

**DOCUMENT PRODUCTION: NEW THINGS
NOT TO MISS**

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FIRST SECTION

I. INTRODUCTION

Document production in the arena of family law is absolutely essential....and fun! Being able to accurately identify and gather the documents needed to prove your case is one of the most important steps in effectively and zealously representing your client. It is amazing what can be exposed about finances, assets, conduct, custody and other relevant facts through the thoughtful and proper use of the discovery tools afforded under Georgia law. However, you must also be just as thorough in gathering relevant documents from your own client. Without all of these documents, you will never be able to put together the pieces of the puzzle that tell the story of your case.

Once you have pulled together the pieces to tell the story, you will need to be sure that you are familiar with the rules of the court(s) that you are before, including the local ones, so that are you have completed discovery and effectively told your client's story, you are able to obtain some relief for your client. Thus, the purpose of these materials is two-fold: to help you gather the relevant documents to tell your client's story and to assist you in preparing to obtain relief after the story is told. The scope includes a general overview of document discovery and some specifics on two of the newest areas of law for family law practitioners, child support and custody.

II. GENERAL OVERVIEW OF DOCUMENT DISCOVERY ON OPPOSING PARTY

The Georgia Civil Practice Act (O.C.G.A. Sections 9-11-1 thru 9-11-133) gives lawyers one means of discovering facts needed to prove their case. All you have to do is use it. O.C.G.A. Section 9-11-34 is the statute that governs production of documents. (See Appendix A). The primary method that can be utilized to obtain documents from the opposing side under this Code section is through a Request for Production of Documents. The opposing party has thirty (30) days to file a written Response, unless the Request is served on the opposing party simultaneously upon service of the Complaint, in which case forty five (45) days is allowed for the Response to be filed. Of course, the Court may allow a shorter or longer time. The Request must specify a reasonable time, place, and manner of making the inspection. The Request should be specific. Failure to produce the requested documents is subject to a Motion to Compel under O.C.G.A. Section 9-11-37. (See also requirements of Uniform Superior Court Rule 6.4(A) as to content of Motion). Before filing a Motion to Compel, you must comply with the requirements of Uniform Superior Court Rule 6.4(B). The sanctions that can be imposed pursuant to the granting of a Motion to Compel can be severe.

A second means of collecting documents from an opposing party, but not a third party, is through a Notice to Produce pursuant to O.C.G.A. Section 24-10-26. (See Appendix B). A Notice to Produce should not be confused with a

Request for Production of Documents. There are distinct differences. The Request gives the document producer the time period to respond as stated above; requires specificity as to time, place and manner of production; and is enforced by filing a Motion to Compel. Contrarily, production of documents pursuant to a Notice to Produce can only be utilized on the opposing party but not third parties; requires the documents to be produced upon the occurrence of a certain event (i.e. deposition, hearing, trial); and is enforced by a Motion for Contempt under O.C.G.A. Section 24-10-25. (See Bergen v. Cardiopul Medical, Inc., 175 Ga.App. 700 (1985)). Furthermore, a Notice to Produce is not required to specify the time, place and manner of production and may be more general in its document requests. You may also attach a Notice to Produce to a Notice of Taking Deposition. (See Appendix C). I always do this even if I have already served the opposing party with the Notice to Produce because it serves to re-emphasize the fact that I am expecting documents to be produced at the deposition.

To be safe, when requesting documents from the opposing party, you should combine a Request for Production of Documents with a Notice to Produce (See Appendix D for an example). Otherwise, you may end up going to a deposition or temporary hearing prior to the thirty or forty five day period for responding to the Request without the documents you need from the opposing side. On the other hand, if you never go to a temporary hearing or deposition, you will still get the documents you need in the thirty of forty five day period under the Request.

III. GENERAL OVERVIEW OF DOCUMENT DISCOVERY ON THIRD PARTIES

Subsection (c) of O.C.G.A. Section 9-11-34 of the Georgia Civil Practice Act also allows a party to serve a Request for Production of Documents on a third party. The third party or the opposing party can file an objection to the Request under subsection (b) of this Code section. The third party may charge a reasonable document copying charge. There are specific requirements and deadlines you must comply with if the Request is being served on a third party who is a practitioner of the healing arts or a hospital or health care facility. Do not forget to serve opposing counsel or the opposing party, if pro se, with a copy of your Request to any third party. If the Request is seeking documents of a nonparty (i.e. phone records of the alleged paramour or documents of the closely held company of a party), you must serve a copy of the Request on that nonparty (i.e. paramour, registered agent for the company) as well as the opposing party. If no objection is filed to the third party Request, then the third party is immune from liability or damages notwithstanding the fact that documents they produce may contain confidential or privileged information. I usually send a letter to the third party explaining the purpose of the Request for Production of Documents at the same time I send the Request. (See Appendix E for sample letter and Request for Production of Documents to a Third Party).

Another tool for obtaining documents from a third party is through a subpoena for production of documents, which is also referred to as a *subpoena duces tecum*, under O.C.G.A. Section 9-11-45. (See Appendix F). You cannot get

documents from a third party through a Notice to Produce. In fact, a lot of third parties will refuse to honor a Request for Production of Documents and instead will insist on the attorney seeking the documents by subpoena. The subpoena should command the person to produce the documents at a scheduled hearing or deposition. If the subpoena is unreasonable or objectionable, then a Motion to Quash is the appropriate method to protect from production. However, the third party to whom the subpoena is directed may simply serve a written objection on the attorney designated in the subpoena and no documents will be required to be produced except pursuant to Order of the Court from which the subpoena was issued. Of course, the third party may require to be paid reasonable costs for the production of the requested documents. Do not forget to serve a copy of the subpoena on opposing counsel. Also, once you receive the documents requested, you should immediately provide the opposing side with a copy. (See Appendix G for sample subpoena for production of documents).

IV. SCOPE OF DISCOVERABLE MATTERS

The purpose of discovery is to enable the parties to prepare for trial, to formulate the issues, and to find the facts. It enables us to also determine facts that the adverse party contends exist so that we can be fully prepared and get our clients fully prepared. Discovery, when used correctly, can also remove the potential for secrecy and hiding of information which is particularly important in the area of Family Law.

O.C.G.A. Section 9-11-26(b) governs the scope of the matters you can request under the Georgia Civil Practice Act. (See appendix H). Section 9-11-26(b)(1) states in part that: "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." The use of the discovery process has been held to be broadly construed. Travis Meat & Seafood Co. v. Ashworth, 127 Ga. App. 284 (1972); International Serv. Ins. Co. v. Bowen, 130 Ga. App. 140 (1973). The Courts are to give wide latitude in allowing all parties to make as complete and thorough discovery as possible. Travis Meat & Seafood Co. v. Ashworth, 127 Ga. App. 284 (1972). In fact, the standard of review on appeal is that the trial court will not be reversed on discovery matters absent a clear abuse of discretion. Ambassador College v. Goetzke, 244 Ga. 322 (1979). So, it has been well settled for decades that discovery is a powerful tool at the disposal of the attorney.

Documents which are prepared in anticipation of litigation or for trial by or for a party or by or for that party's representative which contain mental impressions, conclusions, opinions, or legal theories of the person preparing them are considered "work product" and are not discoverable unless a showing of substantial need and undue hardship can be shown. O.C.G.A. Section 9-11-16(b)(3).

V. SPECIFIC LAW ON SPECIFIC DOCUMENTS

Included below are some of the typical documents which may be requested in the practice of Family Law along with authority governing their production.

(a) Personnel Records/Evaluations:

Personnel records, even though prepared and generated internally by an employer, are not privileged as a matter of law. DeLoitte Haskins & Sells v. Green, 187 Ga. App. 376, cert. denied, 187 Ga. App. 907 (1988).

(b) Report of Private Investigator:

If the private investigator was hired by the attorney then the report will usually not be discoverable since it will be protected as “work product.” Smith v. Smith, 223 Ga. 551 (1967). The investigator should report directly to the attorney. Any engagement letter should show the attorney or his/her law firm as the client. If the attorney is not the client, then the report should be discoverable.

(c) Names/Addresses of Witnesses:

A party is not required to state the specific names and addresses of persons that he/she intends to call as witnesses. However, it is proper to ask for the names, addresses, etc. of all persons who have knowledge of any specific matter or relevant fact. Grant v. Huff, 122 Ga. App. 783 (1970).

(d) Income Tax Returns:

Income tax returns are not considered privileged and are subject to discovery. Bailey v. Bruce, 132 Ga. App. 782 (1974). However, more than a de minimis showing of relevancy is required for discovery. Borenstein v. Blumenfield, 151 Ga. App. 420 (1979); Snellings v. Sheppard, 229 Ga. App. 753 (1998). For example, for obvious reasons the tax returns of the parties are

absolutely relevant but you may have a harder time getting the tax returns of a corporation unless a spouse in the pending case is a majority shareholder.

(e) Document Containing Privileged and Non-Privileged Information:

If any document contains some privileged and some non-privileged information, then the appropriate remedy is to redact or delete the privileged matter and produce the remainder. Cranford v. Cranford, 120 Ga. App. 470 (1969).

(f) Documents Prepared Prior to Commencement of Case:

Materials obtained or collected by a party even before the action is commenced may be protected by work product if there were reasonable grounds to believe that the litigation was probable. Lowe's of Ga. v. Webb, 180 Ga. App. 755 (1986); Tobacco Road v. Callaghan, 174 Ga. App. 539 (1985). Documents relevant to this rule may be diaries, private investigative reports, photographs, etc.

(g) Experts:

When a document is prepared by the attorney and then disclosed to that party's expert witness, the work product protection is not waived and that document will still be protected as work product only discoverable upon the showing of substantial need and undue hardship. McKinnon v. Smock, 264 Ga. 375 (1994).

VI. ELECTRONICALLY OR DIGITALLY STORED DOCUMENTS

Document production that is, in my opinion, being the most overlooked is electronically or digitally stored and produced documents. Gone are the days when cancelled checks are returned. Bills are being paid on line via electronic debits. Letters are rapidly disappearing and being replaced by emails. Yellowing photos stored in the attic are now replaced by photo albums stored right on our computers and cell phones. We can even have virtual affairs via the internet. And for those more technologically advanced, there are not even any more paper files to keep up with. You simply pull up the entire file with a click of the mouse.

While all of this can be exciting or intimidating depending on your attitude (and age!), the scary part for the Family Law practitioner is how to “discover” the world of information stored electronically that will prove their case. Just think of a computer’s hard drive as a simple file cabinet. Obviously, most all documents kept in the home or business file cabinets are discoverable as being information likely to lead to the discovery of admissible evidence. Information stored electronically is the same thing. However, sometimes the lawyer must move fast to get this information because it is so easily destroyed, modified or altered.

