

PARAS APY & REISS

A Professional Corporation for the Practice of Family Law

Discovery: It's Time to Turn the Tables

By Bonnie Reiss

The rules have always been different for family lawyers. We can't take mortgages.¹ We can't pay referral fees.² There are page limitations on our Certifications.³ Our billings and requests for counsel fees *pendente lite* must be scrupulously specific. Even so, we often collect far less than the value of our services and are compelled to carry large receivables. We are treated differently than other litigators since the funds spent on the litigation process reduce the income and assets available to help family members meet necessary expenses, both before and after divorce. Yet, while family lawyers, particularly those representing the spouse who is not in control of the family funds, bear this burden, there is much that can, and should, be done by the courts; particularly during the discovery phase of the case to maintain the proverbial "even playing field."⁴

Forty years of case law tells us that the income and assets subject to distribution belong to both parties.⁵ The discovery process is intended to place both litigants on level ground in the litigation.⁶ Too frequently, however, this principle is merely afforded lip service. A non-owner, supported spouse⁷ can easily exhaust limited resources trying to obtain information that should be readily available. The result is an unfair settlement and drastically diminished economic security for the parent who has the day-to-day responsibility for meeting the children's needs.

In most marriages where there is a business or professional practice, the party who controls the economic information also controls the economic resources. The supported spouse is forced to

¹ N.J. Ct. R. 5:3-5(b)

² N.J. Ct. R. 1:39.6(d)

³ N.J. Ct. R. 5:5-4, Pressler, 2010 N.J. Court Rules (Gann).

⁴ See *Painter v. Painter*, 65 N.J. 196 (1974).

⁵ Id.

⁶ See *Finnegan v. Coli, et al.*, 59 N.J. Super. 353 (Law Div. 1960); *Davis Acoustical Corp., v. Skulnik*, 131 N.J. Super 87 (App. Div. 1974); *Merns v. Merns*, 185 N.J. Super 529, (Ch. Div. 1977); *Gerson v. Gerson*, 148 N.J. Super 194 (Ch. Div. 1977).

⁷ Solely for literary convenience references to the supported spouse may be written as "she" or "her".

incur counsel fees to obtain information on his or her own assets or marital assets and invariably is required to deplete assets which are meant for her future security.

Perhaps the following scenario is familiar: You represent Joan who has been married to Hank for eleven years. They have two children. Joan, previously divorced has not worked outside the home since she was 18, when she worked as a waitress. Hank, owns a closely held business with his cousin, Vinnie. Hank pays the family bills and controls the investments. It is a matter of extreme pride to Hank that he "takes care of the family." For Joan to ask questions about accounts or tax returns would be viewed as an affront to his role as "provider." Joan has free use of charge cards and all the cash she needs. They have one joint checking account, used primarily by Joan, into which Hank deposits money "as needed." The business pays for Joan's BMW SUV, Hank's Range Rover and Hank's mother's car, as well as, the home phone, all family cell phones and cable T.V., which is also in Hank's office. They go to Cancun every April, stay in the Presidential Suite at a five star hotel and fly first class. Long weekends are spent in Las Vegas, Atlantic City and Aruba where their room is often "comped." Meals, cigars, vacations, gasoline, car repairs and other personal expenses are charged on credit cards in the name of Hank's business. Joan is a secondary card holder on one of these cards which she uses for her gas purchases. They live in a 6,000 square foot home which is beautifully landscaped. The value is \$800,000 and it is encumbered by first and second mortgages totaling \$650,000. A portion of the debt went to place the down payment on a beach house which was owned for several years, but sold to pay damages in a lawsuit filed against Hanks's business and Hank personally. The parties have cleaning help twice a week and the two children attend private school. Hank's mother is a one-half owner of the marital residence, as she contributed to the initial down payment. The parties have paid the mortgage without assistance from Hank's mother. Hank owns fifty percent of his mother's home. Joan has no exempt assets. The parties have more than \$50,000 in credit card debt and Hank has not made estimated tax payments on the current or last years' tax returns. Hank's reported income is \$165,000 per year. Joan has no clue what she spends so her CIS consists entirely of estimates. Hank is 48 and Joan is 45.

As Joan's attorney, you find yourself in the position where determining the value of the business and its real cash flow is critical. Joan's interest in the marital residence is small and it appears that she will be liable on the debt. She will need whatever cash she can realize from her interest in the business to acquire a residence and she will need substantial alimony in order to maintain a lifestyle substantially similar to the way they lived during the marriage.

