

The Honorable Suzanne R. Parisien
Trial Date: June 12, 2023
Noted for Hearing: February 28, 2023

IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

STACY IRWIN and KIMBERLY FERREIRO,

Plaintiffs,

v.

CITY OF SEATTLE, WASHINGTON, a
municipal corporation under the laws of the
State of Washington,

Defendant.

Case No. 21-2-11739-9 SEA

**PLAINTIFFS' MOTION TO
COMPEL CURRENT ADDRESS
OF FORMER MAYOR JENNY
DURKAN OR A PERSON
DESIGNATED TO ACCEPT
SERVICE OF PROCESS ON
BEHALF OF JENNY DURKAN**

I. INTRODUCTION AND RELIEF REQUESTED

Plaintiffs Stacy Irwin and Kimberly Ferreiro were Public Records Officers assigned to work in Seattle Mayor Jenny Durkan's office. Mayor Durkan and several other high-ranking officials, including the Police Chief and the Fire Department Chief, do not have text messages sent or received during the George Floyd protest in Seattle. The City of Seattle's response to the protest was to abandon the Seattle Police East Precinct and 16 blocks of Capitol Hill for several weeks in June 2020. The former mayor's text messages for that entire period of time are mysteriously missing.

Plaintiffs have been trying to schedule the deposition of now former Mayor Durkan since September 2022 without success. Plaintiffs do not have former Mayor Jenny Durkan's address and

PLAINTIFFS' MOTION TO COMPEL CURRENT ADDRESS
OF FORMER MAYOR JENNY DURKAN OR A PERSON TO
ACCEPT SERVICE ON BEHALF OF JENNY DURKAN

Case No. 21-2-11739-9 SEA

Page 1 of 6

SUSAN B. MINDENBERGS

ATTORNEY AT LAW

705 SECOND AVENUE, SUITE 1050

SEATTLE, WA 98104

TEL: (206) 447-1560; FAX: (206) 447-1523

SUSANMM@MSN.COM

1 have no way of serving a subpoena on the former mayor. The City of Seattle has refused to provide
2 either a last known physical address for former Mayor Jenny Durkan or a person designated to
3 accept service of process for Mayor Durkan. Plaintiffs now seek an order compelling Defendant
4 City of Seattle to provide the last known address of former Mayor Durkan or identify a person
5 designated to accept service of process for Mayor Durkan.

6 **II. STATEMENT OF FACTS**

7 Plaintiffs and Defendant City of Seattle engaged in a CR 26(i)/37(a) discovery conference
8 on September 28, 2022. At that conference, Plaintiffs indicated their intent to depose former Mayor
9 Durkan and sought a physical address to serve a subpoena or a designated representative to accept
10 service of process. Mindenbergs Decl. ¶2. During the conference, Defendant agreed to inquire
11 about the address or designation person and get back to Plaintiffs. On October 4, 2022, Plaintiffs
12 sent a letter to Defendant memorializing the agreements and outstanding issues in discovery.
13 Mindenbergs Decl. ¶3, Ex. A. On October 20, 2022, Defendant responded indicating “We are
14 exploring means for service to be accepted and will be back to you in this regard as soon as we can.”
15 Mindenbergs Decl. ¶4, Ex. B. Defendant has never provided Plaintiffs with information about either
16 the address or designated agent for Mayor Durkan.

17 On October 24, 2022, Defendant served on Plaintiffs their disclosure of possible primary
18 witnesses. Mindenbergs Decl. ¶5, Ex. C. Jenny Durkan is listed as lay witness number 4. Defendant
19 stated that “[f]ormer Mayor Durkan has knowledge regarding the City’s response to the SEEC
20 Report and related matters. She may also have other information pertinent to this lawsuit.” *Id.* The
21 Defendant provided no address or other contact number for former Mayor Durkan in its disclosure.
22 *Id.* On February 6, 2023, Plaintiffs asked Defendant for dates for depositions of former Mayor
23 Durkan and others and asked that the City respond by close of business on February 8, 2023.
24 Mindenbergs Decl. ¶6, Ex. D. On February 8, 2023, Defendant served its Second Supplemental
25 Responses to Plaintiffs’ first discovery requests. Mindenbergs Decl. ¶7, Ex. E. Defendant lists
26 Jenny Durkan stating “[f]ormer Mayor Durkan has knowledge relevant to Plaintiffs’ allegations and

1 the City’s defenses, including, for example, regarding the City’s response to the SEEC’s Report,
2 and related matters.” *Id.* On February 9, 2023, Defendant responded regarding Mayor Durkan:
3 “Regarding former Mayor Durkan, we are working on outreach regarding service of a deposition
4 subpoena and will get back to you shortly.” Mindenbergs Decl. ¶8, Ex. F. Since September 2022,
5 the Defendant has failed to either provide the last known physical address of its former mayor or a
6 person designated to accept service of process. Mindenbergs Decl. ¶9. The Defendant has failed to
7 provide the information sought and has failed to seek a protective order. Plaintiffs are willing to
8 maintain confidentiality for former Mayor Durkan’s physical address especially since she not only
9 served as Seattle mayor, but also served as a former federal prosecutor. Mindenbergs Decl. ¶10.

