

DISCOVERY: THE TERRIFIC THREE

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I. INTRODUCTION

Discovery 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 a 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. Do not forget to be just as thorough in gathering relevant documents from the client. Discovery allows the attorney to put together all the pieces of the puzzle that tell the story of the case.

It is important to be familiar with the rules of discovery, which are oftentimes confusing. There are so many means of discovery available to the practitioner that this paper cannot possibly address each and every one. Instead, The Terrific Three will be discussed: Discovery of Documents, Request to Inspect, and Requests for Admission. Each of these is of particular value to the family lawyer. Depositions and interrogatories are commonly used. The Terrific Three are the ones that can help make the case turn out terrific!

II. 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 an attorney to also determine facts that the adverse party contends exist so that the attorney can be fully prepared and get his or her clients fully prepared. Discovery, when used

correctly, can also remove the potential for secrecy and hiding of information which is particularly important in the arena of Family Law.

O.C.G.A. Section 9-11-26(b) governs the scope of the matters that are discoverable under the Georgia Civil Practice Act. 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).

III. DISCOVERY PERIOD

Uniform Superior Court Rule 5.1 requires that all discovery be commenced promptly, pursued diligently, and completed without unnecessary delay. This should especially be true in the case of domestic relations cases which involve people's lives and emotions, including those of their children. While U.S.C.R. 5.1 states that the discovery must be commenced within six months after the filing of the Answer, this Rule does not require that a party be given six months in which to complete discovery. Alexander v. Macon-Bibb County Urban Development Authority & Urban Properties #47, 257 Ga. 181 (1987).

However, this Rule only applies to the ability of a party to utilize the Court's compulsory process to compel discovery. Therefore, a party can certainly do discovery after the discovery period has ended but is left with no remedy if the party fails to respond. In fact, the party sending the discovery would be barred from seeking an order compelling a response. Jack Eckerd Drug Co. v. Covington, 183 Ga. App. 164 (1987).

The time for discovery can be extended, reopened, or shortened, all of which are in the wide discretion of the Court. Magliaro v. Lewis, 203 Ga. App. 632 (1992), cert. denied, 203 Ga. App. 907 (1992). Under the Rule's express wording, there is no time limit on discovery if an Answer is not filed. Since there can be no default in a divorce case, then it is a very real possibility that an Answer may not be filed. In this case, the matter will be left to the discretion of the Court. Gray v. Whisenaut, 258 Ga. 242, (1988).

Practice Tip: If the attorney wants to make sure a case is on the “fast track,” he or she should file a Motion to Shorten the Discovery Period. Be sure to always mark the six month discovery period on the calendar.

IV. DISCOVERY OF DOCUMENTS

Discovery of documents can be the most valuable tool available in the discovery arsenal. Documents can include writings, drawings, graphs, charts, photographs, tape recordings and other data compilations from which information can be obtained or translated by the respondent through detection devices into reasonably usable form. It also includes any tangible things which contain or constitute matters within the scope of discovery as defined in O.C.G.A. Section 9-11-26(b) and which are in the possession, custody, or control of the party upon whom the request is served. Of course, just requesting production of documents is not enough. You must actually review the documents carefully and thoroughly! A discussion of the various methods for document discovery on the opposing party and on third parties follows.

A. Obtaining Documents from Opposing Party

O.C.G.A. Section 9-11-34 and O.C.G.A. Section 24-10-16 are the statutes that govern production of documents from the opposing party.

- (i) **Request for Production of Documents:** The method to obtain documents from the opposing side under O.C.G.A. Section 9-11-34 is through a Request for Production of Documents. The Request must specify a reasonable time, place, and manner of making the inspection of the documents requested. The Request should also be specific as to the documents to be produced.

The opposing party has thirty (30) days from date of service to file a written Response to the Request, 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. It is not a proper response to a Request for Production of Documents just to simply provide the documents requested. O.C.G.A. Section 9-11-34 (b)(2) requires that the Response must state as to each item or category requested, whether inspection of that document will be permitted as requested. For example, a proper response would be to address each numbered item set forth in the Request and state that the requested documents are attached or are available for review and copying at the offices of the responding party's attorney or some other similar statement. If the

particular request is objected to, then the reason for objection as to each requested item or category must be specified.