Immediately upon filing your case send out or serve a letter on the opposing party putting them on notice of their duty to preserve documents, information, data, and other electronic or digital communications or compilations of data which may be relevant to the issues in the pending action. (See Appendix I for sample letter). You may also want to send a letter to the

registered agent of any closely held corporate or business entity in which the opposing party has an interest notifying them of the same duty to preserve this information. (See Appendix J for sample letter). This letter should especially be sent if there is a real danger and suspicion that the business or company's assets may be misappropriated or transferred resulting in significant loss in value to the marital estate involved in your case. Then, promptly follow up with a Request for Production of Documents or Subpoena for Production of Documents to that entity.

Consider having a forensic computer expert image the hard drive on the home computer. Obviously you, your expert, or your client cannot view or look at any password protected information until you get a specific court order allowing you to do so or written consent from the opposing party or counsel. But, by immediately imaging the hard drive, you have done something valuable. You have preserved that information so that it cannot be altered, modified, or deleted. Sometimes just knowing you have that information in your possession is leverage enough to get your client a good settlement without ever having to view it. Be sure to fully comply with O.C.G.A. Section 16-9-90, et seq.; 16-11-60 et seq.; and U.S.C.A. 18 Section 2511, et seq.

If the information you need is stored on a computer in the possession and control of the other party or by a corporate entity wholly or majority owned by the opposing client, you can consider asking the Court for an ex parte order allowing your forensic computer expert to image the hard drive (See Appendix K for Motion and Order). Or, you may want to ask the Court to enter a Temporary

Restraining Order relating directly to the preservation of electronic evidence.

(See Appendix L).

In forming your questions for the production of electronic and digitally stored information, remember that the secret is in the drafting. Information may not just be stored on the hard drive but may also be stored in several different places within the computer system, including a backup system where the data is downloaded or copied at an offsite location. Consequently, include in your Request, Notice, or Subpoena language similar to “...located or stored on hard drive, disk, or on any other computer readable media.” Otherwise, opposing counsel or third parties may decline to produce documents stored on the hard drive or information that exists solely in electronic or digital form.

Some examples of computer documents or information not to overlook are:

Emails

Photographs

Registrations for Internet Memberships (Match.com; Perfectmatch.com)

Pornography

Security camera/surveillance tapes

Data backup

Business projections

Personal financial statements

Financial records

Phone records

Cancelled checks/deposit slips

Quicken/QuickBooks

Excel spreadsheets

Personnel files

Credit card statements

Negotiations of contracts (that the final contract would not show)

Logs

Deleted or trashed messages, drafts

Contact lists

Calendars

Voicemail transcriptions

Finally, use your computer to pull up your client, the opposing party, the parties' children, etc. on My Space. com or other similar websites. You may be surprised at what you find. Also, Google the parties and their businesses to get information.

I also suggest that you go on line and check the lien and deed records for your client, the opposing party, and any business entities in which they are involved. (<http://gsccca.org>). Also, check the opposing party's name for a hit on the Secretary of State website (www.sos.ga.us.com) to locate corporate entities he or she may be involved in which may be unknown to your client.

VII. DOCUMENTS TO ASK FOR FROM FINANCIAL INSTITUTIONS:

Banks and financial institutions are a wealth of information. They will charge to produce documents so narrow your Request or Subpoena to the documents needed for that particular case. (See Appendix G for an example of a Subpoena to a Bank for a modification of child support case). For instance, to help determine the income of a self-employed person or someone who you suspect is getting paid income in cash, ask not just for the bank statements but also for the deposit slips. Then evaluate each deposit on the bank statement to determine its source.

Always ask for all personal financial statements, loan applications, or net worth statements of the parties, individually or jointly, from the bank. These show income, assets, and debts. Most of the time they are inflated but it is a document that the party still signs under penalty of perjury. And of course, if your client was the one doing the puffing, you sure want a copy of the statement before deposition or trial so that you can prepare your client to explain the document and answer the questions that will be asked about it on cross examination.

The bank's file oftentimes will have internal memos and valuations that are invaluable. These will reflect what the customer or the lender forecasts for the economic future of the opposing party or their business.

You may also need to send a Request or Subpoena for Production of Documents to the registered agent of any business or corporate entity in which

the parties have any interest or to a party's CPA. Again, do not forget their electronically stored documents....emails, worksheets, projections, etc.

VIII. THIRD PARTY DISCOVERY BY THE OPPOSING PARTY

Nobody likes surprises in court. You should always have a copy of all documents provided to the other side which they gained through their third party discovery. Upon receipt of your service copy of any third party discovery done by the other side, go ahead and send a letter directly to the third party requesting that they send you a copy of all documents they provide to opposing counsel. (See Appendix M for sample letter). I offer, and expect to pay, for my portion of the copying expenses but not any research fees. Unless the documents have been produced pursuant to subpoena, then the other side is under no duty to provide you with a copy of the documents without a Request or Notice. If the documents were obtained by subpoena, then the opposing side has a duty to provide copies immediately to you upon their receipt.

The other way to get copies of the documents which opposing counsel has received through their third party discovery is to simply send a Request for Production of Documents/Notice to Produce to the opposing party asking for copies.

IX. DOCUMENT PRODUCTION FROM YOUR CLIENT

Do not overlook the duty to obtain all relevant documents from your client. In your initial meeting, prepare and give them a "to do" list of the

documents you will need from them. For the most part, clients love “homework.” It saves them money and keeps them involved.

X. DOCUMENT PRODUCTION FOR CHILD SUPPORT

The new child support law, O.C.G.A. Section 19-6-15, has increased the document production that needs to be done by your client, the opposing party, and third parties. The Worksheet requires that we be accurate. When you submit your Worksheet to the Court, you, as an officer of the Court, are certifying that it is true and accurate. In my opinion, that increases our duty of due diligence in a case.

A. Schedule A---Gross Income:

Suggested documents you should get from your client and the opposing party for Schedule A are as follows. You will need to choose which categories are applicable to your case and form your “to do” list for your client and your Request/Notice appropriately. Don’t just rely on forms.

Salary and Wages

W-2 for the past 3 calendar years

Paychecks, payroll records, or other documents reflecting gross income and all deductions from gross income to arrive at the net pay amount for the current year

Year end paycheck for prior calendar year

Statement of employee benefits

Contracts (employment, teaching, etc.) for prior, current, and upcoming year

Commissions/Fees/Tips

Checks, statements, correspondence, emails reflecting commissions, fees or tips for the past two years

Ledgers, reports, or other documents reflecting tips for the past two years

Reports, records, and other documents upon which commission is based or determined

Documents reflecting rebates, patronage fees, surplus checks, etc.

Overtime

Correspondence, interoffice memos, emails, and other documents on company overtime pay

Copy of all paychecks showing overtime pay

Severance Pay

Employment contract in effect at time of termination

Correspondence, interoffice memos, emails and other documents reflecting negotiation of severance package

Documents evidencing reason for termination or severance

Copies of all checks or other documents showing payments or benefits from the severance package

Pensions/Retirement Plans

Statements from last 5 years

Plan descriptions

Correspondence, emails, forms, requests for withdrawal, documents showing distributions or transfers

Plan elections

Beneficiary designations

Statements of cost basis

Statement of current value

Copy of any QDRO or Order affecting the plan

Self Employment

The child support law is specific on what constitutes self employment income. It is defined in the statute as “Gross receipts minus ordinary and necessary expenses required for self employment or business operations.” It does not include excessive promotional, travel, vehicle, personal living expenses, depreciation on equipment, or costs of operation of a home office. So now you must get these documents and do a detailed assessment as to what is truly the gross income of the self employed. To simply rely on the tax return is not enough and just plain wrong.

Documents you cannot be without are:

1099 for the past five years

Cancelled checks for the past two full calendar years forward

Deposit slips for the past two full calendar years forward

Bank statements for the past two full calendar years forward

Ledgers or other similar documents reflecting income/expenses for the past two full calendar years forward

All documents verifying the deductions reflected on Schedule C of their income tax return for the past two calendar years plus those they anticipate will be used to show deductions for the current calendar year

All credit card statements and summaries for two full calendar years forward

All notes or documents reflecting debts owed or paid in the past two full calendar years forward

All invoices or billings sent by the self employed for past two calendar years forward

Depreciation schedules

Fringe Benefits

Fringe benefits paid for an employee can add up quickly. For example, if the car one party uses is paid for by the employer, then that value should be added into the gross income of that party. Due diligence must be done to uncover the fringe benefits and an appropriate value placed on them.

Rental Income

Rental income cannot be overlooked even though there is not a specific line delineated for rental income on Schedule A of the latest Excel Version of the Worksheet (version 4) or the web based Worksheet. There is a specific line for rental income on the newest form of the Domestic Relations Financial Affidavit required under Uniform Superior Court Rule 24.2.

Documents you should obtain are:

Leases

Rent ledgers and deposit ledgers and receipts for rent

Bank statements for the past 2 years forward

Cancelled checks reflecting expenses directly related to the rental property for the past 2 years forward

Deposit slips for the rental account

Documents supporting the expenses and deductions to rental income reflected on Schedule E of the income tax returns for the past 2 calendar years and those expenses/deductions anticipated for the current year

Notes, mortgages, and amortization schedules owed or paid in the past two years

Depreciation schedules

*******Practice Tip*******

Create and attach exhibits or worksheets to your child support Worksheet to inform the Court of the basis for the information shown. The Excel version allows you to insert worksheets into your main Worksheet. Use them to explain the calculations done for gross income of a party, description and corresponding value of any fringe benefits, rental income less necessary expenses, etc. This will keep you focused, will assist your client in testifying regarding the facts contained in the Worksheet, and will be of invaluable assistance to the Court.

B. Schedule B – Adjusted Income:

Self Employment Tax Adjustment:

The amount to be shown in the column for the self employed spouse will most likely not be the same as the gross income for that spouse. The tax laws can be very generous in allowances for the tax write offs to the self employed. A self employed income earner may be able to write off all or a portion of travel expenses, meals, home office expenses, cell phone, vehicle expenses, insurance, depreciation, and a host of other costs. The amount remaining, if any, after deducting all of these write offs from the gross earnings is the amount that is

used for determining self employment tax on the first page of the party's income tax return. This should be the same amount that you fill in on the column of Schedule B on the Worksheet but it is not the same amount you will use as the gross income of the self employed.