You are proactive and send Interrogatories and a Notice to Produce requesting five years of business and personal financial records to adverse counsel, as soon as he advises you he will be representing Hank. They are ignored. Letters and phone calls follow, generating fees. You attend

the first case management conference 70 days after you propounded your Notice to Produce. The timeframes set by the rules for compliance with discovery demands are ignored and the resulting order allows 60 days for Hank to furnish answers.⁸

Hank's attorney represents that his client is willing to pay the retainer for a joint forensic accountant to value the business, but not a separate accountant for Joan. Faced with the prospect of filing a motion before a judge who will ask why you want your own "hired gun," you agree to joint expert.

At the second case management conference, 60 days later, Hank's attorney says they need an additional two weeks to provide the discovery you requested. Of course, the request is granted. The case is now more than four months old. When the response to your discovery demands arrives, it is incomplete and disorganized. There is no written response to the Notice to Produce; only a box of documents which are not labeled as corresponding to the numbered demands on the Interrogatories or Notice to Produce. Records that have been scrupulously maintained throughout the marriage are suddenly missing. Personal bank statements are spotty. There are no cancelled checks. You are provided with a few random months of credit card statements. Some are from the same issuer, but bear different account numbers. There is no indication whether they relate to the same account, whether the account number has been changed because of a merger or takeover of the financial institution, or there are multiple accounts. There is no indication when the accounts were opened since all reflect balances. The response to the demand in your Notice to Produce for business checks and credit cards indicates that "all business records have been provided to the accountant." You call the accountant to find that they don't have cancelled checks or credit card statements. "Not in litigant's possession" is another response to many of the demands in the Notice to Produce.

You also receive a typed document entitled "Answers to Interrogatories." It is not signed. "See Notice to Produce" is the response to many questions, without reference to what demand in the notice is being referenced.⁹ Where the interrogatory asks for a narrative response there is none. Many interrogatories are answered with "To be supplied."

Your client must pay for hours spent inventorying documents and preparing a deficiency

⁸ R. 4:18-1 provides that the response must be served 35 days after service of the request or 50 days after service of the Summons and Complaint. Rule 4:17-4(b) gives 60 days for response to Interrogatories.

⁹ Rule 4:17-4(d) permits reference to a document in response to an interrogatory where "the answer to an interrogatory may be derived or ascertained from or requires annexation or copies of the business records... or from an examination, audit or inspection of such business records, or from a compilation, abstract or summary based thereon, or from electronically stored information and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served..." The respondent must specify in detail the record from which the answer can be obtained. See Pressler, *Id* at page 1506

letter in which you tell the business owner, who gathered the documents, what he has failed to provide. (as if he didn't already know.) The deficiency letter is ignored. N.J.R. 5:5-1 provides that, in pre-judgment cases, discovery of income and assets that are not otherwise exempt are subject to the same rules of discovery that govern other civil litigation.^{10, 11} If a party objects to the production of any requested item, the burden is on that party to raise a specific objection within thirty-five days and state the basis of the objection.[citation] If no objection is made within that time period, and the item is not produced, the party submitting the discovery demand may move for an order of suppression or dismissal pursuant to R. 4:23-5 which provides, " [u]nless good cause for other relief is shown the court shall enter an order of dismissal or suppression without prejudice."¹² The recalcitrant party must pay a restoration fee of \$100.00 if a motion to vacate is made within thirty days of the entry of the order of dismissal or suppression and \$300.00 if such a motion is filed thereafter.¹³ If an application to reinstate is made within 90 days, the court may require the payment of sanctions, counsel fees or both as a condition for restoration. If the failure to comply with a discovery demand persists, pleadings may be stricken, with prejudice.¹⁴

The dismissal of the pleadings in a divorce case is not even a pyrrhic victory. In most cases, both parties' initial pleadings seek a divorce, both seek equitable distribution and the information necessary to enter a support award is in the possession of the party withholding the discovery. Thus, striking the pleadings of the recalcitrant party is useless. Pleadings are always reinstated. Even if a court declined to reinstate, the dependent spouse cannot receive his or her fair share of the marital estate without the economic information the supporting spouse controls.

Knowing that dismissal will do nothing to move the case forward, you file a motion to compel responses.¹⁵ These are the kinds of motions that judges dread since they are time consuming. The

¹⁰ N.J. Ct. R. 5:5-1(a), Pressler, 2003 N.J. Court Rules, (Gann) R.5:5-1(a) refers to R. 4:17; R. 5:5-1(c) refers to R. 4:11 et seq. and R. 4:10-2(dX2) and R. 5:5-1(d) refers to R. 4:18-1, R. 4:18-2 and R.4:22-1.