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). This Motion must be directed to the Court in which the action is pending. One option is to simply seek an order compelling the inspection of the documents in accordance with the Request. The Court can deny the Motion in part or in full and the Court may enter a Protective Order as it sees fit. Notice of the Motion must be given to the opposing party. The Court can also award attorneys fees to the moving party from the opposing party and/or the attorney advising him or her! However, if the Court finds that the objection filed to the Request or Motion was substantially justified or that any other circumstances make an award of attorneys fees unjust, the Motion can be denied. In this instance, the Court can award attorneys fees to the party who successfully opposed the Motion and/or that party's attorney. If the Motion is granted in part and denied in part, the Court may apportion fees in a just manner. If the opposing party simply fails to serve any written response to the Request for Production of Documents, then on

Motion, the Court can make any order in regard to the failure that it deems just which may include:

- (a) That the facts or matters claimed by the moving party are established;
- (b) Refusing to allow the disobedient party to oppose the claims made by the moving party and/or may prohibit the disobedient party from introducing claims or defenses in the action;
- (c) Striking out pleadings or parts thereof, staying the proceedings until compliance, dismissing the proceeding or any part thereof or rendering a judgment by default against the disobedient party.

Before filing a Motion to Compel, there must be compliance with the requirements of Uniform Superior Court Rule 6.4(B). This provision requires that the moving party “shall confer” with counsel for the opposing party in a good faith effort to resolve the discovery matters and that a Statement must be filed certifying that this conference has occurred and that the efforts to resolve the issues failed. Does this mean that there must be a verbal discussion or is a letter sufficient? Deep South Construction, Inc. v. Slack, 248 Ga. App. 183 (2001) does make it clear that there is no requirement that counsel for the movant has to make more than one attempt to resolve the discovery matter.

(ii) **Notice to Produce**: 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. 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, which includes notice and hearing. (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 (since these things are already determined by the time and place of the deposition, hearing, or trial) and a Notice to Produce may be more general in its document request.

The Notice must be served more than twenty four hours prior to the hearing. Byron v. State, 229 Ga. App. 795 (1998). Note that a Notice to Produce is the only way to get documents from the opposing side once the discovery period has expired pursuant to Uniform Superior Court Rule 5.1. Gaffron v. Metropolitan Atlanta

Rapid Transit Authority, 229 Ga. App. 426 (1997) held that documents requested in a Notice to Produce twenty days prior to trial, but after the six month discovery period provided by U.S.C.R. 5.1 had expired, must be produced.

A Notice to Produce may also be attached to a Notice of Taking Deposition. Do this even if the opposing party has already been served with the Notice to Produce because it serves to re-emphasize the fact that documents are to be produced at the deposition.

(iii) **Combination**: To be safe when requesting documents from the opposing party, combine a Request for Production of Documents with a Notice to Produce (See Appendix A for an example).

B. Obtaining Documents from Third Parties:

Document discovery on Third Parties has some important differences from document production on the opposing party. O.G.G.A. Sections 9-11-34, 9-11-45, and 24-10-25 govern this type of discovery.

- (i) **Request for Production of Documents**: 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 may charge a reasonable document copying charge. Do not forget to serve opposing counsel or the opposing party, if pro se, with a copy of the Request to a 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), a copy of the Request must also be served on that nonparty (i.e. paramour, registered agent for service of the company) as well as the opposing party.

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, there are specific requirements and deadlines (do not forget to comply with HIPAA—see Appendix B for example letter).

The requirements of the Request are the same as set forth above for a Request for Production of Documents on the opposing party. Enforcement of the Request is also the same.

The third party or the opposing party can file an objection to the Request under subsection (b) of this Code section. 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.

(ii) **Subpoena For Production of Documents**: 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*. Documents cannot be obtained from a third party through a Notice to Produce. In fact, a lot of third

parties will refuse to even honor a Request for Production of Documents but, 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. 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.