Adjustment for Pre-existing Child Support Orders

If your client or the opposing side has minor children from a prior relationship, you need to get a certified copy of the Order requiring the payment of child support. But you cannot stop there. You must also get whatever documents reflect that the court ordered payments have actually been made for the last consecutive twelve (12) months (or if the Order requiring the payments has been in effect for less than twelve months, then for the period from date of entry of the Order to current). Make sure that none of the payments made over the past twelve month period include any arrearages since these are not to be considered in the adjustment. The amount actually paid as court ordered child support for the past twelve consecutive months are to be averaged to get the monthly adjustment to put on Schedule B of the Worksheet.

Documents you should ask for include:

Copy of the Order requiring the child support payments (you may then get a certified copy from that county's Clerk)

Proof of payment for the past twelve consecutive months including but not limited to: cancelled checks, receipts, money orders, bank statements reflecting transfer or deposit for child support, paystubs reflecting payroll deduction, payment history from a court Clerk, IV-D agency, the Child Support Enforcement Agency's computer data base, etc.

Child Support payment history

Order reflecting any arrearages due

Documents reflecting the breakdown of any arrearages paid over the past twelve months

Adjustment for Children Living in Parent's Home or Theoretical Child Support Orders

This Adjustment is completely discretionary with the Court. It does not include stepchildren unless a party to the pending action is court ordered to support them. You will need to collect detailed amounts and documents supporting your claim for this Adjustment or the opposing side's claim for this Adjustment. This is an ideal place to insert a page in the Worksheet to detail your calculations for this Adjustment. Be sure to fill in the block at the bottom of Schedule B explaining why this Adjustment is justified and why it is in the best interests of the children at issue before the Court.

Documents which may support this Adjustment are:

Medical bills showing costs of the child living in the home

Bills, cancelled checks, receipts, payment history, and any other document showing any special needs of the child living in the home

School expenses of the child living in the home

Extracurricular expenses of the child living in the home

If the opposing side is claiming the Adjustment, require production of detailed records supporting the Adjustment and a breakdown of their calculation of the Adjustment.

C. Schedule D --- Additional Expenses:

Work Related Child Care Costs

Work related child care costs necessary for the parent's employment, education, or vocational training that are determined by the Court to be appropriate, and that are appropriate to the parents' financial abilities and to the lifestyle of the child if the parents and child were living together, shall be averaged for a monthly amount and entered on Schedule D of the Child Support Worksheet in the column of the parent paying the expense. Schedule D allows you to place the amounts for child care during the school year versus the summer. If child care is being provided by a person who is not charging or being paid (i.e. relative, one of the child's parents), then there will be no work related child care costs. Once again, proof must be obtained as to actual cost and payment before the cost will be considered by the Court.

Documents to get are:

From your client:

Provide the following for the past 12 months including documents located or stored on hard drive, disk or any other computer readable media:

1. Records reflecting cost actually paid by you or your spouse (including through payroll deduction) for child care due to employment with a summary by month of the amount paid, to whom, and the amount.
2. Records reflecting cost actually paid by you or your spouse (including through payroll deduction) for child care due to you obtaining further education or vocational training with a

summary by month of the amount paid, to whom, the amount, and an explanation as to why these amounts were needed for your educational/vocational training and how such education/training will benefit your earning capability.

From opposing party:

1. All documents of any kind, including statements, bills, invoices, cancelled checks, or other documents, including those located or stored on hard drive, disk, or on any other computer readable media, which reflect costs actually paid by you or your spouse (including through payroll deduction) for child care which you contend was due to your employment or employment of your spouse from the past eighteen months forward.
2. All documents of any kind, including statements, bills, invoices, cancelled checks, or other documents, including those located or stored on hard drive, disk, or on any other computer readable media, which reflect costs actually paid by you or your spouse (including through payroll deduction) for child care which you contend was due to education or vocational training by you or your spouse from the past eighteen months forward.
3. All documents evidencing any attendance, completion, grades, registration, or enrollment into any educational or vocational class or institution by you or your spouse at any time from the past eighteen months forward.

From Child Care Provider:

1. All documents of any kind reflecting the amounts paid, who paid the amount, and the date of payment for child care provided on behalf of the minor child: (name of child or children) from the past eighteen months forward, including documents located or stored on hard drive, disk, or on any other computer readable media.
2. All documents of any kind reflecting the dates of attendance and who dropped off and picked up (name of child or children) to your facility from the past eighteen months forward.

Health Insurance Premiums Paid for Children

The amount that is, or will be, paid by a parent for health insurance for the child for whom support is being determined shall be an adjustment to the Basic Child Support Obligation and prorated between the parents based upon their respective incomes. Payments made by a parent's employer for health insurance and not deducted from the parent's wages shall not be included. When a child for whom support is being determined is covered by a family policy, only the health insurance premium actually attributable to that child shall be added. Health insurance includes general health or medical insurance and does not include dental or vision insurance (these are dealt with on Schedule E as a possible Deviation).

Documents to get are, and include, documents located or stored on hard drive, disk, or other computer readable media:

From Your Client and Opposing Party:

1. Plan summary, statements, bills, paychecks, computer printouts or other documents reflecting the cost/premium of general health or medical insurance on the following:
 - a. Yourself;
 - b. Yourself and the minor children subject to this litigation;
 - c. Yourself, your spouse, and the minor children subject to this litigation;
 - d. Additional costs for any other children (i.e. stepchildren, children who are no longer minors, children of a prior marriage or relationship, etc.);
 - e. The cost you are currently paying.
2. Plan summary, plan descriptions, benefits' statements, and any other document reflecting all of the persons who are currently insured under any general health or medical insurance policy covering you, your spouse, and/or any of your children.

From Opposing Party's Employer:

Copy of any document reflecting the information requested below regarding general health or medical insurance available through your business/company for (name of opposing party) and/or his/her family, including documents located or stored on hard drive, disk, or on any other computer readable media:

a. Cost/premium paid, or which would be paid, by (name of opposing party) for the following coverage excluding any portion paid by your company and not passed onto the employee:

- i. employee only;
- ii. employee plus spouse only;
- iii. employee plus children only (if there is a different cost depending on the number of children covered please identify the cost for each child);
- iv. family coverage (employee, spouse, children);
- v. the actual amount the employee is now paying for the coverage he/she elected to maintain.
- vi. the names of all persons insured under the policy currently in place for the employee.
- vii. Description of the plan's benefits.

D. Schedule E --- Deviations

The amount of child support established in O.C.G.A. Section 19-6-15 and the Presumptive Amount of Child Support are rebuttable and the Court or the jury may deviate from the Presumptive Amount of Child Support in compliance with this subsection. In deviating from the Presumptive Amount of Child Support, primary consideration shall be given to the best interests of the child for whom support is being determined.

Specific Deviations:

1. **Other Health-Related Insurance (Dental or Vision Insurance):**

From Your Client and Opposing Party:

Plan summary, statements, bills, paychecks, computer printouts or other documents reflecting the cost/premium of dental insurance on the following, including documents located or stored on hard drive, disk, or on any other computer readable media:

- a. Yourself;
- b. Yourself and the minor children subject to this litigation;
- c. Yourself, your spouse, and the minor children subject to this litigation;
- d. Additional costs for any other children (i.e. stepchildren, children who are no longer minors, children of a prior marriage/relationship, etc.);
- e. The cost you are currently paying.

Plan summary, plan descriptions, benefits' statements, and any other document reflecting all of the persons who are currently insured under any dental insurance policy covering you, your spouse, and/or any of your children.

Plan summary, statements, bills, paychecks, computer printouts or other documents reflecting the cost/premium of vision insurance on the following:

- a. Yourself;
- b. Yourself and the minor children subject to this litigation;
- c. Yourself, your spouse, and the minor children subject to this litigation;
- d. Additional costs for any other children (i.e. stepchildren, children who are no longer minors, children of a prior marriage/relationship, etc.);
- e. The cost you are currently paying.
- f. Plan summary, plan descriptions, benefits' statements, and any other document reflecting all of the persons who are currently insured under any vision insurance policy covering you, your spouse, and/or any of your children.

From Opposing Party's Employer:

1. Copy of any document reflecting the information requested below regarding dental insurance available through your business/company for (name of opposing party) and/or his/her family, including documents located or stored on hard drive, disk, or on any other computer readable media:

a. Cost/premium paid, or which would be paid, by (name of opposing party) for the following coverage excluding any portion paid by your company and not passed onto the employee:

- b. employee only;
- c. employee plus spouse only;

- d. employee plus children only (if there is a different cost depending on the number of children covered please identify the cost for each child);
- e. family coverage (employee, spouse, children);
- f. the actual amount the employee is now paying for the coverage he/she elected to maintain.
- g. the names of all persons insured under the policy currently in place for the employee.
- h. Description of the plan's benefits.

2. Copy of any document reflecting the information requested below regarding vision insurance available through your business/company for (name of opposing party) and/or his/her family, including documents located or stored on hard drive, disk, or on any other computer readable media:

a. Cost/premium paid, or which would be paid, by (name of opposing party) for the following coverage excluding any portion paid by your company and not passed onto the employee:

- b. employee only;
- c. employee plus spouse only;
- d. employee plus children only (if there is a different cost depending on the number of children covered please identify the cost for each child);
- e. family coverage (employee, spouse, children);
- f. the actual amount the employee is now paying for the coverage he/she elected to maintain.

- g. the names of all persons insured under the policy currently in place for the employee.
- h. Description of the plan's benefits.

2. Life Insurance: (see O.C.G.A. section 19-6-34)

From Your Client and Opposing Party:

Policies, policy summary, benefits' statements, correspondence, statements, bills, invoices, policy statements, cancelled checks, paychecks or other documents reflecting the following information for any life insurance policy insuring your life or that of your child's other parent which are actually paid either by you, through your employment or independently of any employment, including documents located or stored on hard drive, disk, or on any other computer readable media:

- a. Cost/premium deducted from your paycheck or earnings;
- b. Cost/premium paid for by you independent of your employment;
- c. Cost/premium paid for you by a third party (including your employer, any company in which you have any ownership interest, your spouse, etc.)
- d. Beneficiary designation;
- e. Correspondence, forms, directives for any change in beneficiary designation within the last twenty four (24) months;
- f. Designation of the owner of any such policy;
- g. Documents reflecting any assignments, liens, or encumbrances;

- h. Cash surrender value;
- i. Death benefits.

From Policy Provider (i.e. employer, life insurance company):

All documents reflecting the information requested below concerning any life insurance policy insuring the life of (name of opposing party), including documents located or stored on hard drive, disk, or on any other computer readable media:

- a. cost/premium;
- b. beneficiary designation;
- c. owner of the policy;
- d. cash surrender value;
- e. correspondence/emails between you and (opposing party);
- f. application for coverage;
- g. death benefits;
- h. Correspondence, forms, directives for any change in beneficiary designation within the last twenty four (24) months;
- i. Correspondence, forms, directives for any change in ownership within the last twenty four (24) months;
- j. Assignments, liens or encumbrances against the policy.