¹¹ Pressler 2003 N.J. Court Rules, Comment R. 5:5-1 (Gann)

¹² N.J. Ct. R.4:23-5(a)(1), Pressler, 2003 N.J. Court Rules, (Gann) (emphasis added) See Id.

¹³ See Id.

¹⁴ N.J. Ct. R. 4:23-5(a)(2), Pressler, 2003 N.J. Court Rules, (Gann). The rule states that if an order of dismissal or prejudice has been entered pursuant to (a)(1) of this rule and such order has not been vacated, the party seeking discovery may move for an order of dismissal or suppression with prejudice 90 days after the entry of original order.

¹⁵ The comment to rule 4:23-1 permits an aggrieved party whose Notice to Produce has not been complied with to seek relief either by filing a motion to compel or proceeding under the two step process in 4:23-5. Proceeding under 4:23-1(c) *requires* an award of counsel fees "after the opportunity for a hearing...unless the court finds that the opposition to the motion was substantially justified or other circumstances make an award of expenses

business owner's defenses to your motion include "business disruption," that it is "too burdensome" to gather the records or that the records are lost. A common defense is that the demand is overly burdensome as evidenced by the fact that the records requested were not required by the joint forensic accountant. This argument ignores the critical difference between the role of the joint expert and an attorney for a party. The accountant usually sends a "preliminary" demand. The forensic accountant may be satisfied to use QuickBooks® to conduct a valuation and rely on the business owner's own QuickBooks® categorization of expenses adding back those which he finds to be miscategorized. However, this approach may miss company paid expenses from which the parties have derived personal benefit. QuickBooks® are often months behind and rarely reflect current spending.

Equitable distribution of a family business or professional practice involves exactly the same issues and requires the same discovery as an action between warring shareholders. The claim that documents need not be provided because the court's expert has not similarly deemed them critical to his valuation or an analysis of cash flow is a baseless objection. The expert's opinion is not etched in stone. He is subject to cross-examination. Without documents which may challenge representations the owner has made to his accountant or the expert, the dependent spouse's ability to conduct cross-examination of the expert or the adverse party is hamstrung. Nevertheless, judges often give this "defense" to a discovery motion serious consideration, since, at this point in the litigation, he is dealing with an old case which is clogging his calendar.

The employment of a joint accountant often places the non-moneyed spouse at a disadvantage. His employment is usually the result of a desire to save on litigation expenses. He is typically paid by the business owner, often from the accounts of the business itself. Characteristically, the business owner will assert that the business is experiencing a reduction in revenues or increase in expenses. Justifiably concerned about having his own bill paid, the forensic accountant may be hesitant to provide a lifestyle analysis after being told that the business owner doesn't want to pay for it. As Joan's attorney, you need to address issues of credibility which may be of lesser consequence to the "joint" expert.

Where the business owner claims not to retain checking or credit card records, the offer of a signed authorization allowing counsel or the supported spouse to secure the records directly from the financial institutions may be the best result obtainable. However, here, too, counsel still faces hurdles. Credit cards and cash or brokerage accounts "inadvertently" may not have been disclosed in answers to interrogatories or a CIS. Many institutions, even if provided with an authorization, still

unjust." Similarly, if the motion to compel production is unsuccessful, the same standard applies for an award of fees.

require a subpoena. If the institution is out of state, the process is particularly burdensome. At the very least, the authorization procedure carries delays and is costly since a bank may charge a *per* check and *per* statement photocopying fee, which, again, imposes the cost on the party who has the least access to economic resources.

The remedies provided under the court rules are inadequate and most often impose an enormous financial burden on the dependent spouse forcing the litigant with limited funds to dissipate assets just to get the basic information necessary to assert her/his rights.

In reality, these "defenses" asserted by the business owner are aimed at more than frustrating discovery. The spouse controlling the money and the information uses his status as "keeper of the keys to the kingdom" to manipulate the litigation process and wear down the party with limited economic resources. In order for the dependent spouse to get to the point where meaningful negotiations can take place, he or she is faced with the prospect of spending thousands of dollars in legal fees, accounting and reproduction costs to have a business or financial institution provide necessary records.

Moreover, the protocol set forth in the court rules, aside from being cumbersome and ineffective in Family Law matters, runs contrary to the rules' stated purpose. The comment to N.J.R. 4:18-1 makes clear that the "evident purpose" of the rule is "to remedy the practice,... of providing documents in a helter skelter fashion, placing upon the demander of documents the onus, with its attendant expense and delay of sorting through the material produced, much of which is often irrelevant to the demand."¹⁶ Yet, from the outset, the onus *is* on the demander of the documents, the spouse without access to family income or assets, to incur the expense of creating the demand, following up, sorting through documents, preparing deficiency letters, filing motions and/or ultimately paying to obtain the documents from the institutions via authorizations or subpoenas.

