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Kevin Knodell

1ST CIRCUIT COURT  
STATE OF HAWAII  
FILED

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R. LUECKE  
CLERK

IN THE FAMILY COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

APRIL STAR STREMEL,

Plaintiff,

vs.

JONATHAN L. STREMEL,

Defendant.

FC-D No.: 18-1-6111

**NON-PARTY JOURNALIST KEVIN  
KNODELL'S MOTION TO QUASH  
SUBPOENA FOR APPEARANCE AS  
WITNESS ON DECEMBER 23, 2021 at  
9:30AM; DECLARATION OF NON-  
PARTY JOURNALIST KEVIN  
KNODELL; EXHIBIT "1"; CERTIFICATE  
OF SERVICE**

Judge: Hon. Judge Elizabeth Paek-Harris

**NON-PARTY JOURNALIST KEVIN KNODELL'S MOTION TO QUASH SUBPOENA  
FOR APPEARANCE AS WITNESS ON DECEMBER 23, 2021 at 9:30AM**

**I. INTRODUCTION**

Pursuant to Rules 10 and 45 of the Hawai'i Family Court Rules ("HFCR"), non-party investigative journalist Kevin Knodell, by and through his undersigned attorneys, respectfully moves this Court for entry of an order quashing the subpoena commanding Mr. Knodell to appear in person at the Kapolei Judiciary Complex on December 23, 2021 at 9:30 a.m. as a witness for the Defendant, for the hearing on Defendant's motion to sanction Plaintiff's counsel, Dkt. 260.

There are two bases for this motion:

**First**, the subpoena is invalid for failure to comply with HFCR 45(c) (“Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person and by tendering to such person the fees for one day’s attendance and the mileage allowed by law.”). No witness fee or mileage was tendered to Mr. Knodell. Declaration of Kevin Knodell at 3.

**Second**, the subpoena must be quashed because it poses an unreasonable and oppressive burden on a member of the media. Any conceivably relevant testimony sought by Defendant in connection with the sanctions motion is available from other sources—including Defendant himself—and is neither necessary nor critical to the claims at issue in the above-captioned matter. Thus, any purported need for Mr. Knodell’s testimony in this ancillary dispute between the Defendant and Plaintiff’s counsel is far outweighed by the chilling effect on newsgathering activities if Mr. Knodell were forced to testify. “Given the important role that newsgathering plays in a free society, courts must be vigilant against attempts by civil litigants to turn non-party journalists or newspapers into their private discovery agents.” *Hobley v. Burge*, 223 F.R.D. 499, 505 (N.D. Ill. 2004).

## **II. BACKGROUND**

Mr. Knodell is an investigative journalist who reports on military affairs, veterans, security and diplomacy in Hawaii and the greater Pacific. Knodell Decl., at 2. In January and August 2021, Mr. Knodell authored articles in the online news publication Honolulu Civil Beat (“Civil Beat”) concerning Joint Base Pearl Harbor-Hickam’s Family Advocacy Program. *See* Defendant’s Motion (Dkt. 260) at Exhibits A (the “August 2021 Article”) and C (the “January 2021 Article”).

On September 28, 2021, Defendant moved to sanction Plaintiff's counsel, claiming that counsel violated HCRR10.4 by emailing a confidential court document to the media. Dkt. 260 at 1. That motion is set for hearing on December 23, 2021 at 9:30 a.m.

On or about November 17, 2021, Mr. Knodell was served with (1) a subpoena commanding him to appear as a witness for Defendant at the Family Court of the First Circuit, 4675 Kapolei Parkway on December 23, 2021 at 9:30 a.m. (the "testimonial subpoena") and (2) a subpoena duces tecum compelling Mr. Knodell to appear at the office of Defendant's former counsel and produce newsgathering documents, communications, and files (the "discovery subpoena"). Knodell Decl. at 3, Exhibit 1. No witness fee or mileage was provided for either subpoena. Knodell Decl., at 3. The discovery subpoena sought, among other things, "any and all" documents relating to the January 2021 and the August 2021 Articles; documents and communications between Mr. Knodell and Civil Beat editors regarding the articles—including "drafts, documents, or evidence that was rejected by the editors"; documents and communications between Mr. Knodell and Plaintiff's counsel; documents and communications between Mr. Knodell and Plaintiff; and court documents. Because Mr. Knodell is no longer affiliated with Civil Beat, he had and has no responsive documents in his possession, custody, or control to produce in response to the subpoena duces tecum. Mr. Knodell informed Defendant's then-counsel that he had no documents. Knodell Decl. ¶ 5. During the meet and confer process, counsel for Mr. Knodell similarly informed Defendant that he had no responsive documents in his possession, custody, or control.<sup>1</sup> Nevertheless Mr. Knodell appeared at the time and location specified in the subpoena duces tecum