3. Travel Expenses:

From Your client:

All documents reflecting any travel expenses you have incurred in the past 18 months directly for the purpose of exercising your custody/visitation with your

children that are subject to the pending action and provide a written summary reflecting monthly amounts, the reason for the amounts, and proof of payment.

From Opposing Party:

All documents reflecting any travel expenses you actually pay to exercise your court ordered custody/visitation time with the minor children which you contend justify a special deviation from the presumptive amount of child support, including documents located or stored on hard drive, disk, or on any other computer readable media.

4. Alimony

If your client or the opposing party is under any obligation to pay alimony, be sure to get a certified copy of the Order requiring the payments. The second necessary document to have is proof that the payments ordered are actually being paid. Tax returns are not conclusive evidence of payment so you should insist on a copy of the actual document reflecting payment (i.e. cancelled check, receipt, money order, etc.).

From Your Client and Opposing Party:

If you are paying alimony, please provide the following documents, including documents located or stored on hard drive, disk, or on any other computer readable media:

- a. a full and complete filed copy of the Divorce Decree (with Settlement Agreement if applicable) or other Court Order reflecting the alimony obligation;

- b. documents reflecting your actual payment of the court ordered alimony (i.e. cancelled checks, receipts, etc.) other than your tax return;
- c. copy of your complete income tax returns for the past 2 calendar years.

Extraordinary Educational Expenses:

Do not forget to average these over the course of the calendar year versus the school year. Documents you will need to get include the following:

a. Private School:

Get detailed statements and billings from the school directly to determine the exact amounts for tuition, books, and lab fees versus expenses for lunches, snacks, field trips, etc., including documents located or stored on hard drive, disk, or on any other computer readable media.

b. Tutoring:

Get detailed statements and billings from the tutor.

Get proof that tutoring is really tutoring and not a form of child care.

c. Grants/etc.:

Get detailed information on scholarships, grants, stipends, and other cost-reducing programs being received or for which the child may be eligible.

Extraordinary Medical Expenses

Get all bills, reports, assessments, recommendations, prescription drug history, invoices, proof of payment, copy of the insurance plan, and all other documents that support these expenses, including documents located or stored on hard drive, disk, or on any other computer readable media.

Special Expenses Incurred for Child Rearing:

The total of special expenses incurred for child rearing must exceed seven (7%) percent of the Basic Child Support Obligation in order to be considered as a deviation. Documents you will need to get, if applicable, are as follows, including documents located or stored on hard drive, disk, or on any other computer readable media:

From your client:

Do a summary and attach all supporting documents that reflect expenses for each child that are paid by you (or your spouse if this is a divorce case) for the following:

Sports----registration fees, equipment, clothing, travel expenses, entry fees, etc.

Lessons----for sports, music, art, martial arts, gymnastics, dance, etc., including the fees and equipment

Church----for trips, programs, classes, etc.

School----pictures, yearbook, prom, clubs, activities, cheerleading, band, athletics, graduation, etc.

Camps (day and overnight)----for sports, school, church, elective, educational, art, etc.

Music, etc.

Special Dietary Needs of the child----give examples and costs

Special Hygiene Needs of the child----haircuts, pedicures, facials, etc.

Pets---veterinary costs, food, shots, boarding

Technology Needs-----cell phone, computer, PDA, cameras, webcam, etc.

Relatives----costs of visiting relatives

Gifts----gifts for teachers, friends, etc. given by the child

Vehicle---if your child drives then the cost of the vehicle such as debt, insurance, gas, maintenance, tag, taxes, drivers education classes

Entertainment---boats, jet skis, trips, etc.

Any other expense you have directly for the child

From Opposing Party:

Do NOT give them the exhaustive list given above to your client since you do not want to give them any ideas! Instead simply ask them:

Provide any documents which you contend support a deviation for special expenses incurred for child rearing for each child, including documents located or stored on hard drive, disk, or on any other computer readable media.

*******Practice Tip*******

Attach a worksheet to your main Worksheet detailing the deviations that you contend are justified and in the best interests of the child. Do not forget to fill in the blocks on Schedule E requiring you to explain why the deviation is

justified and in the best interests of the child. Finally, include the following document request to the opposing party:

Provide any and all documents which support any deviation you are claiming should be made from the Presumptive Amount of Child Support, including any parenting time deviation. This includes documents located or stored on hard drive, disk, or on any other computer readable media.

SECOND SECTION

A. Child Custody:

As the custody statute has been amended to include the requirement of parenting plans among other changes, we continue to see the value of the discovery process in obtaining document production. The new custody statute is located at O.C.G.A. 19-9-1.

Some of the documents to request as you develop a parenting plan include:

- Documents that show activities that the parent engages in with the children
- Calendar of time spent with children during the last 3 years.
- Notes, diaries of any other written source that shows your involvement with child's extracurricular activit(ies) within the last 24 months.
- Notes, diaries or any other written source showing how many times you have taken or picked up child from school or otherwise visited child's school whether for parent-teacher conferences or other purpose (s).

Notes, diaries or any other written source showing how many times you have taken children to the doctor within the last 24 months.

- Pictures of where a child will live when the child is in your physical care
- Calendar or other written source that sets forth where the child will spend each day of the year if in your care
- Any written document showing how the child will spend holidays, birthdays, vacations, school breaks, and other special occasions, including the amount of time with each parent including the time of day that each event will begin and end;
- Any written document showing your proposal(s) for transportation arrangements including how the child will be exchanged between the parents, the location of the exchange, how the transportation costs will be paid.
- Any written document showing your proposal for any other matter relating to the child spending time with each parent;
- If it is your position that supervision will be needed for any parenting time, any documents showing the particulars of the supervision; including location, name of supervising agency, credentials of supervising agency;
- Copies of any parenting plans filed with the Court.

One of the more useful discovery tools in preparing parenting plans is Interrogatories. The responses obtained to interrogatories can be quite useful in arriving at a point to settle a custody issue or begin to draft a joint parenting plan or one party parenting plan that the opposing party might find acceptable.

Along with the requirement of parenting plans is an Amended Civil Filing and Disposition Forms.

B. Miscellaneous Documents:

Now that you have completed the discovery process and are preparing to go to court, you should be aware of the court's requirements associated with the child support guidelines such as the filing of Domestic Relations Financial Affidavits, Child Support Worksheets, and Addendums along with final and temporary orders for child support in some counties.

*******Practice Tip*******

Check with the law clerk, clerk of court, or other attorneys who practice in a county on a regular basis when in doubt as to what documents you are required to file regarding the new child support law before making your appearance. Counties and even judges within counties vary significantly in their requirements regarding the new child support statute. With parenting plans, the Court will also have discretion, thus, it will also be important to know your judge and whether he or she will require a parenting plan at a temporary hearing before you can obtain relief. To do this, simply follow the suggestions listed herein this paragraph.

APPENDIX A

Current through the 2007 Regular Session ***

TITLE 9. CIVIL PRACTICE
CHAPTER 11. CIVIL PRACTICE ACT
ARTICLE 5. DEPOSITIONS AND DISCOVERY

O.C.G.A. § 9-11-34 (2007)

§ 9-11-34. Production of documents and things and entry upon land for inspection and other purposes; applicability to nonparties; confidentiality

(a) *Scope.* Any party may serve on any other party a request:

(1) To produce and permit the party making the request, or someone acting on his behalf, to inspect and copy any designated documents (including writings, drawings, graphs, charts, photographs, phono-records, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form), or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of subsection (b) of Code Section 9-11-26 and which are in the possession, custody, or control of the party upon whom the request is served; or

(2) To permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of subsection (b) of Code Section 9-11-26.

(b) *Procedure.*

(1) The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party. The request shall set forth the items to be inspected, either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts.

(2) The party upon whom the request is served shall serve a written response within 30 days after the service of the request, except that a defendant may serve a response within 45 days after service of the summons and complaint upon that defendant. The court may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified. The party submitting the request may move for an order under subsection (a) of Code Section 9-11-37 with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

(c) *Applicability to nonparties.*

(1) This Code section shall also be applicable with respect to discovery against

persons, firms, or corporations who are not parties, in which event a copy of the request shall be served upon all parties of record; or, upon notice, the party desiring such discovery may proceed by taking the deposition of the person, firm, or corporation on oral examination or upon written questions under Code Section 9-11-30 or 9-11-31. The nonparty or any party may file an objection as provided in subsection (b) of this Code section. If the party desiring such discovery moves for an order under subsection (a) of Code Section 9-11-37 to compel discovery, he or she shall make a showing of good cause to support his or her motion. The party making a request under this Code section shall, upon request from any other party to the action, make all reasonable efforts to cause all information produced in response to the nonparty request to be made available to all parties. A reasonable document copying charge may be required.

(2) This Code section shall also be applicable with respect to discovery against a nonparty who is a practitioner of the healing arts or a hospital or health care facility, including those operated by an agency or bureau of the state or other governmental unit. Where such a request is directed to such a nonparty, a copy of the request shall be served upon the person whose records are sought by certified mail or statutory overnight delivery, return receipt requested, or, if known, that person's counsel, and upon all other parties of record in compliance with Code Section 9-11-5; where such a request to a nonparty seeks the records of a person who is not a party, a copy of the request shall be served upon the person whose records are sought by certified mail or statutory overnight delivery, return receipt requested, or, if known, that person's counsel by certified mail or statutory overnight delivery, return receipt requested, and upon all parties of record in compliance with Code Section 9-11-5; or, upon notice, the party desiring such discovery may proceed by taking the deposition of the person, firm, or corporation on oral examination or upon written questions under Code Section 9-11-30 or 9-11-31. The nonparty, any party, or the person whose records are sought may file an objection with the court in which the action is pending within 20 days of service of the request and shall serve a copy of such objection on the nonparty to whom the request is directed, who shall not furnish the requested materials until further order of the court, and on all other parties to the action. Upon the filing of such objection, the party desiring such discovery may move for an order under subsection (a) of Code Section 9-11-37 to compel discovery and, if he or she shall make a showing of good cause to support his or her motion, discovery shall be allowed. If no objection is filed within 20 days of service of the request, the nonparty to whom the request is directed shall promptly comply therewith.

(3) For any discovery requested from a nonparty pursuant to paragraph (2) of this subsection or a subpoena requesting records from a nonparty pursuant to Code Section 9-11-45, when the nonparty to whom the discovery request is made is not served with an objection and the nonparty produces the requested records, the nonparty shall be immune from regulatory, civil, or criminal liability or damages notwithstanding that the produced documents contained confidential or privileged information.