While the business owner's "litigation strategy" of ignoring, opposing and delaying discovery may be a cost of doing business in a corporate chancery action, in the Family Court, it frustrates the dual objective of "evening the playing field" and maximizing the resources available to meet the needs of two households post divorce. This "strategy" drains economic resources and deprives children of camp, lessons, and enrichment programs, perhaps even college. Ultimately, it fuels animosity between parents and risks the emotional well being of their children.

The problem is exacerbated because parties do not have equal access to the funds with which to pay counsel fees. Even though the burden of obtaining discovery and securing support, enforcement and other relief require counsel for the supported spouse to put in many more hours than the counsel for the party who controls the information and economic resources, frequently the

¹⁶ Pressler, *supra* at 1522-1523

supported spouses' attorney is not being paid on an ongoing basis. As a receivable grows, it becomes increasingly difficult to justify to the court. The consequences of the supporting spouse's delays in providing necessary documents inevitably harms the dependent spouse who is more likely to incur the displeasure of the trial judge when the case ages, but is not trial ready.

Too often, the dependent spouse, whose fees have become unaffordable, is faced with the Hobson's choice of settling a case with inadequate discovery or going forward to assert legitimate financial claims knowing that whatever is gained will be offset by the increased fees. Yet, where the parties lived a lifestyle whose expenses were paid by the family business, there may be no choice if the supported spouse is to receive a fair share of the assets and maintain any semblance of the marital lifestyle.

Often, the only way the dependent spouse can gain access to family funds to pay her fees is by filing a motion. This is also an expensive endeavor. Under Rule 5:3-5, it is not sufficient for an attorney to simply submit a paragraph detailing his experience and attach billing records. The certification must also address the factors in Rules 5:3-5, 5:42-9 (b), N.J.S.A. 2A:34-23 and N.J.S.A. 2A:34-23 (a), in particular,

- a. Whether his hourly rate is in line with other attorneys in the same locality with a comparable level of experience.
- b. The nature and length of the professional relationship with the client.
- c. The breadth and complexity of the issues.
- d. Whether accepting this client's representation has resulted in the attorney turning down other work and whether the client is aware of that.
- e. The financial circumstances of the parties and their ability to pay their own fees.
- f. Any fees previously awarded.
- g. Fees previously paid to counsel for each party.
- h. The results obtained.
- i. The extent to which counsel fees have been incurred in the enforcement of discovery or other court orders. To properly address this factor counsel must go through the file and pull all the requests and follow up letters.
- j. The reasonableness of the positions of the parties.

Preparing such a document is a time consuming and costly endeavor. The Rules of Court do not require any less information in a Certification of Services seeking a *pendente lite* counsel fee than one where fees are sought at the completion of a trial. The billing records must be scrutinized and

redacted so that strategy is not disclosed. A chronological detail of time expended cannot possibly communicate the degree to which discovery has been frustrated or the efforts expended by counsel.

Moreover, despite the fact that one of the considerations in a counsel fee award is the amount of counsel fees paid by the adverse party, this is a rule that is honored in its breach. Typically, what the court receives in defense of the application is a razor sharp dissection of the assertions in the Certification of Services coupled with the assertion that the business is experiencing difficulties and income is reduced. If the court believes the business owner's tale of woe, the counsel fee application may be denied "without prejudice," even though all the factors articulated in the statute and the rule mandate an award. The uneven playing field between spouses is thus perpetuated.

If counsel fees are awarded, they rarely bring the bill current. Often, the court takes funds from savings and investments and distributes them equally. Thus, not only does the business owner and his attorney maintain a decided advantage in the ability to pay fees, the non-owner spouse has been forced to pay her attorney to prepare a Certification of Services merely to gain access to her own assets over which her spouse has had unfettered access throughout the litigation. The effect on the dependent spouse is even more draconian when one considers that it is the liquid assets which are the source of the dependent spouse's equitable distribution for the business and other assets controlled by the business owner, and that they are being depleted to fund both parties' litigation expenses.

