

AO 88B (Rev. 12/13) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of New York

EXHIBIT

A

Angel Hernandez

Plaintiff

v.

The Office of the Commissioner of Baseball and
Major League Baseball Blue, Inc.

Defendant

Civil Action No. 18 Civ. 9035 (JPO) (GWG)

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Major League Baseball Umpires Association
c/o Daniel T. Purtell, Esq., Altshuler Berzon LLP, 177 Post Street, Suite 300, San Francisco, CA 94108
(Name of person to whom this subpoena is directed)

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See Schedule A

Place: Proskauer Rose LLP
11 Times Square, New York, NY 10036
Attn: Neil H. Abramson, Esq.

Date and Time:
06/05/2019 5:00 pm

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 05/22/2019

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

Neil Abramson

The name, address, e-mail address, and telephone number of the attorney representing (name of party) The Office of the Commissioner of Baseball and Major League Baseball Blue, Inc., who issues or requests this subpoena, are:

Neil H. Abramson, Esq., Proskauer Rose LLP, 11 Times Square, New York, NY 10036, 212-969-3000

Notice to the person who issues or requests this subpoena

A notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

AO 88B (Rev. 12/13) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action (Page 2)

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PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
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 the 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.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

SCHEDULE A

DEFINITIONS & INSTRUCTIONS

1. The Uniform Definitions in Discovery Requests set forth in Local Rule of the United States District Courts for the Southern and Eastern Districts of New York (“Local Civil Rule”) 26.3 and the rules concerning Assertion of Privilege set forth in Local Civil Rule 26.2 apply to the attached requests.

2. “You,” “your” or “union” as used herein means the Major League Baseball Umpires Association, formerly known as the World Umpires Association, and any present or former parent, subsidiary, affiliate, officer, director, employee, agent, or representative of same.

3. “Angel Hernandez” as used herein means Angel Hernandez and his current and former agents, attorneys, and any other persons acting or purporting to act on his behalf.

4. “Commissioner’s Office” as used herein means Office of the Commissioner of Baseball d/b/a Major League Baseball and any related or affiliated entities, including but not limited to Major League Baseball Blue, Inc.

5. “Major League Baseball Clubs” as used herein refers to the 30 professional Major League Baseball teams: Arizona Diamondbacks, Atlanta Braves, Baltimore Orioles, Boston Red Sox, Chicago Cubs, Chicago White Sox, Cincinnati Reds, Cleveland Indians, Colorado Rockies, Detroit Tigers, Houston Astros, Kansas City Royals, Los Angeles Angels, Los Angeles Dodgers, Miami Marlins, Milwaukee Brewers, Minnesota Twins, New York Mets, New York Yankees, Oakland Athletics, Philadelphia Phillies, Pittsburgh Pirates, San Diego Padres, San Francisco Giants, Seattle Mariners, St. Louis Cardinals, Tampa Bay Rays, Texas Rangers, Toronto Blue Jays, and Washington Nationals.

6. You are instructed to produce documents either as they are kept in the usual course of business or organized and labeled to correspond with the requests in Schedule A.

7. Electronic records and computerized information should be produced in an intelligible format or together with a description of the system from which it was derived sufficient to permit rendering the material intelligible.

8. If you object to a request in part, please state specifically which part of the request you object to and produce all documents responsive to all other parts of the request.

9. In producing the documents requested herein, you are required to furnish all responsive documents within your custody, possession or control, or otherwise available to you, including documents from the files and records of any present or former parent, subsidiary, affiliate, officer, director, employee, agent or representative.

10. The time period covered by the requests in Schedule A herein is January 2006 through the date of your response.

REQUESTS

1. Documents and communications concerning Angel Hernandez's candidacy or applications for crew chief positions, including but not limited to (a) internal union communications; (b) communications with Angel Hernandez or anyone acting on his behalf; (c) communications with the Commissioner's Office; and/or (d) communications with any of the Major League Baseball Clubs.

2. Documents and communications concerning Angel Hernandez not being selected as a crew chief, including but not limited to (a) internal union communications; (b) communications with Angel Hernandez or anyone acting on his behalf; (c) communications with the Commissioner's Office; and/or (d) communications with any of the Major League Baseball Clubs.

3. Documents and communications concerning consideration of Angel Hernandez for post-season assignments, including but not limited to World Series assignments, including but not limited to (a) internal union communications; (b) communications with Angel Hernandez or anyone acting on his behalf; (c) communications with the Commissioner's Office; and/or (d) communications with any of the Major League Baseball Clubs.

4. Documents and communications concerning Angel Hernandez's performance evaluations (including but not limited to mid-year performance evaluations, year-end performance evaluations, umpire evaluation reports, Zone Evaluation ("ZE") system evaluations, and Supervisor Umpire Review and Evaluation ("SURE") system evaluations), including but not limited to (a) internal union communications; (b) communications with Angel Hernandez or anyone acting on his behalf; (c) communications with the Commissioner's Office; and/or (d) communications with any of the Major League Baseball Clubs.

5. Documents and communications concerning any on-field incidents involving Angel Hernandez, including but not limited to (a) internal union communications; (b) communications with Angel Hernandez or anyone acting on his behalf; (c) communications with the Commissioner's Office; and/or (d) communications with any of the Major League Baseball Clubs.

6. Documents and communications concerning discipline imposed (or potential discipline to be imposed) on Angel Hernandez by the Commissioner's Office, including but not limited to (a) internal union communications; (b) communications with Angel Hernandez or anyone acting on his behalf; (c) communications with the Commissioner's Office; and/or (d) communications with any of the Major League Baseball Clubs.

7. Documents and communications concerning any grievance or potential grievance on behalf of Angel Hernandez.

8. Documents and communications concerning any allegations or claims of discrimination, disparate treatment or retaliation against Angel Hernandez , including but not limited to (a) internal union communications; (b) communications with Angel Hernandez or anyone acting on his behalf; (c) communications with the Commissioner's Office; and/or (d) communications with any of the Major League Baseball Clubs.