

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

**FILED**

MAY 01 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 TIM KEELER

**I. RELIEF REQUESTED**

Pursuant to Superior Court Civil Rule (CR) 45(c)(3)(A), Tim Keeler, a retired Kitsap County Sheriff's Office Deputy, by and through his attorneys, Susan L. Rogers and 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. Keeler must be quashed as it fails to comply with the requirements set forth in CR 45(a)(1) and is unduly burdensome on Mr. Keeler.

**II. STATEMENT OF FACTS**

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07-3-01713-1  
MT 306  
Motion  
16617203



1 This case was first filed in 2008 and concerns a parenting plan regarding the parties' minor  
2 child, AMF. Since that date, there have been numerous hearings, motions, and filings. There is  
3 currently a trial date set for June 4, 2024.  
4

5 On April 13, 2024, an unidentified male served Mr. Keeler's spouse with a subpoena duces  
6 tecum which commanded he appear for a deposition on Saturday, May 11, 2024, at 10:30 a.m. at  
7 the Bremerton Kitsap Regional Library and for trial on June 4, 2024, at 9:00 a.m., and made a  
8 request for a law enforcement report: K13-005713. The description of testimony and documents  
9 he was expected to provide was as follows: "TIM KEELER'S testimony and documents in re:  
10 K13-005713." Mr. Keeler is not a party to this action, and has no independent recollection of the  
11 case. Further, Mr. Keeler is retired, and as such does not have access to the Kitsap County Sheriff's  
12 Office law enforcement reports, which includes the records requested by the Petitioner. Mr. Keeler  
13 possesses no documentation regarding K13-005713 and has no independent recollection of the  
14 case.<sup>1</sup> See Keeler declaration.  
15

16  
17 On April 30, 2024, a written objection to the subpoena pursuant to CR 45(c)(2)(B) was  
18 sent via email to Ms. Wood.<sup>2</sup> The objection stated that as to form, the subpoena failed to comply  
19 with CR 45(a)(1)(D) and CR 45(a)(2), and also noted that the records requested are not Tim  
20 Keeler's records, but the records of the Kitsap County Sheriff's Office.  
21

### 22 III. LEGAL AUTHORITY AND ARGUMENT

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24

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25 <sup>1</sup> The documentation the Petitioner is requesting is a public record retained by the Kitsap County Sheriff's  
26 Office 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,  
*Id.* the party serving the subpoena is not entitled to inspect and copy the materials without an order of the court.

1 A trial court's order granting or denying a motion to quash a subpoena is reviewed on  
2 appeal for an abuse of discretion. *Hammond v. Braden*, 16 Wn. App. 773, 776, 559 P.2d 1357  
3 (1977). A court abuses its discretion when its decision is based on untenable grounds or reasoning.  
4  
5 *Luckett v. Boeing Co.*, 98 Wn. App. 307, 309, 989 P.2d 1144 (1999).

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

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

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

11 (1) *In General.* Parties may obtain discovery regarding any matter, not  
12 privileged, which is relevant to the subject matter involved in the pending action,  
13 whether it relates to the claim or defense of the party seeking discovery or to the  
14 claim or defense of any other party, including the existence, description, nature,  
15 custody, condition and location of any books, documents, or other tangible things  
16 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.

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

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

21 The frequency or extent of use of the discovery methods set forth in section (a)  
22 shall be limited by the court if it determines that: (A) the discovery sought is  
23 unreasonably cumulative or duplicative, or is obtainable from some other source  
24 that is more convenient, less burdensome, or less expensive; (B) the party seeking  
25 discovery has had ample opportunity by discovery in the action to obtain the  
26 information sought; or (C) the discovery is unduly burdensome or expensive, taking  
27 into account the needs of the case, the amount in controversy, limitations on the  
28 parties' resources, and the importance of the issues at stake in the litigation. The

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

1 court may act upon its own initiative after reasonable notice or pursuant to a motion  
2 under section (c).

3 Here, Petitioner seeks to depose Mr. Keeler regarding “testimony and documents in K07-  
4 3-01713-1”, which involve an incident alleged to have occurred in 2013. This deposition and  
5 request for documents, the content of which, Mr. Keeler has no recollection of and no access to is  
6 burdensome and harassing. Mr. Keeler is not a party to this case and can add nothing to the issues  
7 surrounding the parenting plan that is at issue in this case. The Petitioner has failed to identify how  
8 discovery of such information as described in the subpoena is or could be relevant to the pending  
9 parenting action, or how such inquiry is reasonably calculated to lead to the discovery of  
10 admissible evidence. As such, the Petitioner’s discovery requests are not within the scope of CR  
11 26(b), and responding thereto by a non-party would be unduly burdensome.