While there may not be a complete solution, the following procedure is proposed in any complex track case where there is a closely held business or professional practice subject to equitable distribution:

1. The first Case Management Order shall have annexed to it a comprehensive list of documents to be provided within a fixed period of time. These would include all bank statements and cancelled checks, credit card statements, financial statements and loan applications, retirement statements, personal and business tax returns, receipts and disbursement ledgers in the form they are maintained. Both parties would be required to update their documents on a quarterly basis until the trial is complete or the matter is settled. A proposed form Notice to Produce is located at the end of this article.
2. Additional documents may be added at the conference. Rather than generate a complete Notice to Produce, the dependent spouse's attorney need only supply a list of additional documents not part of the court notice. Documents that the attorneys agree are not applicable can be stricken from the form Notice at the conference.

3. The burden would be on the business "owner" to make any objection and raise all problems in obtaining the documents in the "standard" Notice to Produce at the first Case Management Conference. Since the list attached to the Case Management Order is *pro forma*, each party should be prepared at the conference to address problems and objections.
4. If new documents are added at the conference, there would be a fourteen-day period to raise any objection. If an objection is not raised within this period, it is presumptively waived. A court, within its discretion, may hear late objections upon a showing of good cause. However, the costs of these hearings would be paid by the party raising the objection.
5. Rather than be made available to inspect at the location where they are maintained in the ordinary course of business, copies of the documents in the *pro forma* Notice to Produce would be provided to both counsel and all forensic experts. This may be done by scanning them and delivering them labeled and organized in an electronic format or by providing photocopies.
6. In cases that are particularly document intensive, a discovery fund would be established. Judges might also consider the appointment of a discovery master to address discovery disputes, propose orders and report to the court at each Case Management Conference. There would be no defense to failure to provide documents in the Notice to Produce that emanate from the Case Management Conferences. Failure of the business owner to provide the documents would carry mandatory counsel fee sanctions and any costs incurred to obtain the documents not produced.
7. Included in the Case Management Order, there would be a requirement that both parties provide current credit reports from three credit reporting agencies. The recommendation would be a further requirement that these be updated before ESP/Mediation and again before trial. These would reveal accounts which may have been omitted from the Case Information Statement.
8. The business would be required to provide a Dunn and Bradstreet report, if one exists, and copies of all documents submitted to lenders for the prior three years. These, too, would be updated before ESP/Mediation and trial.
9. The Case Management Order would also include a provision restraining the disposition of savings and investment accounts without consent or a court order and a provision requiring that both parties provide within fourteen days.

10. Initially, the business owner must obtain or finance the costs of obtaining documents not in his/her immediate possession. Thus, if the business owner believes that he can fulfill his discovery obligations merely by providing an authorization, he will bear the financial burden of that decision. If there is a cost to obtaining those documents and the business owner cannot or does not pay that cost, there will be a rebuttable presumption that the non-owner spouse will receive a credit against equitable distribution for all reasonable costs incurred to obtain and reproduce the documents.
11. A second Case Management Conference occurs two weeks after the documents are due. If they have not been provided and good cause has not been shown for the delay, monetary sanctions would be mandatory. If the material is provided expeditiously, thereafter the court may consider vacating the sanctions. Second and third violations will carry increasingly heavy sanctions and mandatory counsel fee awards. If cash is not available, such fees would be reduced to judgment and payable out of the supporting spouses assets.
12. The second Case Management Conference would provide an opportunity to add document demands, the need for which has been revealed by the first set of documents provided.
13. "Standard Long form"⁸ matrimonial interrogatories would not be permitted. Rather, the Notice to Produce would be the key to the discovery protocol. Requests for Admissions, limited⁹ interrogatories and depositions are used to fill in the blanks. This addresses the tactic often employed by the supported spouse of delaying the business owner with more than 100 interrogatories with multiple sub-parts and the tedious motions that inevitably follow.
14. At the first Case Management Conference and each subsequent court proceeding, each attorney would be required to disclose how much he or she has been paid, the source of funds and the amount of any outstanding bill. Subject to a review of reasonableness and need at final hearing, the court will make an award of fees to achieve parity between the parties without the necessity of a certification of services. This would also occur at the pre-trial settlement conference. If the court finds that one party was required to accrue larger attorneys fees to secure information or enforce orders, additional fees should be awarded on an ongoing basis as the litigation proceeds. If fee orders are ignored or there is no present ability to pay, there will be a presumed credit against equitable distribution.
15. All fee awards and sanctions would be reviewable at final hearing with any

adjustments being made via credits. The burden would be upon the party who opposes the awards and or sanctions to prove that the court's determination was improper. Frivolous requests for review, or those made in bad faith, would be subject to counsel fee awards.

