

**IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT IN
AND FOR PALM BEACH COUNTY,
FLORIDA**

Family Division

Case No. 501971DR004137XXDIFD

**In Re Marriage of
WILLIAM A. CABANA
Petitioner, Former Husband, pro se**

and

**SHARON ANN MAYO f/k/a
SHARON ANN CABANA
Respondent/Former Wife.**

**Former Husband's Ex-Parte Motion To Compel Discovery Pursuant To
Administrative Order No. 5.011-9/92, Subsection B**

COMES NOW WILLIAM A. CABANA, pro se, moves the court for an ex-parte order compelling discovery pursuant to administrative order No. 5.011-9/92, subsection B, and affirmatively alleges:

1. Between June 13, 2005 and August 20, 2005, Former Husband served Former Wife with three Notices to Produce. (Exhibits A, B & C)
2. To date, there has been a failure faithfully to respond to Former Husband's reasonable requests for subject production.
3. Former Husband requires the subject production items to prepare for the trial in this matter, which is specially set on January 5, 2006. Former Wife has resisted all efforts of Former Husband to obtain documents necessary to establish her true financial condition and to substantiate the statements on her financial affidavit.

4. On April 19, 2005 Former Wife filed a Request to Produce with a four page list of information requested (DE 110). (Exhibit D)
5. On June 13, 2005, Former Husband served the Former Wife with the Request to Produce (DE 166), (Exhibit A) which included a 4 page list of documents that were identical copies of the one opposing counsel sent to Former Husband (DE 110).
6. On June 9, 2005 there was an order (DE 152) compelling Former Husband to produce.
7. At an August 8, 2005 hearing this court failed to grant the Former Husband the same discovery rights it granted to the Former Wife. This court limited the materials the Former Wife must produce below the standard required and below the financial production the Former Husband was required to produce. On Former Husband's Motion to Compel, this court entered an order on August 8, 2005 (DE 214) for Former Wife to only supply a few items of the list and denied the major portion of Former Husband's Request to Produce
8. Former Husband served the Former Wife with another Request to Produce On August 5, 2005, (Exhibit B)(DE 207). In paragraph 1 of her Response (Exhibit E), Opposing counsel fraudulently claims to have submitted a copy of the subpoena to Wachovia Bank. In reality, it is a document titled a Re-Notice Of Taking Deposition Duces Tecum (last page of Exhibit E) and not the copy of the subpoena requested.
9. Former Wife apparently has not in complied with F. R. Civ. P. Rule 1.351(b) in submitting a subpoena for the deposition duces tecum and thereby has obtained the records fraudulently.

10. Former Husband disagreed with Former Wife's claim in paragraph 2 that "no such listing exists." A letter from opposing counsel dated August 1, 2005 (Exhibit F) lists the Wachovia accounts from which data was disclosed.

11. The listing of 16 accounts in the letter along with a request for \$275.00 is evidence that there are documents in opposing counsel's possession from which a list could be generated as to the account numbers, names on the accounts, type of items contained in the account and other such data as indicative of the material disclosed. Former Husband does not need all the documents generated and if he is to pay for documents, the request is reasonable for him to be able to select the items desired for copying.

12. To date, Former Husband's has not received copies of any proposed Wachovia evidence to be used in court.

13. Since Former Wife was unable to produce the subpoena, Former Husband alleges that no subpoena was ever generated in compliance with F. R. Civ. P. Rule 1.351(b), that the Wachovia Bank records were acquired without proper authorization and therefore they are not admissible in any proceedings of the instant case.

14. On August 20, 2005, Former Husband served the Former Wife with another Request to Produce (Exhibit C) (DE 221) for records relating to Paypal, Inc. and Colonial Bank.

15. Opposing counsel has not complied with Former Husband's Request to Produce by sending the documents to him.

16. Opposing counsel has indicated this evidence is available for inspection at her office (Exhibit G). She is aware that it is extremely inconvenient and prohibitively

expensive for Former Husband to travel across state to view evidence and effectively denies him access to this data.

17. Providing this information to Former Husband is not burdensome and deviates from her previous methods in complying with requests to produce. Such conduct by opposing counsel on Former Husband's request to produce is simply meant to harass him, another act of bad faith by opposing counsel over Former Husband's Request to produce.

18. Former Wife was required to produce the documents responsive to each of the Requests to Produce within 35 days of service. She has complied only minimally and apparently is concealing important financial documents.

19. Logic and IRS record keeping requirements precludes Former Husband from believing Former Wife's claim that she has no supporting financial records that include her non-FP&L personal income, rental property income and expense records, and other similar items.

20. Former Wife has not supported her claim that tax returns were not filed for 2003 and 2004 with proof of extensions granted by the IRS or with any validation from her CPA.

21. In compliance with Administrative Order No. 5.011-9/92, Subsection A, on November 30, 2005, a fax was sent to opposing counsel outlining and requesting the subject production. (Exhibit H)

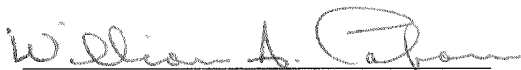
22. Former Wife was given ten (10) days in which to comply with the faxed request. That time has expired and no response has been received by Former Husband .

23. Former Husband has incurred costs as a result of Former Wife's non-compliance for which Former Wife should be held answerable.

WHEREFORE WILLIAM A. CABANA respectfully prays that the Court take jurisdiction over this matter, enter such orders as are appropriate to expedite consideration of this motion, and:

1. That this court enter its ex-parte order compelling the Former Wife to produce all the items contained in the three (3) Requests to Produce to the former husband, at 1050 Capri Isles Blvd., Apt. F-105, Venice, FL 34292, to the extent not previously produced, within ten (10) days of the signing of this order.
2. Deny the admissibility of evidence from Wachovia Bank in further proceedings of the instant case as they were acquired without proper authorization.
3. Awarding WILLIAM A. CABANA all costs pursuant to F.S. §86.011 and F.S. §57.041, this motion.
4. For such and other relief that may be proper.

Respectfully submitted,



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Dated: December 12, 2005

Certificate of Service

I certify that a copy of this Former Husband's Ex-Parte Motion To Compel Discovery Pursuant To Administrative Order No. 5.011-9/92, Subsection B, on this 12th day of December, 2005 was mailed to:

Cathy L. Kamber, Esq.
Attorney for Former Wife
1675 Palm Beach Lakes Boulevard
The Forum, Tower A, Suite 700
West Palm Beach, FL 33401

The Honorable Martin H. Colin
Fifteenth Judicial Circuit
Palm Beach County Courthouse, Room 6.1207
205 North Dixie Highway
West Palm Beach, FL 33401



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