

Judge: Visiting Judge  
Hearing Date: May 20, 2024  
Hearing Time: 9:00 a.m.

**FILED**  
APR 29 2024  
KITSAP COUNTY CLERK  
DAVID T. LEWIS III

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR KITSAP COUNTY

HEATHER WOOD,

Petitioner,

-vs-

LENARD FEULNER,

Respondent.

NO. 07-3-01713-1

MOTION TO QUASH  
PETITIONER'S SUBPOENA  
DUCES TECUM TO MATTHEW  
CLUCAS

**I. RELIEF REQUESTED**

Pursuant to Superior Court Civil Rule (CR) 45(c)(3)(A), Matthew Clucas, Kitsap County Court Commissioner, by and through his attorney, Lael K. Carlson, hereby moves to quash a subpoena issued by Petitioner Heather Wood. A copy of the subpoena is attached hereto as Exhibit A. The subpoena issued to Mr. Clucas must be quashed as Mr. Clucas, as a Court Commissioner, is subject to judicial immunity, and the subpoena fails to comply with the requirements set forth in CR 45(a)(1).

**II. STATEMENT OF FACTS**

This case was first filed in 2008 and concerns a parenting plan regarding the parties' minor child, AMF. Since that date, there have been numerous hearings, motions, and filings. A



1 trial date is currently set for June 4, 2024. Commissioner Clucas presided over hearings on  
2 August 15, 2023, September 1, 2023, and October 6, 2023.

3 On April 15, 2024, Ms. Wood served Mr. Clucas with a subpoena duces tecum which  
4 commanded he appear for a deposition on May 4, 2024, at 10:30 a.m. at the Bremerton Kitsap  
5 Regional Library and for trial on June 4, 2024, at 9:00 a.m., and made a general request for  
6 documents. The description of testimony and documents he was expected to provide was as  
7 follows: “MATTHEW CLUCAS’s testimony In RE: Adeline Feulner (child), Heather Wood vs.  
8 Lenard Feulner hearings attended 8/15/2023, and conversations, utterances, communications and  
9 all things cause # 07-3-01713-1, and 23-2-01534-18.” Mr. Clucas is not a party to this action.  
10

### 11 III. LEGAL AUTHORITY AND ARGUMENT

12 A trial court’s order granting or denying a motion to quash a subpoena is reviewed on  
13 appeal for an abuse of discretion. *Hammond v. Braden*, 16 Wn. App. 773, 776, 559 P.2d 1357  
14 (1977). A court abuses its discretion when its decision is based on untenable grounds or  
15 reasoning. *Luckett v. Boeing Co.*, 98 Wn. App. 307, 309, 989 P.2d 1144 (1999).  
16

17 This motion is made pursuant to Washington Superior Court Civil Rules 26, 30, and 45.

18 The scope of a subpoena requiring a person to produce documentary evidence is limited  
19 by CR 26(b), which provides in part:  
20

21 **Discovery Scope and Limits.** Unless otherwise limited by order of the court  
22 in accordance with these rules, the scope of discovery is as follows:

23 (1) *In General.* Parties may obtain discovery regarding any matter, not  
24 privileged, which is relevant to the subject matter involved in the pending action,  
25 whether it relates to the claim or defense of the party seeking discovery or to the  
26 claim or defense of any other party, including the existence, description, nature,  
27 custody, condition and location of any books, documents, or other tangible things  
28 and the identity and location of persons having knowledge of any discoverable  
matter. It is not ground for objection that the information sought will be  
inadmissible at the trial if the information sought appears reasonably calculated to  
lead to the discovery of admissible evidence.

1 Thus, the essential test is whether the discovery device employed is reasonably calculated  
2 to lead to the discovery of admissible evidence, which is broader than the standard of ER 401.<sup>1</sup>

3 The same rule, CR 26(b)(1), authorizes the Court to limit depositions and other  
4 discovery methods, providing:  
5

6 The frequency or extent of use of the discovery methods set forth in section (a)  
7 shall be limited by the court if it determines that: (A) the discovery sought is  
8 unreasonably cumulative or duplicative, or is obtainable from some other source  
9 that is more convenient, less burdensome, or less expensive; (B) the party seeking  
10 discovery has had ample opportunity by discovery in the action to obtain the  
11 information sought; or (C) the discovery is unduly burdensome or expensive, taking  
12 into account the needs of the case, the amount in controversy, limitations on the  
13 parties' resources, and the importance of the issues at stake in the litigation. The  
14 court may act upon its own initiative after reasonable notice or pursuant to a motion  
15 under section (c).

16 Here, Petitioner seeks to depose a judicial officer regarding “conversations, utterances,  
17 communications and all things cause # 07-3-01713-1, and 23-2-01534-18.” It would be improper  
18 for a judicial officer to testify about a hearing they presided over. State court commissioners are  
19 subject to judicial immunity when sued for damages. *See, e.g., Franceschi v. Schwartz*, 57 F.3d  
20 828, 830-31 (9th Cir. 1995) (affirming dismissal of claim against state court commissioner on the  
21 grounds of judicial immunity because commissioner performed judicial acts that were “functions  
22 normally performed by a judge”); *see also Stump v. Sparkman*, 435 U.S. 349, 356-57, 360, 98  
23 S.Ct. 1099, 1104-05, 55 L.Ed.2d 331 (1978) (judges are absolutely immune from damage  
24 liability as long as 1) they performed a “judicial act” and 2) they did not act in the “clear absence  
25 of jurisdiction”); *see also Block v. Snohomish Cnty.*, 2019 WL 954809, at \*9 (W.D. Wash. Feb.  
26 27, 2019)<sup>2</sup> (holding that “any claim for damages against [commissioner] would fail because

27 <sup>1</sup> *Barfield v. City of Seattle*, 100 Wn.2d 878, 886, 676 P.2d 438 (1984).