(d) *Confidentiality.* The provisions of this Code section shall not be deemed to repeal the confidentiality provided by Code Sections 37-3-166 concerning mental illness treatment records, 37-4-125 concerning mental retardation treatment records, 37-7-166 concerning alcohol and drug treatment records, 24-9-40.1 concerning the confidential nature of AIDS information, and 24-9-47 concerning the disclosure of AIDS information; provided, however, that a person's failure to object to the

production of documents as set forth in paragraph (2) of subsection (c) of this Code section shall waive any right of recovery for damages as to the nonparty for disclosure of the requested documents.

HISTORY: Ga. L. 1966, p. 609, § 34; Ga. L. 1967, p. 226, § 16; Ga. L. 1972, p. 510, § 7; Ga. L. 1979, p. 1041, § 1; Ga. L. 1986, p. 1277, § 1; Ga. L. 1988, p. 375, § 1; Ga. L. 1998, p. 152, § 1; Ga. L. 2006, p. 494, § 2/HB 912.

Ga. Code Ann., § 24-10-26

C

West's Code of Georgia Annotated Currentness

Title 24. Evidence

Chapter 10. Securing Attendance of Witnesses and Production and Preservation of Evidence (Refs & Annos)

Art Article 2. Subpoenas and Notice to Produce (Refs & Annos)

Part Part 1. In General

→ § 24-10-26. Notices to produce

Where a party desires to compel production of books, writings, or other documents or tangible things in the possession, custody, or control of another party, in lieu of serving a subpoena under this article, the party desiring the production may serve a notice to produce upon counsel for the other party. Service may be perfected in accordance with Code Section 24-10-23, but no fees or mileage shall be allowed therefor. Such notices may be enforced in the manner prescribed by Code Section 24-10-25, and Code Section 24-10-22 shall also apply to such notices. The notice shall be in writing, signed by the party seeking production of the evidence, or his attorney, and shall be directed to the opposite party or his attorney.

Laws 1799, Cobb's 1851 Digest, p. 463; Laws 1841, Cobb's 1851 Digest, p. 465; Laws 1880-81, p. 78, § 1; Laws 1966, p. 502, § 1.

Formerly Code 1863, §§ 3437, 3438, 3439, 3440, 3441, 3442, 3757; Code 1868, §§ 3457, 3458, 3459, 3460, 3461, 3462, 3781; Code 1873, §§ 3508, 3509, 3510, 3511, 3512, 3513, 3834; Code 1882, §§ 3508, 3509, 3510, 3511, 3512, 3513, 3834; Civil Code 1895, §§ 5248, 5249, 5250, 5251, 5252, 5253, 5254; Civil Code 1910, §§ 5837, 5838, 5839, 5840, 5841, 5842, 5843; Code 1933, §§ 38-801, 38-802, 38-803, 38-804, 38-805, 38-806, 38-807.

CROSS REFERENCES

Production of documents and things, see § 9-11-34.

LIBRARY REFERENCES

Witnesses ↪ 16.

Westlaw Key Number Search: 410k16.

C.J.S. Witnesses § 25.

RESEARCH REFERENCES

Forms

6 Brown Georgia Pleading, Prac. & Legal Forms Anno. § 24-10-26 Form 1, Form 1. Notice to Produce.

Daniel's Georgia Criminal Trial Practice Forms § 14-53. Notice to Produce.

Daniel's Georgia Criminal Trial Practice Forms § 14-54. Notice to Produce (Another Form).

Daniel's Georgia Criminal Trial Practice Forms § 14-93. Motion to Quash District Attorney's Notice to Produce.

APPENDIX C

IN THE SUPERIOR COURT OF RABUN COUNTY
STATE OF GEORGIA

[REDACTED] /
Plaintiff, /
Vs. / Civil Action File
[REDACTED] / Number: [REDACTED]
Defendant. /

NOTICE TO TAKE DEPOSITION WITH NOTICE TO PRODUCE

TO: [REDACTED] Plaintiff
[REDACTED]
[REDACTED]
P.O. Drawer [REDACTED]
Clayton, GA 30525

You are hereby notified that, pursuant to O.C.G.A. Section 19-11-26 and Section 9-11-30, counsel for Defendant will proceed to take the deposition upon oral examination of [REDACTED] beginning immediately at 9:30 a.m. on August 31, 2007, and continuing until concluded, at the offices of Kelly Anne Miles, Smith, Gilliam, Williams, & Miles, P.A., 301 Green Street, Suite 200, Gainesville, Georgia. The deposition will be taken before an officer duly authorized by law to administer oaths and to take depositions for use in accordance with law. This deposition will be taken for the purposes of discovery, cross-examination, and all other purposes authorized by Georgia law, and shall continue from day to day until completed. [REDACTED] is required by this Notice to be present for the taking of his deposition and shall bring with him the following: Documents as referenced below shall include any information requested which is contained on any hard drive, disk, or other computer readable media.

1. All day planners, calendars, or schedules for you and/or your children, since date of divorce forward.
2. All cell phones, personal data assistants, or other similar device.
3. All emails exchanged between you and Defendant since date of divorce forward.
4. All documents which you contend support any deviations you claim on Schedule E of the Child Support Worksheet.
5. A properly completed Financial Affidavit required by Uniform Superior Court Rule 24.2
6. Your properly completed Child Support Worksheet.
7. All documents requested in response to Defendant's First Request for Production of Documents and Notice to Produce to Plaintiff. (A copy is attached hereto for your reference).

SMITH, GILLIAM, WILLIAMS & MILES, P.A.

BY: _____
Kelly Anne Miles
Attorney for Defendant
Georgia Bar Number: 505665

APPENDIX D

IN THE SUPERIOR COURT OF HALL COUNTY
STATE OF GEORGIA

[REDACTED]	/	
Plaintiff,	/	Civil Action File
vs.	/	Number:
[REDACTED]	/	
Defendant.	/	

**PLAINTIFF'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS AND
NOTICE TO PRODUCE TO DEFENDANT**

YOU ARE HEREBY NOTIFIED, pursuant to O.C.G.A. §24-10-26, to produce at any deposition, hearing or trial, in the above-styled case and from time to time and from term to term, or until the above-styled matter is concluded, the following documents and records, which are in your possession, custody, or control. In addition, pursuant to the Georgia Civil Practice Act (O.C.G.A. §9-11-26 and §9-11-34), you are requested to produce the documents and records set forth below for inspection and copying by attorney for Plaintiff at the offices of Smith, Gilliam, Williams & Miles, PA, 301 Green Street, Suite 200, Gainesville, Georgia, or by making copies of all such documents and mailing them to the undersigned at Smith, Gilliam, Williams & Miles, P.A., P.O. Box 1098, Gainesville, Georgia 30503, within thirty (30) days after receipt of this request.

NOTE:

As used herein, "documents" shall mean, but without limitation, every writing or record of every type and description that is or has been in the possession, control, or custody of Defendant, or of which Defendant has knowledge, including handwritten notes, studies, pictures, voice recordings, maps, reports or films. The term "documents" shall also include any and all information, data, and other electronic or digital communications or compilations of data which are located or stored on hard drive, disk, or on any other computer readable media.

INSTRUCTIONS

1. Any document as to which a claim or privilege is or will be asserted should be identified by author, signatory, description (e.g., letter, memorandum, telex, recording, etc.) title (if any), date, addresses (if any), general subject matter present depository and present custodian, and a complete statement of the grounds for the claim of privilege should be set forth.

2. If it is maintained that any document which is requested existed at one time and in some form, but has been destroyed, set forth the contents of the document, the date of such destruction, the name of the person who authorized or directed such destruction, and the method of destruction.

3. If any documents cannot be produced in full, produce to the extent possible, specifying the reasons for the inability to produce the remainder.

DOCUMENTS TO BE PRODUCED

-1-

A copy of all documents or other evidence indicating assets you claim are your separate assets rather than marital assets.

-2-

A copy of all documents or other evidence indicating any debts or liabilities you have or on which you serve as a personal guarantor.

-3-

All charge cards and charge account applications, detailed statements, and any other document for any accounts in your name individually or jointly with any other or on which you were authorized to place charges at any time from January 1, 2003, to the date of trial.

-4-

All bank statements, deposit slips, check registers, check stubs, and cancelled checks for any personal, business, custodial, brokerage, trust, or investment accounts upon which you are authorized to draw money, have an interest, or on which your name appears or appeared, at any time, from January 1, 2000, to the date of trial.

-5-

APPENDIX E

August 10, 2007

[REDACTED]
[REDACTED]
Peachtree Street, NE
Atlanta, GA 30361

RE:

[REDACTED]
Superior Court of Jackson County
Civil Action File No.: [REDACTED]

Dear Sirs:

Enclosed herewith please find Plaintiff's Request for Production of Documents to Non Party with regard to the above case. This law firm represents [REDACTED] in the pending divorce from his wife [REDACTED]. If the documents you will have in response to this Request are voluminous, I will be more than happy to come to your office to review these documents at a convenient time rather than you having to make copies of everything. Please let me know which way you prefer to handle this.

This Request is being served on you in accordance with O.C.G.A. §9-11-34. Georgia law requires that you provide me with the requested documents within thirty (30) days of the date you receive this Request unless you receive a formal written objection from the opposing party.

O.C.G.A. §9-11-34(c)(2) provides that a party to any lawsuit may serve a Request for Production of Documents on a non-party. The Georgia Court of Appeals (Jones v. Thornton, 172 Ga. App. 412, 1984) ruled this to be a valid means for obtaining records from a nonparty. A copy of this letter and the enclosed Request for Production of your records have been served upon the opposing party's attorney. Should the opposing party's attorney have objections to your producing these documents, you will receive a written objection from them. You, by necessity, must be notified of any such objection in writing. Should you fail to receive notice that an objection has been filed, you should comply with this Request, as provided by the law of this State.

Page Two

This Request is designed to save everyone time, including the Court, and is not intended in any way to inconvenience you. The disclosure of records on a prompt and inexpensive basis serves to promote the compromise and settlement of lawsuits and avoids the necessity of depositions and court appearances. Thank you in advance for your prompt cooperation and response to the enclosed Request.

If you should have any questions, please do not hesitate to contact me.

Cordially,

Kelly Anne Miles

KAM/js

Enclosures

c:

[REDACTED] (Attorney for [REDACTED])
[REDACTED]

IN THE SUPERIOR COURT OF HALL COUNTY

STATE OF GEORGIA

[REDACTED] /
Plaintiff, /
v. / Civil Action File
[REDACTED], / Number:
Defendant. /

REQUEST FOR PRODUCTION OF DOCUMENTS TO NON-PARTY:

[REDACTED] INC.
To: [REDACTED] Inc., C/O [REDACTED] Registered Agent,
[REDACTED] Flowery Branch, Georgia 30542.