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<sup>1</sup> Defendant contacted Mr. Alston on December 9, 2021. The undersigned conferred with Defendant regarding the subpoena after receiving notice in writing from counsel that he no longer represented Defendant and after receiving confirmation from Defendant himself that he was currently unrepresented.

to reiterate that he had no responsive documents. Knodell Decl. ¶ 6. The office was closed and locked, but Defendant was in the hallway outside the office. Mr. Knodell's counsel confirmed to Defendant that there was nothing to produce; in response, Defendant accused Mr. Knodell of failing to honor his obligations under the discovery subpoena.

### III. ARGUMENT

#### A. Both subpoenas are invalid because no mileage fee was tendered.

The subpoenas are invalid. HFCR Rule 45(c) provides:

Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person and by tendering to such person the fees for one day's attendance and the mileage allowed by law.

No witness fees or mileage was tendered to Mr. Knodell for either subpoena. Knodell Decl. ¶ 4. "A subpoena is invalid if no witness fee or mileage allowance is tendered and the court may grant a prospective witness's motion to quash a party's subpoena when the party has failed or refused to tender attendance and mileage fees." 98 C.J.S. Witnesses § 31. *See also In re Marriage of Dauwe*, 148 P.3d 282 (Colo. App. 2006), *as modified on denial of reh'g*, (Sept. 21, 2006).

#### B. The testimonial subpoena should be quashed as unreasonable and oppressive.

In ruling on motions to quash subpoenas directed at non-party journalists and media organizations, courts have analyzed whether the subpoena is "reasonable in the circumstances" under Rule 45. *See, e.g., McKevitt v. Pallasch*, 339 F.3d 530, 533 (7th Cir. 2003); *McBride v. CBS Radio, Inc.*, No. CIV.A10-5463, 2011 WL 8072752, at \*1 n.1 (E.D. Pa. Apr. 12, 2011) (granting motion to quash a subpoena against a non-party media entity); *Los Angeles Mem'l Coliseum Comm'n v. Nat'l Football League*, 89 F.R.D. 489, 496 (C.D. Cal. 1981) (granting motions to quash subpoenas against nonparty journalists finding subpoenas unreasonable and oppressive under FRCP 45(b)); *Patterson v. Burge*, No. 03 C 4433, 2005 WL 43240, \*5 (N.D. Ill. Jan. 6, 2005) (quashing subpoena to the media under the standards of Rule 45). As one court explained:

[N]ews organizations' efforts to maintain their independence and gain the trust of sources is an interest that will be severely impaired if mere relevance, meaning as it does here a mere relationship to the subject matter of a civil suit, makes their non-public records available on request.

2005 WL 43240, at \*3. Courts have repeatedly recognized the burdens to journalists facing a third-party subpoena under Rule 45, finding that those burdens must be carefully weighed, giving consideration to the deleterious impact subpoenas can have on the press's special role in investigating issues of public importance compared to the actual benefits of the information sought and *whether it is available from other sources*. See *Bond v. Utreras*, No. 04 C 2617, 2006 WL 1806387, \*5 (N.D. Ill. June 27, 2006) (recognizing burden because "if [reporter] is seen as being one who hands over people's stories to the Police—especially when those stories sometimes involve allegations that the Police have been abusive — people might be less willing to come to him, and his journalistic endeavors... would be undermined"); see also *Hobley v. Burge*, 223 F.R.D. 499, 505 (N.D. Ill. 2004) ("[t]he resulting wholesale exposure of press files to litigant scrutiny would burden the press with heavy costs of subpoena compliance, and could otherwise impair its ability to perform its duties....") (internal citation omitted); *In re Application to Quash Subpoena to Nat. Broad. Co., Inc.*, 79 F.3d 346, 351 (2d Cir. 1996) (reversing lower court decision, granting motion to quash a subpoena against a media entity pursuant to a journalists qualified privilege).