If the subpoena is for production of documents to be made at the third party's deposition, then the subpoena will be issued under the provisions of O.C.G.A. Section 9-11-45. This Code Section provides for the subpoena to be issued commanding the third party to appear at a place and time certain for his or her deposition and may also command that person to produce and permit inspection and copying of designated books, papers, documents, or tangible things. The deposition can be taken in the county, or any place within 30 miles of the county seat, where the deponent resides or is employed or transacts his business in person or in any county where the deponent is served. The subpoena must be issued by the Clerk of the superior court where the action is pending or in the county where the deposition is to occur. The attorney issuing the subpoena can issue and sign the subpoena only upon agreement of the parties.

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 within ten days of service and no documents will be required to be produced except pursuant to Order of the Court from which the subpoena was issued.

If the documents being sought are to be produced at a hearing or trial, then the *subpoena duces tecum* should be issued pursuant to O.C.G.A. Section 24-10-22. The Clerk may issue the subpoena in blank for the attorney to fill out prior to service. The subpoena may be served by any sheriff, his deputy, or any other person 18 years or older with proof of service shown on a copy of the subpoena. Subpoenas may also be served by registered or certified mail or statutory overnight delivery and the return receipt shall constitute prima-facie proof of service. O.C.G.A. Section 24-10-23. The witness shall be paid a fee of \$25 per day but payment of the witness fee is not a condition of attendance unless the witness resides out of the county, in which case, a condition of attendance is the tender of one day's witness fee plus round trip mileage from the witness' residence and the place of testifying. The fees may be paid in cash, certified check, money order, cashier's check or a check of an attorney or law firm. O.C.G.A. Section 24-10-24. A *subpoena decus tecum* not served more than 24 hours in advance is not

required to be enforced by the Court. A Motion to Quash or Modify the Subpoena under O.C.G.A. Section 24-10-22(b) is the appropriate action to take if the subpoena is unreasonable and oppressive or if the person producing the documents insists on the advance of the reasonable cost of producing the documents.

(C) Discovery of Documents From The Client

Do not overlook the duty to obtain all relevant documents from the client. In the initial meeting, prepare and give him or her a “to do” list of the documents needed. Refine that list in each subsequent meeting with the client. For the most part, clients love “homework.” It saves them money and keeps them involved.

(D) Electronically or Digitally Stored Documents

Document production that is, in my opinion, 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. Paper files are not environmentally correct and are being replaced by complete files just a mouse click away. Yellowing photos stored in the attic are now replaced by photo albums stored right on our computers, cell phones, Facebook and MySpace pages. Incriminating videos are now shared worldwide via YouTube. We can even have virtual affairs via the internet. Now communication takes place textually as opposed to orally and is captured via instant messaging through the internet or thru Twitter.

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. Even the document discovery methods set forth above may give too much time for the information to be “lost.”

Consider having a forensic computer expert image the hard drive on the home computer. Obviously the attorney, the expert, or the client cannot view or look at any password protected information until obtaining a specific court order to do so or written consent from the opposing party or counsel. But, by immediately imaging the hard drive, the attorney has preserved that information so that it cannot be altered, modified, or deleted. Sometimes just knowing one side has that information in their possession is leverage enough to get the 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 needed 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, consider asking the Court for an ex parte order allowing the forensic computer expert to image the hard drive. (See Appendix C for a sample

Emergency Motion to Image Hard Drives and Appendix D for an Order on this motion). In the alternative, ask the Court to enter a Temporary Restraining Order relating directly to the preservation of electronic evidence. (See Appendix E for a sample Restraining Order).

In forming 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 the 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.

Finally, the attorney can use his or her computer to pull up the client, the opposing party, the parties’ children, paramours, etc. on My Space, Facebook, or other similar social networking websites. It is unbelievable how many things people disclose over these internet sites. Also, Google the parties and their businesses to get helpful information.

Go on line and check the lien and deed records for the 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.