Unquestionably, this proposed scenario imposes substantial changes on the way we do business in the Family Part. Yet, such changes are completely justified if the goals of evening the playing field, while expediting the process, are real. Invariably, the party with control over the assets is also the keeper of the keys to the economic information. Statistics show that supported spouses and their children invariably suffer. "Women are at a particular economic disadvantage in divorce because they typically do not control family assets at the end of a marriage. A study that measured the economic consequences of divorce for women ... found that standard of living drops 30 percent for women and rises 10-15 percent for men in the one year following divorce."¹⁷ The decline in standard of living for women in upper income families and those in long term marriages (where spouses are presumably older) are the greatest.^{18, 19} Absent such reforms, supported spouses will continue to be forced to choose between a fair settlement and cutting ones, losses. We can do better. It is wholly appropriate and consistent with the goals of our statutes that the tables be turned and the burdens shifted. The change is bold and drastic; but without it, our goal of evening the playing field is nothing more than an empty platitude.

¹⁷ *Konzelman v. Konzelman*, 158 N.J. 185,205 (1999) (O'Hearn, dissenting) (citing *Women in Divorce: Lawyers, Ethics, Fees & Fairness: A Study by the City of New York Department of Consumer Affairs* at 8-9 (Mar. 1992)). See e.g. Peter Leehy, Note, *The Child Support Standards Act and the New York Judiciary: Fortifying the 17 Percent Solution*, 56 Brook. L. Rev. 1299, 1305-1307 (1991); Carol Bruch, *Developing Standards for Child Support Payments: A Critique of Current Practice*, 16 U.C. Davis L. Rev. 49, 50-54 (1982) (discussing the negative effects of divorce on children and custodial households); Sally F Goldfarb, *Child Support Guidelines: A Model for Fair Allocation of Child Care, Medical, and Educational Expenses*, 21 Fam. L.Q. 325, 349 (1987); Marsha Garrison, *Child Support and Children's Poverty*, 28 Fam. L.Q. 475 (1994). See also *Pascale v. Pascale*, 660 A.2d 485, 492-93 (N.J. 1995) (citing Suzanne Bianchi and Edith McArthur, U.S. Bureau of the Census, *Family Disruption and Economic Hardship, The Short-run Picture for Children 1-2* (1991); U.S. Bureau of the Census, *Child Support for Custodial Mothers and Fathers 2*(1995)).

¹⁸ A Stewart and C. Brentano, (2006) *Divorce Causes and Consequences* (p 98) New Haven: Yale University Press

¹⁹ Duncan, G.J., and Hoffman S.D. (1985) *Economic Consequences of Marital Instability* . In M. David and T. Smeeding (eds.) *Horizontal Equity Uncertainty and Economic Wellbeing*(pp.427 – 467) Chicago: University of Chicago Press

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)	SUPERIOR COURT OF NEW JERSEY
WIFE)	CHANCERY DIVISION – FAMILY PART
)	MONMOUTH COUNTY
Plaintiff,)	
)	Docket No. _____
v.)	
)	Civil Action
HUSBAND)	
)	PRELIMINARY NOTICE
Defendant.)	TO PRODUCE
)	
)	

TO: ADVERSARY

SIR:

PLEASE TAKE NOTICE that pursuant to R. 4:18-1, the plaintiff, Wife demands that the Defendant, Husband produce the following documents at the offices of Paras, Apy & Reiss, P.C., 2 Bridge Avenue, The Galleria, Building 6, Lower Level, Red Bank, New Jersey, on October 22, 2007.

PLEASE TAKE FURTHER NOTICE that in the event that any of the documents requested below are not within Defendant's possession and/or Defendant's ability to access or do not exist Defendant shall so note in the margin next to the request on this document, sign the attached certification, and complete and sign authorizations, indicating the name and address of the person or entity having possession and/or control of the documents.

PLEASE TAKE FURTHER NOTICE that to the extent that Defendant chooses to provide an authorization rather than supply documents himself, Plaintiff will seek reimbursement for all expenses she incurs in securing the documents.

COMPENSATION INFORMATION

1. Copies of all federal and state personal income tax returns for 2002 to 2006 as well as all accountants' work papers utilized in the preparation of the federal and state tax returns. In the event Defendant has not yet filed a return for any of these years, provide all W-2's, 1099's, K-1's and documents in support of any deductions to be claimed.

2. All compensation information, including without limitation, statements of wages, salaries, draws, bonuses, stock options, partnership interests, restricted stock, stock grants, (irrespective of whether vested) commissions, earnings, income, payroll deductions, other deductions of any kind for any employment which Defendant has held from January 1, 2002 to the present.