As a result, courts have rejected attempts to force non-party journalists to testify. In *Mosley v. City of Chicago*, the court rejected a demand to depose a journalist. 252 F.R.D. 421, 437 (N.D. Ill. 2008), vacated in part on reconsideration, 252 F.R.D. 445, 448 (N.D. Ill. 2008).

Here, Defendant seeks the testimony of Mr. Knodell in connection with a motion to sanction Plaintiff's counsel. But the burdens imposed by the testimonial subpoena vastly outweigh any

possible benefit from Mr. Knodell's testimony.<sup>2</sup> Mr. Knodell is not a party to this case; nor does he have personal knowledge of facts relevant to the claims and defenses in this divorce action. He is an investigative journalist who reports on military affairs. He is being brought into these proceedings because of news articles concerning the military's Family Advocacy Program, including Defendant's experience with the FAP. And any evidence sought in support of the sanctions motion (*i.e.*, the potential source of the confidential court order) can be obtained from other sources, including, for example, Defendant himself and Plaintiff's counsel.

The sanctions motion and the discovery subpoena make clear that the real information targeted is Mr. Knodell's newsgathering files and sources. *See* Motion at ¶ 6 (complaining about January 2021 article and discussing need for media gag order); Exhibit 1 (seeking "any and all" documents relating to the January 2021 and the August 2021 Articles; documents and communications between Mr. Knodell and Civil Beat editors regarding the articles—including "drafts, documents, or evidence that was rejected by the editors"; documents and communications between Mr. Knodell and Plaintiff's counsel; documents and communications between Mr. Knodell and Plaintiff; and court documents). Clearly, the testimonial subpoena is nothing more than a blatant attempt to harass the media, fish for information that might expose the sources for the January 2021 and August 2021 articles, and chill future investigative reporting on similar matters of public concern.

If Mr. Knodell is forced to be interrogated about information he obtained from sources, it would impair his integrity as a journalist and turn him into an unwilling investigator for litigants. As courts have recognized, this burden is a very real and important consideration, as it ultimately

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<sup>2</sup> Mr. Knodell is not here challenging the substance of the discovery subpoena because (1) the date for compliance passed; and (2) there was nothing to produce in response.

results in a loss of information to the public. *See Patterson*, 2005 WL 43240, at \*3 (if journalists’ “‘work product’ becomes fair game for civil litigants in their relentless quest to ‘discover’ everything, the news organizations become the indentured servant of the litigants, and their ability to do their important work will be severely impaired.”); *Hobley*, 223 F.R.D. at 505 (quashing subpoena for notes, based on burden of report’s deposition).

Given the inherently burdensome and chilling nature of the Subpoena, the motion to quash should be granted. *See McKevitt v. Pallasch*, 339 F.3d 530, 533 (7th Cir. 2003) (“harassment of the press” is not tolerated and is an appropriate factor for consideration under Rule 45, which requires that a non-party subpoena be “reasonable in the circumstances”).

**C. The First Amendment protects Mr. Knodell’s confidential sources from disclosure.**

The Court need not reach the issue of the reporter’s privilege because the testimonial subpoena is invalid, oppressive, and burdensome. However, Article I, section 4 of the Hawai’i Constitution and the First Amendment of the U.S. Constitution, which is applicable to the states through the Fourteenth Amendment, guarantees freedom of the press.<sup>3</sup> Although the Hawai’i Supreme Court previously rejected the existence of a reporter’s privilege under the First Amendment to the U.S. Constitution, *see In re Goodfader*, 45 Haw. 317, 367 P.2d 472 (1961), the

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<sup>3</sup> Article I, Section 4 of the Hawai’i Constitution states:

No law shall be enacted respecting an establishment of religion, or prohibiting the free exercise thereof, **or abridging the freedom of speech or of the press** or the right of the people peaceably to assemble and to petition the government for a redress of grievances (emphasis added).