Pursuant to O.C.G.A. §9-11-34, you are hereby requested to produce the following documents and other evidence for inspection and copying by attorneys for [REDACTED] Plaintiff, at the law offices of Smith, Gilliam, Williams & Miles, P.A., 301 Green Street, Suite 200, P.O. Box 1098, Gainesville, Georgia 30503, at 10:00 a.m. on the thirtieth (30th) after service of this Request.

In lieu of production at the time and place stated above, you may attach true and correct copies of the requested materials and certify as to their authenticity and as to the number of pages of material provided. Said certification has been attached hereto and is to be returned to the law offices of Smith, Gilliam, Williams & Miles, P.A. at the address listed above by the time listed above.

NOTE:

As used herein, "documents" shall mean, but without limitation, every writing or record of every type and description that is or has been in the possession, control, or custody of (name of third party), or of which (third party) has knowledge, including handwritten notes, studies, pictures, voice recordings, maps, reports or films. The term "documents" shall also include any and all information, data, and other electronic or digital communications or compilations of data which are located or stored on hard drive, disk, or on any other computer readable media.

DOCUMENTS TO PRODUCE:

-1-

Any and all tax returns, personal property returns, and depreciation schedules, along with all schedules and supporting documents for [REDACTED], INC., from the date of incorporation to the present date.

-2-

All minutes, stock certificates, buy sale accounts, and corporate books for [REDACTED] INC., from the date of incorporation to the present date.

-3-

All profit and loss statements, ledgers, accounts receivable ledgers, financial statements, statement of assets/liabilities, net worth, and other similar records of [REDACTED], INC., from the date of incorporation to the present date.

-4-

All bank statements, cancelled checks, check stubs, check registers, and deposit records for any account of any type in the name of [REDACTED], INC., from the date of incorporation to the present.

-5-

All statements, spreadsheets, and summaries for all charge or credit card accounts in the name of [REDACTED] INC., from January 1, 2001 forward.

-6-

All appraisals, valuations, or correspondence indicating the value of any assets of [REDACTED], INC..

-7-

All notes, security agreements, amortization schedules, loan agreements, guarantees, or any other document indicating any liabilities of [REDACTED] INC., at any time from the date of incorporation to the present date.

-8-

All documents indicating shareholder loans to [REDACTED] and documents showing any repayments toward such loans at any time from the date of incorporation to the present date.

-9-

All evaluations, projections, and business plans for [REDACTED] INC., from the date of incorporation to the present date.

-10-

All patents applications for patents, patent searches, records, permits, and correspondence to or from patent offices by [REDACTED] INC., or any of its shareholders or representatives from the date of incorporation to the present date.

-11-

All ledgers, balance sheets, and any other documents evidencing expenses paid by [REDACTED] INC., from the date of incorporation to the present date.

-12-

All policies, declaration pages, premium notices, or correspondence or any life insurance policies owned by [REDACTED] INC., at any time from January 1, 2001, to the present date.

-13-

All leases for realty, equipment, machinery, vehicles, or otherwise entered into by [REDACTED] INC., at any time from January 1, 2001, to the present date.

-14-

All travel ledgers, expense reports, calendars, work schedules, itinerary, or other documents evidencing any appointments or travel by any officers of [REDACTED] INC., from January 1, 2001, to the present date.

-15-

All agreements, employment contracts, and contracts of any kind entered into by [REDACTED] INC., from the date of incorporation to the present date.

All documents evidencing salary, draws, repayment of loans, insurance benefits, vehicle expenses, travel expenses, club memberships, dues, donations, gifts, reimbursements, and all other income or benefits paid or due to [REDACTED] [REDACTED] by [REDACTED], INC., at any time from the date of incorporation to the present date.

SMITH, GILLIAM, WILLIAMS & MILES, P.A.
Attorneys for Plaintiff

BY: _____
KELLY ANNE MILES
Georgia Bar No.: 505665

IN THE SUPERIOR COURT OF HALL COUNTY

STATE OF GEORGIA

[REDACTED] /
Plaintiff, /
v. / Civil Action File
[REDACTED] / Number:
Defendant. /

CERTIFICATE OF SERVICE

The undersigned, counsel for the Plaintiff in the above-styled case, hereby certifies that she has this day served the Defendant named above with the foregoing REQUEST FOR PRODUCTION OF DOCUMENTS TO NON PARTY: [REDACTED], INC., by mailing a copy of same to:

This _____ day of _____, 2007.

SMITH, GILLIAM, WILLIAMS & MILES, P.A.
Attorney for Plaintiff

BY: _____
KELLY ANNE MILES
Georgia Bar No: 505665

GA ST § 9-11-45

Ga. Code Ann., § 9-11-45

C

West's Code of Georgia Annotated Currentness

Title 9. Civil Practice

Chapter 11. Civil Practice Act

Article 6. Trials

→ § 9-11-45. Subpoena for taking depositions; place of examination

(a)(1)(A) The clerk of the superior court of the county in which the action is pending or the clerk of any court of record in the county where the deposition is to be taken shall issue subpoenas for the persons sought to be deposed, upon request.

(B) Upon agreement of the parties, an attorney, as an officer of the court, may issue and sign a subpoena for the person sought to be deposed on behalf of a court in which the attorney is authorized to practice or a court for a venue in which a deposition is compelled by the subpoena, if the deposition pertains to an action pending in a court in which the attorney is authorized to practice.

(C) Subpoenas issued pursuant to this paragraph shall be issued and served in accordance with law governing issuance of subpoenas for attendance at court, except as to issuance by an attorney. The subpoena may command the person to whom it is directed to produce and permit inspection and copying of designated books, papers, documents, or tangible things which constitute or contain matters within the scope of the examination permitted by subsection (b) of Code Section 9-11-26, but in that event the subpoena will be subject to subsection (c) of Code Section 9-11-26; or the court, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may quash or modify the subpoena if it is unreasonable and oppressive, or condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

(2) The person to whom the subpoena is directed may, within ten days after the service thereof or on or before the time specified in the subpoena for compliance, if such time is less than ten days after service, serve upon the attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials except pursuant to an order of the court from which the subpoena was issued. The party serving the subpoena may, if objection has been made, move, upon notice to the deponent, for an order at any time before or during the taking of the deposition, provided that nothing in this Code section shall be construed as requiring the issuance of a subpoena to compel a party to attend and give his deposition or produce documents at the taking of his deposition where a notice of deposition under Code Section 9-11-30 has been given or a request under Code Section 9-11-34 has been served, such notice or request to a party being enforceable by motion under Code Section 9-11-37.

(b) A person who is to give a deposition may be required to attend an examination:

(1) In the county wherein he resides or is employed or transacts his business in person;

(2) In any county in which he is served with a subpoena while therein; or

(3) At any place which is not more than 30 miles from the county seat of the county wherein the witness resides, is employed, or transacts his business in person.

Laws 1967, p. 226, § 19; Laws 1972, p. 510, § 11; Laws 1997, p. 457, § 1.

SUBPOENA FOR THE PRODUCTION OF EVIDENCE

STATE OF GEORGIA

Forsyth COUNTY

TO: Legal Order Processing/Subpoena Compliance Department
P.O. Box [redacted] Philadelphia, Pennsylvania 19101-8667

You are hereby required to be and appear at the [redacted] County Superior Court before

before [redacted] Judge

Superior Court in Room [redacted] of the [redacted] County Courthouse at 10:00 o'clock A.M. on the

18th day of March, 2007, and to bring with you into said Court certain documents to be used as

evidence by Plaintiff in a certain case pending in said Court between

[redacted] and [redacted]

Case No. [redacted]

The following are hereby subpoenaed: See page 2 (backside) of Subpoena

[Multiple blank lines for listing subpoenaed items]

Herein fail not, under penalty of the law.

Witness, Presiding, Judge of said Court

this 21 day of Dec, 2006

If you have questions contact Attorney For Plaintiff
[redacted]

Douglas Samuel
Clerk Superior Court

Kelly Anne Miles / Jennifer B. Floyd

P.O. Box 1098

Gainesville, Georgia 30503

Phone: 770-536-3381

-1-

Copy of any and all bank statements, deposit slips, and cancelled checks, for [REDACTED], individually or jointly, from January 12, 2004, through and including the present date.

-2-

Copy of any and all loan applications, financial statements, or profit and loss statements for [REDACTED], individually or jointly, from January 12, 2004, through and including the present date.

-3-

Copy of any and all notes, security agreements, guarantees, installment accounts, correspondence, payment history, or any other documents concerning any debts owed to you, or guaranteed by [REDACTED], individually or jointly, from January 12, 2004, through and including the present date.

-4-

All memorandum, notes, correspondence, emails, or other communication or documentation of any banking relations with [REDACTED], individually or jointly, from January 12, 2004, through and including the present date.

-5-

Copies of all detailed statements and year end/quarterly summaries for any account in the names of [REDACTED], individually or jointly, from January 12, 2004, through and including the present date.

-6-

Copies of all applications for accounts in the name of [REDACTED], individually or jointly, from January 12, 2004, through and including the present date.

IN THE SUPERIOR COURT OF FORSYTH COUNTY

STATE OF GEORGIA

[REDACTED]

Plaintiff,

Civil Action File

File No.: [REDACTED]

v.

[REDACTED]

Defendant.

CERTIFICATE OF SERVICE

The undersigned, counsel for the Plaintiff in the above-styled case, hereby certifies that she has this day served the Defendant named above with the foregoing PLAINTIFF'S SUBPOENA FOR THE PRODUCTION OF EVIDENCE to Non Party - [REDACTED]

[REDACTED] by mailing a copy of same to:

[REDACTED]

Alpharetta, Georgia 30004

This 6th day of February, 2007

SMITH, GILLIAM, WILLIAMS & MILES, P.A.
Attorneys for Plaintiff

BY: _____

KELLY ANNE MILES

Georgia Bar No: 505665

**SMITH GILLIAM
WILLIAMS & MILES, P.A.**

Attorneys at Law

200 OLD COCA-COLA BLDG
311 CHESHAM STREET, NW
JAINESVILLE, GEORGIA 30501

MAILING ADDRESS:

RD. BOX 1038
JAINESVILLE, GEORGIA 30501

T: (770) 518-3381

F: (770) 531-4481

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APPENDIX H

*** Current through the 2007 Regular Session ***

TITLE 9. CIVIL PRACTICE
CHAPTER 11. CIVIL PRACTICE ACT
ARTICLE 5. DEPOSITIONS AND DISCOVERY

O.C.G.A. § 9-11-26 (2007)

§ 9-11-26. General provisions governing discovery

(a) *Discovery methods.* Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property for inspection and other purposes; physical and mental examinations; and requests for admission. Unless the court orders otherwise under subsection (c) of this Code section, the frequency of use of these methods is not limited.