TERMS OF EMPLOYMENT

3. Any and all documents evidencing the terms and nature of Defendant's employment with XYZ Corp and all subsequent employers, including but not limited to; employment contracts, incentive clauses, payout structures, forgivable loans, company paid expenses and/or reimbursements deferred compensation, stock incentives and vesting clauses, partnership interests from January 1, 2002 until the present time.

4. Any and all documentation pertaining to any corporate/company spending account accessible by Defendant provided by any employer from January 1, 2002.

5. Any and all vouchers, bills, invoices and receipts reflecting any payment on behalf of plaintiff and/or any reimbursement payments to Defendant on account of business expenses, including but not limited to, travel and entertainment expenses, meals and furniture since January 1, 2002.

6. All documents (including correspondence, emails, faxes, text messages) reflecting any offers and/or negotiations in which Defendant may have engaged regarding a change of employment at any time during the past three years.

PERSONAL FINANCIAL DOCUMENTS

7. All documents reflecting checking accounts held in Defendant's name personally, either individually, jointly, as trustee/guardian, or in which Defendant may have a legal or equitable interest or in which he deposited or withdrew funds. Said documents shall include check registers and monthly statements, deposit tickets and all canceled checks (whether or not the account(s) may have been closed), from January 1, 2002 to the present.

8. All documents reflecting savings accounts, credit union and cash management accounts, money market funds and certificates of deposit, or other liquid asset accounts of Defendant, (not named in item 7, above) held in Defendant's name alone and/or in his name jointly, or in which he had any legal or equitable interest whatsoever, or in which he deposited or withdrew funds at any time from January 1, 2002 (regardless if the account(s) was/were closed), until the present time. Such documents shall include but not be limited to passbooks and all monthly statements.

9. All printouts/data from computer programs, such as Quicken or any such program, which lists and/or categorizes checks drawn by Defendant on all accounts in which he has check-writing authority from January 1, 2002 until the present time.

10. Any and all personal financial statements prepared by an accountant or any other person for Defendant at any time since January 1, 2002, irrespective of whether such statements have been submitted to a financial institution.

11. Copies of all Defendant's business and personal monthly credit card statements from January 1, 2002 to the present.

12. Any and all documentation pertaining to private memberships, including but not limited to initiation costs, dues, fees, capital contributions, monthly dining, bonds, golf merchandise, lessons or other charges and/or payments toward capital improvement bonds which Defendant (either individually or via a business membership) has paid since January 1, 2002 or has agreed to pay in the future.

13. All monthly bills and statements from any public or private social sports or recreational club of which the Defendant is a member (either individually or via a business membership) reflecting monthly expenditures made on the Defendant's account, by the Defendant or for the Defendant's benefit from January 2002 up until the present time.

14. All documents from Federal or State taxing authorities reflecting deficiencies or overpayments on personal tax returns from 2002 until the present. All checks, correspondence. Offers in compromise, prepared by Defendant or anyone on his behalf in response to said deficiencies or overpayments.

15. All documents for any trust of which Defendant and/or any children of the marriage are the settler or a beneficiary. Such documents shall include but not be limited to trust document, beneficiary designations, all statements from assets comprising the corpus of the trust from January 1, 2002 up until the present time.

16. All documents reflecting life insurance policies and/or life insurance trusts on which the Defendant has been the owner or beneficiary at any time from January 1, 2002 up until the present time. Said documents shall include but not be limited to policies, beneficiary designations, changes in beneficiary and/or coverage, loan documents, trust agreements and proof that trusts have been funding and policies are current.

17. A credit report showing the defendant's credit rating from at least three credit reporting agencies and all accounts in defendant's name in the past three years.

INVESTMENTS

18. All monthly and/or quarterly statements reflecting investment accounts and retirement of any kind or nature, including but not limited to stock accounts, mutual funds, bond funds, on or any other investments from in which Defendant deposited or withdrew funds from January 1, 2002 up until the present time.

19. All documents reflecting any real property or entity whose purpose is to purchase and or develop real property in which Defendant has acquired a legal or equitable interest from January 1, 2002 up until the present time. Said documents shall include but not be limited to deeds, mortgages, documents which reflect Defendant's investment and or payment of carrying costs, renovation costs, the terms of any partnership or corporation; documents governing the rights of the participants; documents reflecting the sale of all or part of said investments.

20. All documents reflecting any interest in real property or an entity which holds real property owned legally or equitably by Defendant from January 1, 2002 to the present time for residence and or vacation purposes. Said documents shall include but not be limited to contracts for purchase or, deeds, mortgages, mortgage payment coupons, payment of renovations and/or decorating costs and closing statements.

