

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 DAVID  
LEWIS

**I. RELIEF REQUESTED**

Pursuant to Superior Court Civil Rule (CR) 45(c)(3)(A), David Lewis, Kitsap County Clerk, 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. Lewis must be quashed as it fails to comply with the requirements set forth in CR 45(a)(1) and is unduly burdensome on Mr. Lewis and his office.

**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. There is currently a trial date set for June 4, 2024.



1 On April 15, 2024, Ms. Wood served Mr. Lewis with a subpoena duces tecum which  
2 commanded he appear for a deposition on April 23, 2024, at 11:30 a.m. at the Bremerton Kitsap  
3 Regional Library and for trial on June 4, 2024, at 9:00 a.m., and made a general request for  
4 documents. The description of testimony and documents he was expected to provide was as  
5 follows: “DAVID LEWIS’s testimony, documentation, and instruction to the clerks regarding  
6 07-3-01713-1.”<sup>1</sup> Mr. Lewis is not a party to this action.

7  
8 On April 22, 2024, a written objection to the subpoena pursuant to CR 45(c)(2)(B) was  
9 sent via email to Ms. Wood.<sup>2</sup> The objection stated that as to form, the subpoena failed to comply  
10 with CR 45(a)(1)(D) and CR 45(a)(2), and as to substance, the discovery demand was overbroad,  
11 vague, and beyond the permissible scope of discovery under CR 26(b).  
12

### 13 III. LEGAL AUTHORITY AND ARGUMENT

14 A trial court’s order granting or denying a motion to quash a subpoena is reviewed on  
15 appeal for an abuse of discretion. *Hammond v. Braden*, 16 Wn. App. 773, 776, 559 P.2d 1357  
16 (1977). A court abuses its discretion when its decision is based on untenable grounds or  
17 reasoning. *Luckett v. Boeing Co.*, 98 Wn. App. 307, 309, 989 P.2d 1144 (1999).  
18

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

20 The scope of a subpoena requiring a person to produce documentary evidence is limited  
21 by CR 26(b), which provides in part:  
22

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

25  
26 <sup>1</sup> It should be noted here that any documentation that Mr. Lewis may have regarding this case would also  
be a public document filed with the Court and accessible to all parties.

27 <sup>2</sup> CR 45(c)(2)(B) specifically provides that the person to whom a subpoena is directed may within 14 days  
28 object by serving written objections on the attorney designated in the subpoena. Once objection is made,  
the party serving the subpoena is not entitled to inspect and copy the materials without an order of the  
court. *Id.*

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

10 Thus, the essential test is whether the discovery device employed is reasonably calculated  
11 to lead to the discovery of admissible evidence, which is broader than the standard of ER 401.<sup>3</sup>

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

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

24 Here, Petitioner seeks to depose the county clerk, an elected official, regarding  
25 "testimony, documentation, and instruction to the clerks regarding 07-3-01713-1." This  
26 deposition and overly broad request for documents would be burdensome and harassing. Mr.  
27 Lewis is not a party to this case and can add nothing to the issues surrounding the parenting plan  
28 that is at issue in this case. The Petitioner has failed to identify how discovery of such  
information as described in the subpoena is or could be relevant to the pending parenting action,  
or how such inquiry is reasonably calculated to lead to the discovery of admissible evidence. As

<sup>3</sup> *Barfield v. City of Seattle*, 100 Wn.2d 878, 886, 676 P.2d 438 (1984).

1 such, the Petitioner's discovery requests are not within the scope of CR 26(b), and responding  
2 thereto by a non-party would be unduly burdensome.

3 Although the parties to a lawsuit "must accept its burdens as a natural part of civil  
4 litigation, nonparties have a different set of expectations." *Eugster v. City of Spokane*, 121 Wn.  
5 App. 799, 813, 91 P.3d 117 (2004), *review denied*, 153 Wn.2d 1012 (2005). The burden upon a  
6 nonparty "is a factor entitled to special weight" when a court decides whether to enforce a  
7 subpoena duces tecum. *Id.* The court in *Eugster* refused to enforce six overly burdensome  
8 subpoenas against a nonparty. *Id.* at 813-14. As stated above, Mr. Lewis is not a party to this  
9 action and is a factor the Court should consider when deciding whether to enforce the subpoena  
10 at issue here.  
11

12  
13 Civil Rules 30 and 45 authorize a party to issue a subpoena requiring a person's  
14 attendance at a deposition and govern the taking of depositions. This motion is also made  
15 pursuant to CR 45, which provides in pertinent part:  
16

17 (a) Form; Issuance.

18 (1) Every subpoena shall:

19 (A) state the name of the court from which it is issued;

20 (B) state the title of the action, the name of the court in which it is  
21 pending, and its case number

22 (C) command each person to whom it is directed to attend and give  
23 testimony or to produce and permit inspection and copying of  
24 designated books, documents or tangible things in the possession,  
25 custody or control of that person, or to permit inspection of premises,  
26 at a time and place therein specified; and

27 (D) **set forth the text of subsections (c) and (d) of this rule.**

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

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

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

Respectfully submitted this 29th day of April 2024.

CHAD M. ENRIGHT  
Kitsap County Prosecuting Attorney



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LAEL K. CARLSON, WSBA No. 44773  
Deputy Prosecuting Attorney  
Attorney for Mr. Lewis in his capacity as Kitsap County  
Clerk

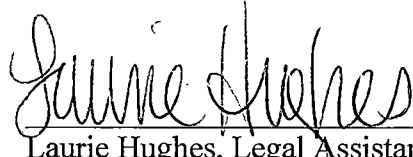
CERTIFICATE OF SERVICE

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**