14 Although the parties to a lawsuit “must accept its burdens as a natural part of civil litigation,  
15 nonparties have a different set of expectations.” *Eugster v. City of Spokane*, 121 Wn. App. 799,  
16 813, 91 P.3d 117 (2004), *review denied*, 153 Wn.2d 1012 (2005). The burden upon a nonparty “is  
17 a factor entitled to special weight” when a court decides whether to enforce a subpoena duces  
18 tecum. *Id.* The court in *Eugster* refused to enforce six overly burdensome subpoenas against a  
19 nonparty. *Id.* at 813-14. As stated above, Mr. Keeler is not a party to this action and is a factor the  
20 Court should consider when deciding whether to enforce the subpoena at issue here.

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

26 (a) Form; Issuance.

27 (1) Every subpoena shall:  
28

- 1 (A) state the name of the court from which it is issued;
- 2 (B) state the title of the action, the name of the court in which it is pending,
- 3 and its case number;
- 4 (C) command each person to whom it is directed to attend and give
- 5 testimony or to produce and permit inspection and copying of
- 6 designated books, documents or tangible things in the possession,
- 7 custody or control of that person, or to permit inspection of premises,
- 8 at a time and place therein specified; and
- 9 (D) set forth the text of subsections (c) and (d) of this rule.

10 **(2) A subpoena for attendance at a deposition shall state the method for**

11 **recording the testimony.**

12 As the subpoena attached to Exhibit A shows, the text of subsections (c) and (d) of CR 45

13 are not set forth in the subpoena, and the subpoena fails to state the method for recording the

14 testimony at the deposition. The deposition conditions are vague. The subpoena indicates that the

15 deposition is to take place at a library. It states that Mr. Keeler is required to be sworn but does not

16 say by whom. The subpoena states that the “deposition will be performed using Facebook video

17 conferencing at the library, via Heather Wood to the Officer.” The “Officer” is not designated, nor

18 is the manner of recording. The subpoena is silent on how the recording will be memorialized,

19 preserved, recorded, or transcribed, contrary to CR 28, 29, and 30.

20 “A subpoena which does not comply with CR 45 is a ‘nullity.’” *State v. Adamski*, 111

21 Wn.2d 574, 577-78, 761 P.2d 621 (1988) (citing *Harrison v. Prather*, 404 F.2d 267, 273 (5th

22 Cir. 1968)).

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

24 On timely motion, the court by which a subpoena was issued shall quash or

25 modify the subpoena if it:

26 ... (iii) requires disclosure of privileged or other protected matter and no exception

27 or waiver applies; or

28

1 (iv) subjects a person to undue burden, provided that the court may condition  
2 denial of the motion upon a requirement that the subpoenaing party advance the  
3 reasonable cost of producing the books, papers, documents, or tangible things.

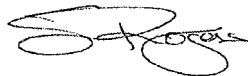
4 The report that Mr. Keeler is being requested to provide is not something that he has  
5 possession of, or access to, nor does he have an independent recollection of the contents of the  
6 document.<sup>4</sup> Accordingly, this request is not one to which Mr. Keeler has the ability to comply.  
7 Further, it is unclear how this request of Mr. Keeler is relevant to the issue(s) that will be  
8 presented at trial. Lastly, the subpoena fails to comply with CR 45.  
9

10  
11 **V. CONCLUSION**

12 For the reasons stated herein, the Subpoena Duces Tecum directed to Tim Keeler should  
13 be quashed.

14 Respectfully submitted this 1st day of May 2024.

15  
16 CHAD M. ENRIGHT  
17 Kitsap County Prosecuting Attorney

18 

19  
20 \_\_\_\_\_  
21 SUSAN L. ROGERS, WSBA No. 19774  
22 Senior Deputy Prosecuting Attorney  
23 Attorney for Mr. Keeler in his capacity as a former Kitsap  
24 County Sheriff's Deputy

25 

26  
27 \_\_\_\_\_  
28 LAEL K. CARLSON, WSBA No. 44773  
Senior Deputy Prosecuting Attorney  
Attorney for David Lewis, Kitsap County Clerk and Mr.  
Keeler in his capacity as a former Kitsap County Sheriff's  
Deputy

4 The Petitioner, as the parent, is one of the few people that can retain an unredacted copy of the report by submitting a public records request to the originating law enforcement agency.

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 [X] Via 1st Class U.S. Mail
9129 James Rd. SW [ ] Via Fax:
Rochester, WA 98579 [ ] Via Email
Hthrw0012@gmail.com [ ] Via Hand Delivery

Nancy Tarbell [X] Via 1st Class U.S. Mail
PO Box 4797 [ ] Via Fax:
South Colby, WA 98384 [ ] Via Email
[ ] Via Hand Delivery

Kerry Stevens [X] Via 1st Class U.S. Mail
PO Box 4545 [ ] Via Fax:
South Colby, WA 98384 [ ] Via Email
[ ] Via Hand Delivery

SIGNED in Port Orchard, Washington this 1st day of May 2024.