21. All documents reflecting ownership, acquisition costs, construction costs or lease payments which Defendant has made or obligated himself as a co-signer for the benefit of any person other than Plaintiff from January 1, 2002 up until the present time.

22. All documents reflecting fractional ownership interests (such as time shares) of Defendant from January 1, 2002 up until the present time. Said documents shall include but not be limited to contracts, closing statements, payment coupons, share certificates.

23. All documents reflecting stocks, bonds, REITs, commodities owned by Defendant, either legally or beneficially from January 1, 2002 up until the present time. Said documents shall include transaction statements, on line trade confirmations, acquisition and sales documents.

PERSONAL PROPERTY

24. All contracts for purchase and/or sale and/or leases for all vehicles on which Defendant has made payments from January 1, 2002 up until the present time.

25. All documents reflecting any legal or equitable interest Defendant has or had in any boat, jet ski, airplane or other amphibious or aviation vehicle from January 1, 2002 up until the present time. Provide bill of sale, registration and insurance documents.

26. All documents reflecting expenditures for maintenance of the items referred to in item 23 for docking, mooring, repairs and other maintenance.

27. All documents reflecting purchase of furniture or furnishings by Defendant for himself or any third party from January 1, 2002 up until the present time. Said documents shall include, but not be limited to receipts and cancelled checks.

28. All documents reflecting any legal or beneficial interest held by Defendant in any horse or other livestock.

DEBT

29. Any and all documents reflecting any secured or unsecured loan(s) taken by Defendant or given by Defendant from January 1, 2002 up until the present time. Said documents should include but not limited to checks, notes, payment logs, security documents, loan applications, etc.

30. Any and all records/evidence pertaining to current outstanding indebtedness of Defendant, including prior or pending lawsuits in any court, cases resolved without litigation, or cases being presently negotiated.

BUSINESS INTERESTS

31. All documents reflecting any current or future interest in any sole proprietorship, partnership, corporation, LLC, professional entity, or other business not already provided including but not limited to; stock options, vested or unvested, restricted stock, deferred compensation, or incentive based awards.

32. All Federal and State tax returns for all businesses, corporations, partnerships, LLCs, sole proprietorships and/or professional entities in Defendant has held any legal or equitable interest from January 1, 2002 up until the present time.

33. Any and all documentation concerning the assets, liabilities, and valuation for any sole proprietorship, partnership, corporation, LLC and/or professional entity in which Defendant has/had a financial interest, either legally or beneficially, from January 1, 2002 up until the present time.

34. Copies of all business plans, contracts with promoters or marketing entities and/or submissions to any financing agencies for any sole proprietorship, corporation, partnership, LLC and/or professional entity in which Defendant has an interest has/had an interest from January 1, 2002 up until the present time.

35. All financial statements, balance sheets, trial balances prepared for any of the aforesaid entities for the past five years.

36. All K-1s issued or prepared for any shareholder, partner or member of the aforesaid entities at any time during the past five years.

37. All monthly statements and canceled checks for all accounts from any entity or business in which defendant has/had a financial interest for the past five years.

38. All books of original entry including but not limited to general ledgers, receipts ledgers, Quickbooks and like programs for all entities in which defendant has held any interests for the past five years. If said records are maintained electronically provide CD.

39. Copies of all insurance policies, casualty, liability, life, group, workmen's compensation, disability and medical.

40. Copies of all price lists, agreements and/or contracts for professional services, professional affiliations and/or fee reimbursements, including but not limited to those with insurance companies and labor unions.

41. Copies of all pleadings, expert reports, and offers of settlement, including correspondence, notes, etc., in any lawsuit in which defendant is named.

42. All documents reflecting agreements with any third parties to purchase any interests in any entities in which defendant has an interest for the past five years.

43. All documents submitted to any financial institution for the purpose of securing financing at any time during the past five years.

44. All documents reflecting requests and or arrangements for bartering of goods and or services at any time over the past five years.

LITIGATION

45. All writings, emails, downloads, stored communications or electronic data upon which Plaintiff intends to rely as an "admission" at trial.

46. All photographs and other reproductions Defendant plans to use as an Exhibit at trial.

MISCELLANEOUS

47. All passports utilized by Defendant from January 1, 2001 up until the present time.

48. Defendant's Last Will and Testament

PARAS, APY & REISS, P.C.

Attorneys for Plaintiff

By: _____

BONNIE M.S. REISS

DATED: