</sup> The subpoenas necessarily seek material protected by the attorney-client privilege, work-product doctrine, and common-interest

---

<sup>7</sup> In their opposition to the motion to quash, Welch’s counsel do not contend that they served the parties under Rule 45(a)(4), which requires service on all parties in the litigation *before* service of a non-party subpoena. Rather, Welch appears to try to excuse that failure by noting that one party was dismissed over a week *after* counsel issued the original subpoena, and Petitioners represented Atlas Turner at the U.S. Supreme Court. First, that one party was later dismissed has nothing to do with Welch’s counsel’s apparent failure of service—Welch’s counsel certified on the subpoena well *before* that party was dismissed that the subpoena *had* been served “on all parties.” Exhibit A. Second, that Petitioners previously served as counsel to Atlas Turner in proceedings *in another court* does not mean that service on Petitioners is effective on Atlas Turner in the Richland County proceeding—where other attorneys, not Petitioners, have appeared for Atlas Turner. *See Dyar v. Georgia Power Co.*, 173 S.C. 527, 176 S.E. 711, 714 (1934) (explaining that “[i]t is fallacious to say that authority to accept service of process” “may be inferred” from the fact that an attorney “represents th[e] [party] in other actions growing out of the same cause of action”). A failure to serve is no technical violation; again, this Court has repeatedly disciplined lawyers for it. *See, e.g., Fabri*, 418 S.C. at 392, 793 S.E.2d at 310; *Matter of Owen*, 422 S.C. 16, 19, 809 S.E.2d 231, 232 (2018).

<sup>8</sup> Though the subpoena sweepingly demands all communications between Petitioners and third parties, the only demand Welch has meaningfully defended is for Petitioners’ payment information, which Welch says reflects “an asset of Atlas that belongs to the Receiver.” Opposition to Motion to Quash 2. But the receiver did not issue this subpoena, and regardless, this Court held that the receivership covers only “insurance policies that have the potential to cover” the alleged injuries. *Welch v. Advance Auto Parts, Inc.*, 445 S.C. 640, 667, 916 S.E.2d 320, 334 (2025). Payment to counsel for services rendered in connection with Atlas Turner’s petition to the U.S. Supreme Court would be outside the scope of the receivership.

protections. For all these reasons, the subpoenas impose an undue burden on Petitioners. And they are facially subject to mandatory quashing under Rule 45(c)(3)(A) for other reasons, too, including that they require production more than 50 miles away from Petitioners' home county and allow hardly any time for production. *See* Rule 45(a)(2), SCRPC.

Dealing with these problems can be left in the first instance to the only court with jurisdiction, the Charleston County Circuit Court. But decisions with implications for core attorney-client and work product privileges should not be left on an uncertain footing in proceedings with jurisdictional defects. The egregious nature of these subpoenas on opposing counsel in litigation confirms the need for this Court to intervene and ensure compliance with Rule 45's protections for non-parties.

### **CONCLUSION**

For these reasons, this Court should grant a Writ of Prohibition prohibiting Acting Circuit Judge Toal in the Richland County Circuit Court from adjudicating Petitioners' motions to quash. As necessary, the Court should also issue an emergency administrative stay of the Richland County Circuit Court's order setting a hearing on March 5. *See Andrews v. Sumter Com. & Real Est. Co.*, 87 S.C. 301, 69 S.E. 604, 606 (1910) (noting inherent power to stay proceedings).

Respectfully submitted,

*s/ Christopher E. Mills*

\_\_\_\_\_  
Christopher E. Mills

(S.C. Bar No. 101050)

SPERO LAW LLC

557 East Bay Street #22251

Charleston, SC 29413

(843) 606-0640

cmills@spero.law

Kelly Calder Mowen

(S.C. Bar No. 107350)

ORNDORFF MOWEN PLLC

135 Corporate Center Dr. #524

Scott Depot, WV 25560

(866) 481-2765

Kelly.Mowen@om-llc.com

Counsel for Petitioners

FEBRUARY 20, 2026

**CERTIFICATE OF COMPLIANCE**

I, Christopher E. Mills, an attorney, certify that the foregoing complies with the relevant requirements of Rule 267, SCAR.

Dated: February 20, 2026

*s/ Christopher E. Mills* \_\_\_\_\_  
Christopher E. Mills