(E) Financial Documents not to Forget

Banks and financial institutions are a wealth of information. They will charge to produce documents so narrow the Request or Subpoena to the documents needed for that particular case. For instance, to help determine the income of a self-employed person or someone who is suspected of 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 the client was the one doing the puffing, it is important to get a copy of the statement before deposition or trial so that the client can be prepared 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.

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. Do not forget their electronically stored documents....emails, worksheets, projections, etc.

V. REQUEST TO INSPECT

O.C.G.A. Section 9-11-34 allows the attorney to bring to life the objects in a case. Under the provisions of this Code Section, a party may serve on any other party a Request to permit entry upon designated land or property in the possession and control of that party upon whom the Request is served. The purpose of the Request is to allow “inspection and measuring, surveying, photographing, testing, or sampling” of the designated object or operation of the object so long as it falls within the scope of discovery as defined by O.C.G.A. Section 9-11-26(b).

The Request must identify the object to be inspected and must describe each item with particularity. The Request must specify a reasonable time, place, and manner of making the inspection and of performing all related acts. The time and manner for responding to the Request is the same as that for a Request for Production of Documents set forth above. Objections to the Request are also the same. A Request can also be served on a third party under the same requirements as a Request for Production of Documents. Failure to file a Response is handled with a Motion to Compel under O.C.G.A. Section 9-11-37.

VI. REQUESTS FOR ADMISSION

Requests for Admission is an often overlooked discovery tool. O.C.G.A. Section 9-11-36 governs this type of Request. The purpose of the Requests for Admission is to expedite trial and to save cost and labor of proving facts that will

not be disputed and the truth of which are easily ascertained. Hobbs v. New England Insurance Co., 212 Ga. 513 (1956). Great cases for the use of Requests for Admission are those in which a Prenuptial Agreement is in dispute or identification of separate property is needed or if a Motion for Summary Judgment is being contemplated. (See Appendix F for a sample Requests for Admission.)

The Requests can be served on any party for the truth of any matter within the scope of discovery allowed under O.C.G.A. Section 9-11-26(b). The Requests must be specific (be as short and concise as possible) and may relate to:

- (i) Statements or opinions of fact;
- (ii) Application of law to fact; or
- (iii) Genuineness of any document described in the Request.

Attach copies of the documents your Request pertains to.

The Request can be served on the Plaintiff at any time after commencement of the case or on any other party with or after service of the Complaint. Each matter to which an admission or denial is sought shall be set forth separately in the Request. Each Request is considered admitted after 30 days from date of service (or 45 days if served with the Complaint) unless the party to whom the Request is directed serves to the requesting party a written answer or objection setting forth the reason for the objection. The Court can shorten or lengthen the time for response. However, strict compliance with this Code Section is essential. Walker Enters. Inc. v. Mullis, 124 Ga. App. 305 (1971). The proper response is to admit, deny, or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. If part of the request

is admitted and part denied, then the response should specify what part is true and what part is denied. Lack of information or knowledge is not a proper response unless the answering party states that he or she has made reasonable inquiry and that the information known or readily obtainable by him or her is insufficient to enable him or her to admit or deny the specific Request.

If the requesting party needs, he or she can move the Court to determine the sufficiency of the answers or objections. An award of attorneys fees is governed by the same considerations as those in a Motion to Compel under O.C.G.A. Section 9-11-37.

Any specific Request which is admitted is conclusively established. The only way this can be overridden is if the Court, upon motion, allows withdrawal or amendment of the admission. The Requests and response are considered matters of proof and must be introduced into evidence before they can be considered by the trier of fact. Brooks v. Roley & Roley Eng'rs, Inc., 144 Ga. App. 101 (1977). Any admission made by a party is for the purpose of the pending action only and cannot be used for any other purpose nor can it be used against him in any other proceeding.

Practice Tip: Examine every single page of any discovery request or pleading received so as not to overlook a Requests for Admission that may be enclosed. Mark your calendar and your secretary's and paralegal's IMMEDIATELY for the deadline. Do not wait until the last day to respond!