10 Discovery cut-off in this matter is scheduled for April 24, 2023. The trial in this matter is set
11 for June 12, 2023.

12 **III. STATEMENT OF ISSUES**

- 13 1. Should the Court order Defendant to provide Plaintiffs with a physical address or the
14 name of a persons designated to accept service of process for former Mayor Jenny
15 Durkan?
16 2. Are Plaintiffs entitled to reasonable attorney’s fees and costs pursuant to CR 37(a) for
17 bringing this motion?

18 **IV. EVIDENCE RELIED UPON**

19 Plaintiffs Irwin and Ferreiro rely on the evidence contained in the Declaration of Susan B.
20 Mindenbergs, the exhibits thereto, and the pleadings and documents filed herein.

21 **V. ARGUMENT AND AUTHORITY**

22 Defendant City of Seattle has had notice since September 28, 2022, that Plaintiffs were
23 seeking the deposition of Seattle’s former Mayor, Jenny Durkan. Since the Defendant was Mayor
24 Durkan’s former employer and from whom Mayor Durkan received compensation, it is clear that
25 the City has a last known address. However, in its initial disclosure of primary witnesses, Defendant
26 failed to comply with LCR 26(k)(3)(A) when no address or phone number was provided for former
Mayor Durkan. Although the sanctions include exclusion of the witness, Plaintiffs are not seeking

1 exclusion, but rather an address and phone number or a name of a person designated to accept service
2 of process for Mayor Durkan.

3 It is unknown why Defendant City of Seattle has refused to provide either a physical address
4 or person designated to accept service of process. It is clear, former Mayor Durkan is an important
5 witness in this case. Concealment is a possible motive for the Defendant's refusal to provide Mayor
6 Durkan's address. Concealment under RCW 4.16.180 is defined as a "clandestine or secret removal
7 from a known address." *Caouette v. Martinez*, 71 Wn. App. 69, 74, 856 P.2d 725
8 (1993) (quoting *Patrick v. DeYoung*, 45 Wn. App. 103, 109, *review denied*, 107 Wn.2d 1023 (1987)).
9 According to the holding in *Caouttte*, "[w]illful evasion of process appears to be a necessary
10 ingredient." *Muncie v. Westcraft Corp.*, 58 Wn.2d 36, 38, 360 P.2d 744 (1961). Here, the reason for
11 the Defendant's unwillingness to provide either an address or a designated agent to accept service
12 of process for Mayor Durkan is both prejudicial to Plaintiffs and a willful violation of the rules of
13 court.

14 VI. CONCLUSION

15 Plaintiffs seek an order compelling Defendant City of Seattle to provide either a physical
16 address for former Mayor Jenny Durkan or identify a person designated to accept service of process
17 for her within five (5) days of the entry of the order. Defendant on-going refusal is willful. Pursuant
18 to CR 37(a)(4), Plaintiffs seek an award of reasonable attorney fees and cost incurred in being forced
19 to bring this motion.

20
21 /

22 //

23 ///

1 DATED this 14th day of February 2023.

2 By: /s/ Susan B. Mindenbergs
3 Susan B. Mindenbergs, WSBA #20545
4 Law Office of Susan B. Mindenbergs
5 705 Second Avenue, Suite 1050
6 Seattle, WA 98104
7 Telephone: (206) 447-1560
8 Facsimile: (206) 447-1523
9 Email: susanmm@msn.com

10 By: /s/ Jeffrey L. Needle
11 Jeffrey L. Needle, WSBA #6346
12 Law Office of Jeffrey L. Needle
13 705 Second Avenue, Suite 1050
14 Seattle, WA 98104
15 Telephone: (206) 447-1560
16 Facsimile: (206) 447-1523
17 Email: jneedlel@wolfenet.com
18 *Attorneys for Plaintiffs*

19 *I certify that this memorandum contains 1411 words, in compliance with the Local Civil Rules.*

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on February 14, 2023, the undersigned caused a true and correct copy
3 of the foregoing document to be served in the manner indicated below upon the following
4 individual(s):

5 James P. Savitt, WSBA #16847
6 Brandi B. Balanda, WSBA #48836
7 Sarah Gohmann Bigelow, WSBA #43634
8 SAVITT BRUCE & WILLEY LLP
9 1425 Fourth Avenue, Suite 800
10 Seattle, WA 98101-2272
11 Telephone: (206) 749-0500
12 Facsimile: (206) 749-0600
13 Email: jsavitt@sbwllp.com
14 Email: bbalanda@sbwllp.com
15 Email: sgohmannbigelow@sbwllp.com
16 *Attorneys for Defendant*

- Legal Messenger
- Facsimile
- Electronic Mail
- USPS First Class Mail
- UPS Shipping
- Court eFiling/eService

17 The foregoing statement is made under the penalty of perjury under the laws of the State of
18 Washington and is true and correct.

19 DATED this 14th day of February 2023.

20 By: /s/ Christine A. Tobin
21 Christine A. Tobin, *Paralegal*
22 Law Office of Susan B. Mindenbergs
23 705 Second Avenue, Suite 1050
24 Seattle, WA 98104
25 Telephone: (206) 447-1560
26 Facsimile: (206) 447-1523
Email: christine@sbmlaw.net