The U.S. Constitution is nearly identical:


Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; **or abridging the freedom of speech, or of the press**; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. Supreme Court subsequently recognized a qualified reporter's privilege under the First Amendment. *Branzburg v. Hayes*, 408 U.S. 665 (1972). And, a state trial court subsequently held that a qualified reporter's privilege barred a plaintiff in a personal injury action from discovering newsgathering files. *Belanger v. City and County of Honolulu*, Civil No. 93-4047-10 (Haw. 1st Cir. Ct. May 4, 1994). A Hawai'i federal court has also recognized a qualified common-law privilege to refuse to divulge confidential sources. *DeRoburt v. Gannett*, 507 F. Supp. 880 (D. Haw. 1981). There, the court analyzed three factors to determine whether the privilege applied to bar disclosure: "(1) is the information relevant, (2) can the information be obtained by alternative means, and (3) is there a compelling interest in the information?" *Id.* at 886 (quoting *Miller v. Transamerican Press, Inc.*, 621 F.2d 721, 726 (5th Cir. 1980)). Here, the information sought by Defendant is not relevant to the claims in the action but has limited relevance in his ancillary dispute against Plaintiff's counsel. And, the information can be obtained by alternative means, including, for example, from Defendant and Plaintiff's counsel.

#### IV. CONCLUSION

For the foregoing reasons, movant respectfully requests that this Court enter an order quashing the testimonial subpoena.

DATED: Honolulu, Hawai'i, December 22, 2021.



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PAUL ALSTON  
CLAIRE WONG BLACK

Attorneys for Non-Party Journalist  
KEVIN KNODELL



IN THE FAMILY COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

APRIL STAR STREMEL,

Plaintiff,

vs.

JONATHAN L. STREMEL,

Defendant.

FC-D No.: 18-1-6111

**DECLARATION OF NON-PARTY  
JOURNALIST KEVIN KNODELL**

**DECLARATION OF NON-PARTY JOURNALIST KEVIN KNODELL**

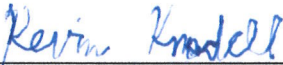
I, KEVIN KNODELL, declare as follows:

1. I make this Declaration in support of Non-Party Journalist Kevin Knodell's Motion to Quash Subpoena for Attendance In Person at hearing based on my personal knowledge.
2. I am an investigative journalist reporting on military affairs, veterans, security and diplomacy in Hawaii and the greater Pacific focused on military affairs.
3. On or about November 17, 2021, I was served with a subpoena/subpoena duces tecum. A true and correct copy of the document served on me is attached as Exhibit 1. No witness fee or mileage was tendered to me.
4. Because I am no longer affiliated with Civil Beat, I had none of documents requested by the subpoena duces tecum in my possession, custody, or control.
5. On or about December 7, 2021, I informed Fred Waki, Esq. by U.S. Mail and email that I do not possess any of the documents requested by the subpoena.

6. On the subpoena return date, I appeared at the time and location specified on the subpoena with my counsel to reiterate that I had no responsive documents.

I declare under penalty of law that the foregoing is true and correct.

DATED: Honolulu, Hawai'i, December 22, 2021.

  
\_\_\_\_\_  
KEVIN KNODELL

IN THE FAMILY COURT OF THE FIRST CIRCUIT

2021 NOV 15 PM 1:49

STATE OF HAWAII

APRIL STAR STREMEL,

Plaintiff,

vs.

JONATHAN STREMEL,

Defendant.

FC-D No. 18-1-6111

RYAN GADUAL  
CLERK

SUBPOENA  
KEVIN KNOPELL; SUBPOENA  
DUCES TECUM

**SUBPOENA**

THE STATE OF HAWAII:

ANY OFFICER AUTHORIZED BY LAW TO SERVE SUBPOENAS IN THE STATE  
OF HAWAII:

YOU ARE COMMANDED to serve this subpoena on the witness named below:

NAME & LAST KNOWN ADDRESS

KEVIN J. KNOPELL



This subpoena shall not be personally delivered between 10:00 p.m. and 6:00 a.m. on premises not open to the public, unless a judge of the above-entitled court permits, in writing on this subpoena, personal delivery during those hours.

TO THE WITNESS ABOVE-NAMED:

YOU ARE COMMANDED to appear as a witness for the Defendant at the Family Court of the First Circuit, 4675 Kapolei Parkway, Third Floor, Kapolei, Hawaii 96707 on December

23, 2021 at 9:30 a.m.