(b) *Scope of discovery.* Unless otherwise limited by order of the court in accordance with this chapter, the scope of discovery is as follows:

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

(2) *Insurance agreements.* A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement is not by reason of disclosure inadmissible in evidence at trial. For purposes of this paragraph, an application for insurance shall not be treated as part of an insurance agreement;

(3) *Trial preparation; materials.* Subject to paragraph (4) of this subsection, a party may obtain discovery of documents and tangible things otherwise discoverable under paragraph (1) of this subsection and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including his attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation. A party may obtain, without the required showing, a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party

may obtain, without the required showing, a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. Paragraph (4) of subsection (a) of Code Section 9-11-37 applies to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a "statement previously made" is (A) a written statement signed or otherwise adopted or approved by the person making it, or (B) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded; and

(4) *Trial preparation; experts.* Discovery of facts known and opinions held by experts, otherwise discoverable under paragraph (1) of this subsection and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

(A) (i) A party may, through interrogatories, require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

(ii) A party may obtain discovery under Code Section 9-11-30, 9-11-31, or 9-11-34 from any expert described in this paragraph, the same as any other witness, but the party obtaining discovery of an expert hereunder must pay a reasonable fee for the time spent in responding to discovery by that expert, subject to the right of the expert or any party to obtain a determination by the court as to the reasonableness of the fee so incurred;

(B) A party may discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only as provided in subsection (b) of Code Section 9-11-35 or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means; and

(C) Unless manifest injustice would result:

(i) The court shall require the party seeking discovery to pay the expert a reasonable fee for time spent in responding to discovery under subparagraph (B) of this paragraph; and

(ii) With respect to discovery obtained under division (ii) of subparagraph (A) of this paragraph, the court may require, and with respect to discovery obtained under subparagraph (B) of this paragraph the court shall require, the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

(c) *Protective orders.* Upon motion by a party or by the person from whom discovery is sought and for good cause shown, the court in which the action is pending or, alternatively, on matters relating to a deposition, the court in the county where the deposition is to be taken may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

- (1) That the discovery not be had;
- (2) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;
- (3) That the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;
- (4) That certain matters not be inquired into or that the scope of the discovery be limited to certain matters;
- (5) That discovery be conducted with no one present except persons designated by the court;
- (6) That a deposition, after being sealed, be opened only by order of the court;
- (7) That a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; or
- (8) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. Paragraph (4) of subsection (a) of Code Section 9-11-37 applies to the award of expenses incurred in relation to the motion.

(d) *Sequence and timing of discovery.* Unless the court, upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence; and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

(e) *Supplementation of responses.* A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement his response to include information thereafter acquired, except as follows:

(1) A party is under a duty seasonably to supplement his response with respect to any question directly addressed to:

(A) The identity and location of persons having knowledge of discoverable matters; and

(B) The identity of each person expected to be called as an expert witness at trial, the subject matter on which he is expected to testify, and the substance of his testimony.

(2) A party is under a duty seasonably to amend a prior response if he obtains information upon the basis of which:

(A) He knows that the response was incorrect when made; or

(B) He knows that the response, though correct when made, is no longer true and the circumstances are such that a failure to amend the response is, in substance, a knowing concealment.

(3) A duty to supplement responses may be imposed by order of the court, agreement of the parties, or at any time prior to trial through new requests for supplementation of prior responses.

HISTORY: Ga. L. 1966, p. 609, § 26; Ga. L. 1967, p. 226, § 13; Ga. L. 1972, p. 510, § 1; Ga. L. 1984, p. 22, § 9; Ga. L. 1987, p. 3, § 9; Ga. L. 1993, p. 91, § 9.

APPENDIX I

VIA HAND DELIVERY
AT DEPOSITION OF PLAINTIFF
June 26, 2007

[REDACTED], Esq.

P.O. Box [REDACTED]
Athens, Georgia 30603

RE: [REDACTED]
Banks County Superior Court
Case Number: [REDACTED]

Dear [REDACTED]:

This letter is put you and your client, [REDACTED], on notice of your duty to preserve documents, information, data and other electronic or digital communications or compilations of data which are or may be relevant to the issues in the pending divorce action. [REDACTED] should ensure that all sources of potentially relevant information are identified and placed "on hold" to the extent required.

The form of materials to be preserved include, but are not limited to, the following:

- Electronic mail and file attachments including stored, deleted, sent or received mail
- Electronic or other calendars
- Telephone logs and electronic contact lists
- Data files on any computer including desktops, laptops, servers, or other electronic device including online storage
- Hard drives, floppy disks, CDs, DVDs, flash drives or other data storage units or devices
- Back-up tapes
- Databases and related structural information, file remnants, and hidden or archived data and metadata

On behalf of Ms. [REDACTED], we hereby request that Mr. [REDACTED], or anyone on his behalf, cease and desist any activities which would inadvertently or intentionally result in the deletion or destruction of materials which may be the subject of discovery request or may be potentially relevant. It is our intention to obtain mirror image copies of the relevant data. If necessary, we will employ a computer forensic expert to assist in this

procedure. Until this can be accomplished, hopefully with Mr. [REDACTED] cooperation, we request that Mr. [REDACTED], or anyone on his behalf, immediately prohibit the defragmentation, compression, or reformatting of data files or any other action that may or would alter, destroy, or delete the potentially relevant data files.

In addition, Mr. [REDACTED] should communicate to his agents and all other persons acting in concert with him of the duty to preserve potentially relevant data or information and of the duty to take affirmative steps to monitor compliance so that all sources of discoverable information are identified and steps taken to prevent the inadvertent, negligent, or intentional destruction or deletion of the relevant information or data.

In the event we cannot cooperatively accomplish these goals, we will seek an Order for the preservation/imaging of evidence. Thank you for your cooperation in this regard.

Cordially,

Kelly Anne Miles

C: Ms. [REDACTED]

APPENDIX J
SMITH GILLIAM
WILLIAMS & MILES PA
Attorneys at Law

R. WILSON SMITH, JR.
(1906 - 1983)
JOHN H. SMITH
STEVEN P. GILLIAM
JERRY A. WILLIAMS
KELLY ANNE MILES
BRAD J. PATTEN
M. TYLER SMITH
R. BRENT HATCHER, JR.
JENNIFER B. FLOYD

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T: (770) 536-3381
F: (770) 531-1481
www.sjwilliam.com

August 10, 2007

VIA CERTIFIED MAIL, RETURN
RECEIPT REQUESTED AND FIRST CLASS MAIL

[REDACTED]
c/o [REDACTED], Registered Agent
[REDACTED]
Gainesville, GA 30501

RE: [REDACTED]
Superior Court of Hall County, Georgia
Civil Action Number:

Dear Mr. [REDACTED]

Please be advised that this firm has been retained by Ms. [REDACTED] to represent her in connection with her pending divorce from her husband, [REDACTED]. You are the registered agent for [REDACTED], Inc. (hereinafter the "Company") according to the records of the Secretary of State for Georgia.

Ms. [REDACTED] asserting claims for an equitable division of marital property and alimony from Mr. [REDACTED]. A major issue in connections with her claims will be the ownership and value of Mr. [REDACTED] interest in the Company and any income or benefits he receives from the Company. As attorneys for Ms. [REDACTED], we will seek all relevant information, documents, and data concerning the financial condition of the Company, including the assets and the value of Mr. [REDACTED] interest in the Company. In addition, we will be seeking information regarding income, benefits, and any other compensation paid or due to Mr. [REDACTED] by the Company. Finally, any communications, via email or in any other format, to or from Mr. [REDACTED] may be discoverable.

The purpose of this letter is to put the Company on notice of the pending litigation and to advise the Company of its duty to preserve all documents, information, data, and other electronic or digital communication or compilations of data which are or may be relevant to the issues in this pending litigation. The Company should insure that all sources of potentially relevant information are identified and placed "on hold" to the extent required.

(65)

You are advised to immediately place a "hold" on any document retention system now in effect at your Company which perform automatic destruction or deletion of documents, information, data, or any other information on any computer readable media. You are advised that you have a duty to prevent the deletion, modification, alteration, or destruction of potentially relevant electronic materials, whether in digital or electronic form or hard copy.

The form or materials to be preserved include, but are not limited to, the following:

- Electronic mail and file attachments including stored, deleted, sent or received mail
- Electronic or other calendars
- Telephone logs or electronic contact lists
- Data files on any computer including desktops, laptops, servers, or other electronic device including on-line storage
- Hard drives, floppy disks, CDs, DVDs, flashdrives or other data storage units or devices
- Back-up tapes
- Databases and related structural information, file remnants and hidden or archived data and metadata

We hereby request, on behalf of our client, that the Company cease and desist any activities, implementation of policies, or other acts which would result, inadvertently or intentionally, in the deletion, modification, alteration, or destruction of materials which may be the subject of our discovery requests or may be potentially relevant to the pending case. This includes prohibiting the defragmentation, compression or reformatting of data files or other actions which could or would alter, destroy, modify, or delete potentially relevant data files.

Upon your receipt of this letter, an immediate back-up should be made of the potentially relevant information and data and back-up files should be preserved and not recycled.

Please communicate directly with the Company's employees likely to have such relevant information and communicate clearly to them the duty to preserve such potentially relevant data or information. Please take affirmative steps to monitor compliance so that all sources of discoverable information are identified and that the necessary steps are taken to prevent the inadvertent, negligent, or intentional destruction, modification, alteration, or deletion of relevant information or data.

Of course, our client is prepared to enter into a Confidentiality Agreement and Order which would protect any proprietary or trade secret information which may be implicated in regard to the information and documents that we seek to obtain. In addition, we intend to minimize disruption to the Company's business operations and we

pledge to make every effort to collaboratively establish a protocol for the mirror imaging of all relevant materials and the copying of electronic and digital data.

Please provide a copy of this letter to your corporate legal counsel. Please call me at your earliest convenience so that we can discuss a method for the production of the relevant and discoverable information of the Company in a cooperative spirit. If I have not heard from you, or your counsel, within ten days of this date of this letter, we will seek an Order for preservation and copying of the evidence. I look forward to hearing from you very soon.