28 <sup>2</sup> Unpublished opinion and therefore is nonbinding authority and may be accorded such persuasive value  
as this Court deems appropriate.

1 [commissioner] is entitled to absolute judicial immunity” as they were undertaking acts in their  
2 judicial capacity). While Commissioner Clucas is not a party to this lawsuit, he acted and made  
3 decisions in this case in his role as a judicial officer and therefore is entitled to judicial immunity.  
4  
5 The subpoena for testimony and documents must be dismissed.

6 Moreover, a record is kept of what occurred at each hearing, and all documents filed at a  
7 hearing are accessible to the public. Mr. Clucas is not a party to this case and can add nothing to  
8 the issues surrounding the parenting plan that is at issue in this case. The Petitioner has failed to  
9 identify how discovery of such information as described in the subpoena is or could be relevant  
10 to the pending parenting action, or how such inquiry is reasonably calculated to lead to the  
11 discovery of admissible evidence. As such, the Petitioner’s discovery requests are not within the  
12 scope of CR 26(b), and responding thereto by a non-party would be unduly burdensome.  
13 Moreover, Petitioner has failed to show how a judicial officer may be subject to such subpoena.  
14

15 Civil Rules 30 and 45 authorize a party to issue a subpoena requiring a person’s  
16 attendance at a deposition and govern the taking of depositions. This motion is also made  
17 pursuant to CR 45, which provides in pertinent part:  
18

19 (a) Form; Issuance.

20 (1) Every subpoena shall:

- 21 (A) state the name of the court from which it is issued;  
22  
23 (B) state the title of the action, the name of the court in which it is  
pending, and its case number  
24 (C) command each person to whom it is directed to attend and give  
25 testimony or to produce and permit inspection and copying of  
designated books, documents or tangible things in the possession,  
26 custody or control of that person, or to permit inspection of premises,  
at a time and place therein specified; and  
27 (D) **set forth the text of subsections (c) and (d) of this rule.**  
28

1                   **(2) A subpoena for attendance at a deposition shall state the method for**  
2                   **recording the testimony.**

3                   As the subpoena attached to Exhibit A shows, the text of subsections (c) and (d) of CR 45  
4 are not set forth in the subpoena, and the subpoena fails to state the method for recording the  
5 testimony at the deposition. The deposition conditions are vague. The subpoena indicates that the  
6 deposition is to take place at a library. It states that Mr. Clucas is required to be sworn but does  
7 not say by whom. It states that the deposition will be performed using “Facebook video  
8 conferencing at the library, via Heather Wood to the Officer.” The “Officer” is not designated,  
9 nor is the manner of recording. The subpoena is silent on how the recording will be  
10 memorialized, preserved, recorded, or transcribed, contrary to CR 28, 29, and 30.

11                   “A subpoena which does not comply with CR 45 is a ‘nullity.’” *State v. Adamski*, 111  
12 Wn.2d 574, 577-78, 761 P.2d 621 (1988) (citing *Harrison v. Prather*, 404 F.2d 267, 273 (5th  
13 Cir. 1968)).

14                   In addition, CR 45(c)(3)(A) provides:

15                   On timely motion, the court by which a subpoena was issued shall quash or  
16 modify the subpoena if it:  
17                   ...(iii) requires disclosure of privileged or other protected matter and no exception  
18 or waiver applies; or  
19                   (iv) subjects a person to undue burden, provided that the court may condition  
20 denial of the motion upon a requirement that the subpoenaing party advance the  
21 reasonable cost of producing the books, papers, documents, or tangible things.

22                   The description of the testimony and documentation that Mr. Clucas is requested to  
23 provide is so broad, vague, and onerous that it would subject him and his office to undue burden  
24 in attempting to respond to a subpoena that appears to be nothing more than a fishing expedition.  
25 Further, it is unclear how this request of Mr. Clucas is relevant to the issue(s) that will be  
26 presented at trial. Lastly, the subpoena fails to comply with CR 45.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

V. CONCLUSION

For the reasons stated herein, the Subpoena Duces Tecum directed to Mr. Clucas should be quashed.

Respectfully submitted this 29th day of April 2024.

CHAD M. ENRIGHT  
Kitsap County Prosecuting Attorney



---

LAEL K. CARLSON, WSBA No. 44773  
Deputy Prosecuting Attorney  
Attorney for Mr. Clucas in his capacity as Kitsap County  
Court Commissioner

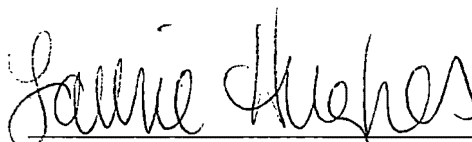
CERTIFICATE OF SERVICE

I, Laurie Hughes, declare, under penalty of perjury under the laws of the State of Washington, that I am now and at all times herein mentioned, a resident of the state of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date given below I caused to be served the above document in the manner noted upon the following:

Heather Wood	<input checked="" type="checkbox"/> Via 1 <sup>st</sup> Class U.S. Mail
9129 James Rd. SW	<input type="checkbox"/> Via Fax:
Rochester, WA 98579	<input type="checkbox"/> Via Email
Hthrwood012@gmail.com	<input type="checkbox"/> Via Hand Delivery

SIGNED in Port Orchard, Washington this 29<sup>th</sup> day of April 2024.



Laurie Hughes, Legal Assistant  
Kitsap County Prosecutor's Office  
614 Division Street, MS-35A  
Port Orchard WA 98366  
Phone: 360-337-7089

# **EXHIBIT A**