APPENDIX **A**

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

APPENDIX B "

Date

Dr. _____, MD
Address
Gainesville, GA 30501

Re: _____ v. _____
Stephens County Superior Court
Civil Action Number _____

Dear Records Clerk:

I represent the Defendant, _____, in the above-referenced divorce case. Pursuant to the Georgia Civil Practice Act, a party to a lawsuit is authorized to request and obtain documents from persons, firms, corporations, etc. who are not parties to the lawsuit. O.C.G.A. § 9-11-34(c)(2) specifically makes this law applicable to non-parties who are practitioners of healing arts, hospitals, or health care facilities.

Enclosed please find a Request to you, as a non-party, for Production of Documents. Pursuant to O.C.G.A. § 9-11-34, you should respond to this Request "promptly".

In accordance with the Health Insurance Portability and Accountability Act ("HIPAA") privacy regulations, 45 CFR § 164.512(e)(1)(3i), this firm has provided written notice to the patient referenced within our Request, _____. Enclosed with this Request is a copy of the written notification sent to the patient's attorney of record on _____, which notification contained sufficient information about the above-referenced litigation in order to allow the patient to object to the production of documents we have requested from you. The patient had twenty days in which to file an objection. This twenty day period ended on _____. To date,

no objection has been filed by the patient and therefore, you are authorized and requested to fully comply, as promptly as possible, with producing the documents set forth in our Request.

If you have any questions regarding this matter, please feel free to call me. Of course, we are willing to reimburse you for any reasonable charges incurred in photocopying. If there is a charge, please include a bill and it will be paid promptly. If you require these costs to be paid in advance, please call my office.

Thank you very much for your prompt attention to this matter.

Cordially,

Kelly Anne Miles

KAM/amt

Enclosure: Notification to Patient's Attorney dated _____
Request for Production of Documents to Non-Party

C: Opposing Counsel
Client

APPENDIX C

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]

[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

(25)

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.

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], 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.

-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
SUPERIOR COURT
HALL COUNTY, GEORGIA

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

(30)

IN THE SUPERIOR COURT OF LUMPKIN COUNTY

STATE OF GEORGIA

[REDACTED]

Plaintiff,

vs.

[REDACTED]

Defendant,

/
/
/
/
/

Civil Action File

Number: [REDACTED]

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

IN THE SUPERIOR COURT OF HALL COUNTY
STATE OF GEORGIA

_____	/	
Plaintiff,	/	Civil Action File
vs.	/	Number: _____
_____	/	
Defendants.	/	

DEFENDANT'S FIRST REQUEST FOR ADMISSIONS TO PLAINTIFF

COMES NOW, _____, Defendant herein, and files his FIRST REQUEST FOR ADMISSIONS TO PLAINTIFF, as follows:

-1-

You signed the attached Antenuptial Agreement attached hereto on _____.

-2-

You signed the Antenuptial Agreement freely and voluntarily.

-3-

You were represented by independent legal counsel who gave you legal advice concerning the contents of the attached Antenuptial Agreement.

-4-

Exhibit B of the attached Antenuptial Agreement contains a full and complete disclosure of assets and liabilities in your name as of _____.

-5-

Exhibit A of the attached Antenuptial Agreement contains a full and complete disclosure of the assets and liabilities of _____ as of _____.

-6-

You read the attached Antenuptial Agreement prior to your execution of said Agreement.

-7-

You and _____ first married on _____.

-8-

You and _____ were divorced from your first marriage on _____.

-9-

On _____, _____ was born.

-10-

A Final Judgment was agreed upon and entered into between you and _____ regarding _____ on _____.

-11-

The date of your current marriage to _____ was _____.

-12-

At the time you entered into the attached Antenuptial Agreement you and _____ were both residents of the state of Florida.

-13-

The attached Antenuptial Agreement was executed in the state of Florida.

-14-

Admit or deny that each of the following items is titled solely in _____ name:

a)

-15-

Admit or deny that the following assets are titled jointly in your name and _____ name:

-16-

Admit or deny that the following assets are titled solely in your name:

a)

-17-

You were not employed on _____.

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

BY: _____
Kelly Anne Miles
Bar Number 505665