I hereby certify that this is a full, true, and correct copy of the original on file in this office

Clerk, Circuit Court, First Circuit

## SUBPOENA DUCES TECUM

YOU ARE COMMANDED to bring the following items and documents to:

### LOCATION & TIME

LAW OFFICE OF FRED I. WAKI  
FRED I. WAKI #5728  
Century Square  
1188 Bishop Street, Suite 912  
Honolulu, Hawaii 96813

FRIDAY, DECEMBER 10, 2021 AT 10:00 AM.

1. Emails between yourself and the Plaintiff, APRIL START STREMEL (ALTON), including attachments.
2. Emails between yourself and DAVID HAYAKAWA, including attachments.
3. Any and all documents relating to the article you published in Honolulu Civil Beat titled, "A Bitter Domestic Dispute Could Shake Up How the Navy Handles Abuse Cases in Hawaii, By Kevin Knodell" published on January 21, 2021.
4. Any and all documents relating to the article you published in Honolulu Civil Beat titled, "Troops Can't Sue The Military For Discrimination. This Hawaii Sailor Wants To Change That" published on August 13, 2021.
5. Any and all documents, text messages, or messages sent through encrypted applications and/or software, social media, hard copy, or sent to you in any other format from DAVID HAYAKAWA.
6. Any and all documents, text messages, or messages sent through encrypted applications and/or software, social media, hard copy, or sent to you in any other format from APRIL STAR STREMEL (ALTON).
7. Any and all documents, communication, and correspondence between yourself and your editors (including, but not limited to, KIM GAMEL & JOHN HILL)

regarding both published articles and CONFIDENTIAL court documents sent to you from David Hayakawa via any editors or other staff at Honolulu Civil Beat.

8. Any court document, audio recording, video recording, affidavit, deposition, or any other statement signed by JUDGE STEVEN M. NAKASHIMA making the following specific statement: "*Mr. Stremel was a danger to his wife,*" and "*Mrs. Stremel was not a danger to him.*" If no evidence exists, please submit a Declaration of Witness stating so.
9. Submit ANY statement from ANY Family Court Judge specifically using the word "dangerous" to describe Defendant Jonathan Stremel and the words "Not dangerous" to describe Plaintiff April Stremel. If no evidence exists, please submit a Declaration of Witness stating so.
10. Any and all article drafts, documents, or evidence that was rejected by the editors or other employees of Honolulu Civil Beat, including, but not limited to, the Parents and Children Together Report (PACT) that confirmed the Defendant Jonathan Stremel was a victim of domestic abuse.

DISOBEDIENCE of this subpoena may be punished as contempt by this Court.

DATED: Kapolei, Hawaii, November 15

R. PASQUAL  
CLERK OF THE ABOVE ENTITLED COURT



**RETURN OF SERVICE**

SERVICE WAS MADE AT:

\_\_\_\_\_  
DATE

\_\_\_\_\_  
TIME

\_\_\_\_\_  
PLACE OF SERVICE

- Service was made upon the witness/person named in the subpoena
- Service of subpoena was made upon another person named as follows (Explain):

\_\_\_\_\_  
PERSON SERVED (Print)      TITLE/POSITION (If not the witness)

\_\_\_\_\_  
SIGNATURE (Not Required)

\_\_\_\_\_  
NAME OF SERVER (Print)

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE/TIME

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing will be duly served upon the following party on this date, by hand-delivery, mail or e-mail, as indicated and addressed as set forth below:

	<b>HAND- DELIVERED</b>	<b>MAIL</b>	<b>JEFS</b>
DAVID HAYAKAWA, ESQ. 841 Bishop Street, Suite #410 Honolulu, HI 96813	(    )	( <b>X</b> )	(    )
Attorney for <b>Plaintiff</b>			
JONATHAN L. STREMEL 87-1002 Nenewai Street Waianae, HI 96792	( <b>X</b> )	( <b>X</b> )	(    )

**Defendant**

DATED: Honolulu, Hawai'i, December 22, 2021.



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PAUL ALSTON  
CLAIRE WONG BLACK

Attorneys for Non-Party Journalist  
KEVIN KNODELL