[Handwritten signature of Laurie Hughes]

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

**EXHIBIT A**



RECEIVED FOR FILING  
KITSAP COUNTY CLERK

APR 12 2024

KITSAP COUNTY CLERK  
DAVID T. LEWIS III

[x] EXPEDITE (if filed < 5 days of Hearing)  
[x] Hearing is Set (time sensitive)  
Date: 6-4-24 Rm. tbd Time: 9:00 AM  
ZOOM#: tbd? Passcode: tbd?  
Judge/Calendar: Adams/Departmental

**Subpoena #11 to: Tim Keeler**

(printed name of witness)

**Superior Family Court of Kitsap County**

<p>In Re: The Parenting and Support of Adeline Feulner, Child.</p> <p><u>Heather Wood, Mother</u> Petitioner</p> <p>Vs.</p> <p><u>Feulner, Lenard (father)</u> Respondent</p>	<p><b>Case Number: 07-3-01713-1</b></p> <p>Subpoenas Duces Tecum by Heather Wood, Mother, testimony from: Tim Keeler, Kitsap County Detective.</p> <p><b>CR 45(4) &amp; (3); &amp; RCW 5.56.010</b></p> <p><b>(Clerk's Action Required)</b></p>
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**TO:** Tim Keeler, 150 Spruce RD., Port Orchard, WA 98367, 132 PO Box, Burley, WA 98322, 602) 413-1938, (253) 514 1269, (253) 857-8654, (253) 857-8654, [Mkeeler23@gmail.com](mailto:Mkeeler23@gmail.com) [mmkeeler23@gmail.com](mailto:mmkeeler23@gmail.com)

**NOTICE TO:** The Kitsap County Superior Court Clerk, 614 Division St #202, Port Orchard, WA, 98366, (360) 337-7164, [superiorcourt@kitsap.gov](mailto:superiorcourt@kitsap.gov) ; AND

Lenard Feulner, Respondent, DOB: 10-11-1956, Dr. Lic. No.: FEULNLR447PJ State: WA. Height: 6' Weight: 240 Eyes: brown, 4101 Anderson Hill Rd, SW, Pt Orchard WA 98367, 333 Lippert Dr, W, #C129, Ph. (360)874-8806, (360)228-6079, [lenardfeulner@gmail.com](mailto:lenardfeulner@gmail.com)).

Adeline Feulner, 4101 Anderson Hill Rd SW, Port Orchard, WA, 98367, (564) 220-8922, [adelinewolfpaw@gmail.com](mailto:adelinewolfpaw@gmail.com) ;AND

Nancy Tarbell, esq. #26686, (GAL/knight errant) PO Box 840, Manchester, WA 98353-0840, [nancy@tarbelllaw.com](mailto:nancy@tarbelllaw.com) , (360)871-2794; AND

Kerry Stevens, esq., Bar #15420, (previously appointed atty in my withdrawn dismissed Petition) 11074 SE Glendale Ave Unit A, Port Orchard, WA 98366-9033, {360}269-2947, [slo@wavecable.com](mailto:slo@wavecable.com) ; AND

Tim Keeler  
Subpoena

Page 1 of 2 Heather Wood [hthrwood012@gmail.com](mailto:hthrwood012@gmail.com)  
9129 James Rd. SW, Rochester, WA 98579

Commissioner Matthew Clucas, esq. #22929, 614 Division St, Port Orchard, WA  
98366-4683, (360) 337-7140, [superiorcourt@kitsap.gov](mailto:superiorcourt@kitsap.gov)

TIM KEELER, YOU ARE COMMANDED TO TESTIFY ON **June 4<sup>th</sup>, 2024, 9:00 AM**, in  
the KITSAP COUNTY SUPERIOR FAMILY COURT, 614 Division St Port Orchard, WA,  
98366, (360)337-7164, [superiorcourt@kitsap.gov](mailto:superiorcourt@kitsap.gov) If the Trial Date changes, you will be  
notified as to the new date of your expected appearance.

THE ADDRESS AND TIME STATED above:

Description of testimony/document(s):

TIM KEELER's testimony and documents in re: K13-005713.

TIM KEELER, YOU ARE **also** Comanded to appear for **DEPOSITION** in the above  
cause on **May 11, 2024 @ 10:30 AM** In the **Bremerton Kitsap Regional Library, 1301  
Sylvan Way, Bremerton, WA 98310, (360) 447-5480**, unless otherwise mutually agreed  
upon. You are required to be sworn and the deposition will be performed using  
Facebook video conferencing at the library, via Heather Wood to the Officer.

FAILURE TO COMPLY WITH THIS SUBPOENA MAY BE CONSIDERED CONTEMPT  
OF COURT AND MAY RESULT IN YOUR ARREST. FAIL AT YOUR OWN PERIL.

Dated: APR 12 2024

Kitsap Superior Court Clerk's Certified Signature: X *[Signature]* (seal)

Printed Name: Rebecca Wildes