Cordially,

Kelly Anne Miles

KAM/js

Cc:

(67)

APPENDIX K

IN THE SUPERIOR COURT OF HALL COUNTY
STATE OF GEORGIA

[REDACTED]
Plaintiff, / Civil Action File
vs. / Number:
[REDACTED] /
Defendant. /

PLAINTIFF'S EMERGENCY MOTION TO IMAGE HARD DRIVES

COMES NOW, [REDACTED] Plaintiff herein, and hereby moves this Court to grant this Emergency Motion to Image Hard Drives of [REDACTED] Defendant herein, both personal and business, showing this Honorable Court the following:

-1-

Plaintiff has filed a Complaint for Divorce against Defendant in the above action. Therein, Plaintiff seeks to receive an equitable division of the marital assets, alimony, and other relief. Based on the financial statement of Defendant, the parties' net worth as of January, 2005, exceeded \$43 million with net annual cash flow of over \$1.6 million. (See affidavit of Plaintiff attached hereto as "Exhibit A", Personal Financial Statement as of January, 2005 attached hereto as "Exhibit B", resume of Defendant attached hereto as "Exhibit C", all of which are incorporated as a part hereof.)

-2-

Defendant is either the sole or majority owner, member and chief executive officer of the following companies:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Financial information, both personally and business, are contained on the hard drives of computers located at the jointly titled real property of the Plaintiff and Defendant, [REDACTED] Hall County, Georgia, which computers are under the control of Defendant herein. (See "Exhibit A"). To Plaintiff's knowledge, the hard drives are specifically:

- a. Defendant's desktop, personally and as CEO/manager/member of the aforementioned companies;
- b. [REDACTED]
- c. [REDACTED]
- d. [REDACTED]
- e. [REDACTED]
- f. [REDACTED]
- g. [REDACTED]

In addition, Plaintiff seeks to image any other hard drive that contains any information concerning Defendant's personal financial information and business ventures, as well as email and other information of a sexual nature or content, plus any other hard drives containing any information concerning [REDACTED] [REDACTED], or any other entity in which Defendant holds, has held, or anticipates holding any ownership interest. Such information is discoverable by Plaintiff in that it is relevant and material to the issues in this divorce case.

Plaintiff moves this Court to grant this Motion *ex parte* and without advance notice to Defendant in order to protect the information contained on the computer servers, hard drives, individual workstation P.C., laptops and other items containing digital data or electronic data of the Defendant and/or the businesses listed in paragraph 2 above. Prior notice to Defendant of this Motion or the filing of the Complaint for Divorce will result in irreparable harm to

Plaintiff. Specifically, if Defendant receives advance notice of this Motion then all information contained on the computers can be permanently and irreparably deleted, destroyed, and/or modified. Granting Plaintiff's Motion will allow Plaintiff to image the hard drives exactly as they are at the time of imaging, thereby eliminating any possibility that such information could be tainted, loss, deleted, or modified.

-4-

Imaging the hard drives will not result in any harm or damage to Defendant. The hard drives will be imaged by Plaintiff's forensic computer expert. (See "Exhibit D", Affidavit of [REDACTED], attached hereto and incorporated as a part hereof.) The original hard drives will not be altered or modified in any way by the imaging. Imaging will be done at Defendant's place of business so there will be no inconvenience to Defendant. No information will be read or accessed from the computers or hard drives until a full hearing can be held with notice to all parties. The imaged hard drives will be kept in a secure location by Plaintiff's counsel, under key, not to be accessed by any person without further order of this Court. Except for the short period of time it takes to actually image that particular computer's hard drive, Defendant will have full and complete access to the hard drives so there will be no disruption to the flow of business nor any modification of the information contained on the original hard drives.

-5-

Imaging the hard drives as set forth in this Motion does not violate any provisions of the Georgia Computer Systems Protection Act, O.C.G.A. 16-9-93, et seq. Rather, the relief sought by Plaintiff herein ensures that all relevant data is protected and eliminates the risk of such information being erased, destroyed, or tampered.

-6-

Plaintiff requests that this Court direct that a Hall County Deputy accompany her attorney and her computer expert to image the hard drives and to take all steps necessary to assist Plaintiff's attorney and/or expert in carrying out the Court's Order on this Motion.

-7-

Plaintiff seeks to recover her attorneys fees and all costs necessary of her forensic computer expert and the Hall County Deputy from Defendant.

(70)

Upon service of this Motion and the Court's Order, Plaintiff requests that this Court order that all computers referenced above be immediately turned off and unplugged until the image of that computer has been successfully completed. This will prevent any risk of the data being deleted or altered between the time of service and imaging.

WHEREFORE, Plaintiff prays that this Court grant her Emergency Motion to Image Hard Drives, instantar, without advance notice to Defendant.

SMITH, GILLIAM, WILLIAMS & MILES, PA
Attorneys for Plaintiff

By: _____
Kelly Anne Miles
Bar Number: 505665

By: _____
Jennifer B. Floyd
Bar Number: 140955

IN THE SUPERIOR COURT OF HALL COUNTY
STATE OF GEORGIA

[REDACTED]

Plaintiff,

/

Civil Action File

vs.

/

Number:

[REDACTED]

/

Defendant.

/

ORDER ON PLAINTIFF'S EMERGENCY MOTION TO IMAGE HARD DRIVES

Plaintiff herein having filed an Emergency Motion to Image Hard Drives in the above styled case, and this Court having read and considered said Motion, *ex parte*, including the Exhibits and Affidavits attached to said Motion,

WHEREFORE, this Court hereby **GRANTS** Plaintiff's Motion. This Court specifically finds that immediate and irreparable loss or damage will result to Plaintiff if the *ex parte* relief requested in Plaintiff's Motion is not granted immediately. This Court finds that the reasons supporting Plaintiff's claim that advance notice should not be required to be given to Defendant justifies granting this *ex parte* relief. Further, this Court finds that the *ex parte* relief requested by Plaintiff is necessary to protect the information sought by her in this case. Finally, this Court finds that granting the relief sought by Plaintiff will not result in any harm to Defendant nor the businesses.

WHEREFORE, IT IS HEREBY ORDERED, as follows:

-1-

Plaintiff's attorney and Plaintiff's forensic computer expert, [REDACTED] are hereby allowed to immediately image the computer servers, hard drives, individual work stations, T.C. laptops, and other items containing digital data or electronic data from all computers located at [REDACTED] Flowery Branch, Hall County, Georgia, including but not limited to, the following:

a) Defendant's desktop;

b) Computers used by [REDACTED]

- c) Computers used by [REDACTED]
- d) Computers used by [REDACTED]
- e) Computers used by [REDACTED];
- f) Computers used by [REDACTED]
- g) Computers used by [REDACTED] and
- h) Any other computers containing any information regarding Defendant's personal finances, investments, businesses, or other financial dealings, including but not limited to information regarding [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED], or any other entity in which Defendant holds or has held any ownership interest, as well as all computers containing email correspondence to or from Defendant of a business or personal nature.

-2-

Defendant is hereby directed to immediately identify all such computers listed above to the Hall County Deputy upon presentation of this Order and shall immediately make all such computers available for imaging as needed by Plaintiff's forensic computer expert.

-3-

A Hall County Deputy shall immediately accompany Plaintiff's attorney and her computer forensic expert to [REDACTED] Flowery Branch, Georgia. Upon arrival the Deputy shall personally serve Defendant with the Complaint for Divorce, Summons, Plaintiff's Emergency Motion to Image Hard Drives, this Order, the Rule Nisi for Temporary Hearing, and any other pleadings filed with the Clerk of Hall County, Georgia, as part of this action. The Deputy shall insure that all computers at the location are immediately unplugged and turned off and that they remain in this condition until the imaging process on that particular computer has been successfully completed. Further, the Deputy shall take whatever steps are necessary to insure that all terms of this Order are carried out immediately.

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-4-

Defendant is hereby restrained and enjoined from altering, destroying, modifying, or in any other way accessing any of the computer information to be imaged until the imaging is complete.

-5-

The imaged hard drives shall be immediately tendered to Plaintiff's attorney for safekeeping under lock and key and shall not be accessed by any person without further Order of this Court.

-6-

Plaintiff's attorney, Plaintiff's forensic computer expert, and all other persons acting on behalf of Plaintiff are hereby restrained and enjoined from accessing or viewing any information contained on any of the original or imaged hard drives without further Order of this Court.

-7-

Plaintiff's request for an award of attorney's fees, reimbursement of the Hall County Deputy fees, and her forensic computer expert fees is hereby reserved.

IT IS SO ORDERED, this _____ day of June, 2005, at _____ o'clock ____m.

JUDGE [REDACTED]
SUPERIOR COURT
HALL COUNTY, GEORGIA

Prepared by:
Kelly Anne Miles
Attorneys for Plaintiff
Bar Number: 505665

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APPENDIX L

IN THE SUPERIOR COURT OF LUMPKIN COUNTY

STATE OF GEORGIA

[REDACTED]	/	
Plaintiff,	/	
vs.	/	Civil Action File
[REDACTED]	/	Number: [REDACTED]
Defendant,	/	

MUTUAL RESTRAINING ORDER FOR THE PRESERVATION OF ELECTRONIC DATA

A Complaint for Divorce having been filed in the Superior Court of Lumpkin County, Georgia, and Defendant having filed an Emergency Motion to Image Hard Drives, ex parte, and after hearing the Motion, this Court **DENIES** the Motion but hereby enters the following Mutual Restraining Order.

IT IS HEREBY ORDERED, pursuant to O.C.G.A. 19-1-1, that each party, their agents, servants, and employees, and all other persons acting in concert with such parties is prohibited from concealing, altering, deleting, reformatting, transferring, or disposing of information, data compilations, metadata, computerized data, or other electronically or digitally recorded information maintained in digital or electronic storage devices including but not limited to: computers, laptop computers, online electronic storage, back-up tapes or CDs, personal digital assistants (PDAs), cellular telephones, and electronic mail.

This mutual restraining order shall remain in effect against both parties to this action until further order of the Court.

IT IS SO ORDERED, this ____ day of _____, 2007.

JUDGE [REDACTED]
SUPERIOR COURT
LUMPKIN COUNTY, GEORGIA

Prepared by:
Kelly Anne Miles
Attorney for Defendant
Georgia Bar No. 505665

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APPENDIX M

May 24, 2007

[REDACTED]
South Flower Street, 35th Floor
Los Angeles, CA 90071

RE: [REDACTED]
Case Number [REDACTED]
Lumpkin County Superior Court

Dear [REDACTED]

I am the attorney representing [REDACTED] in the divorce action referenced above. I am in receipt of the letter and Request for Production of Documents served on [REDACTED] by [REDACTED]. We have no objection to you producing the documents requested on the condition that you provide us with a copy of all documents given to [REDACTED]. Of course, we are willing to pay for the copy expense attributable to the copies made for us pursuant to this letter. Any other costs of research and production of the requested documents should be forwarded and paid by Defendant as the requesting party.

Thank you and please give me a call if you have any questions.

Cordially,

Kelly Anne Miles

KAM/js

C: [REDACTED]

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