

COURT OF COMMON PLEAS  
DIVISION OF DOMESTIC RELATIONS  
HAMILTON COUNTY, OHIO

ELLEN L. TURNER

Plaintiff,

v.

JON H. ENTINE

Defendant.

: CASE NO. DR0500131  
: JUDGE PANIOTO  
: MAGISTRATE THEILE

: SUPPLEMENTAL MEMORANDUM  
: IN SUPPORT OF  
: DEFENDANT'S MOTION TO  
: CONTINUE PROPERTY TRIAL  
: AND TO BIFURCATE



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FILED

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GREGORY HARTMANN  
CLERK OF COURTS  
HAMILTON COUNTY, OH

DECLARATION OF STACY D. PHILLIPS

I, STACY D. PHILLIPS, declare as follows:

1. I am an attorney licensed to practice in the State of California and am a partner of Phillips, Lerner, Lauzon & Jamra, L.L.P.. I offer this Declaration at the request of Defendant, JON ENTINE ("Defendant"), and his Ohio counsel, Gloria Haffer, Esq. and Robert Meyers, Esq. of Buechner, Haffer, O'Connell, Meyers, Healey & Koenig Co., L.P.A in the within action.

2. I am a certified Family Law Specialist in the State of California. A copy of my curriculum vitae is attached to this Declaration as Exhibit "1".

3. I offer my Declaration in lieu of personal testimony pursuant to Sections 2009 and 2015.5 of the California *Code of Civil Procedure*; Rules 1225 and 14.10 of the California Rules of Court; *Reifler v. Superior Court*, 39 Cal.App.3d 479 (1974) and *Marriage of Stevenot* (1984) 154 Cal.App.3d 1051. The facts contained within this Declaration are within my personal knowledge, and if called upon to testify, I could and would testify competently thereto.

4. This Declaration is not intended to waive nor is it a waiver of any material protected by the attorney-client privilege or the attorney work-product doctrine.

5. I offer my Declaration in support of Defendant's currently pending Motion for a continuance of the presently scheduled property trial dates and for a bifurcation of the issue of the validity and the choice of law pertaining to the Parties' Premarital Agreement ("Agreement") which was entered into by the Parties in California in 1994. I have been provided and have reviewed a copy of the Agreement. I have also relied and reviewed the *California Practice Guide, Family Law*, by Judge William P. Hogoboom and Justice Donald B. King to formulate the below summary of the applicable California Law.

6. Choice of Law Issue: The Agreement at Page 17, Paragraph 19 provides that the Agreement, which was executed in the State of California, shall be subject to and interpreted under the laws of the State of California. It is my understanding that the question of the choice of law has not yet been determined by this Court. Therefore, the purpose of this Declaration is to provide a brief summary of the various grounds on which the enforcement and validity of the Agreement can be disputed and challenged under California Law.

1           7.     Bifurcation Issue : *California Rules of Court 5.175(c)* provides the Court the  
2 authority and discretion to bifurcate pivotal issues in the case where the resolution of the  
3 bifurcated issue(s) is likely to simplify the determination of, or lead to settlement, of other issues  
4 in the case. *California Rules of Court 5.175 (c)* provides specific examples of issues that may,  
5 in some cases be appropriate to try separately in advance, such as the validity of postnuptial or  
6 premarital agreement, the date of separation, the date to use for valuation of assets and whether  
7 one or more assets are separate or community property in character. Indeed we have Form  
8 adopted by the Judicial Council which we are allowed to use as part of any motion requesting a  
9 bifurcated trial on the issue. For the Court's reference, a copy of this Judicial Council Form is  
10 attached hereto as Exhibit "2". Based on my review of the Agreement and the facts of this case  
11 as they have been provided to me by Defendant and his Ohio Counsel, the issue of the validity of  
12 the Parties' Agreement and the choice of law governing same would have been bifurcated by a  
13 California Court and resolved first before the disposition of the balance of the issues in this case.

14           8.     Statutory Provisions Applying to Premarital Agreements in California :

15 Under California Law a 'premarital' (or 'antenuptial ') agreement is a contract executed between  
16 prospective spouses in contemplation of marriage, fixing marital property rights and financial  
17 responsibilities upon consummation of the marriage. The law applicable to the validity and  
18 enforcement of Premarital Agreements in California is dependent on the date of execution of the  
19 Agreement as follows: 1) Premarital Agreements executed on or after January 1, 1986 are subject  
20 to the Uniform Premarital Agreement Act ("UPAA", which has been codified in *Family Code*  
21 §§ 1600 et seq.). However, effective January 1, 2002, parts of the UPAA (Fam.C. §§§§ 1612 and  
22 1615) were significantly amended. Although these amendments clearly apply to Premarital  
23 Agreements executed after December 31, 2001, it is presently unclear whether or to what extent  
24 the amendments will be retroactively applied to Premarital Agreements executed between 1986  
25 and 2002.

26           9.     *California Family Code* §1615, prior to its 2002 Amendment, which was in effect  
27 at the time the Parties' entered into their Agreement provided as follows:  
28

1           “(a) A premarital agreement is not enforceable if the party against whom enforcement  
2 is sought proves either of the following:

- 3           (1) The party did not execute the agreement voluntarily.  
4           (2) The agreement was unconscionable when it was executed and, before execution  
5 of the agreement, all of the following applied to that party:

6                       (A) The party was not provided a fair and reasonable disclosure of the  
7 property or financial obligations of the other party;

8                       (B) That party did not voluntarily and expressly waive, in writing, any  
9 right to disclosure of the property or financial obligations of the other  
10 party beyond the disclosure provided.

11                      (C) That party did not have, or reasonably could not have had, an  
12 adequate knowledge of the property or financial obligations of the other  
13 party.

- 14           (b) An issue of unconscionability of a premarital agreement shall be decided by the  
15 court as a matter of law.” [Emphasis Added]

16           10. It should also be noted that the UPA (as amended effective January 1, 2002)  
17 eases the burden of proof for a party contesting the enforceability of the Agreement on the  
18 grounds that he/or she did not execute the Agreement voluntarily. (See Family Code §§  
19 1615(a)(1)). The Act deems that a premarital agreement was not executed voluntarily unless the  
20 court makes five prescribed findings as set forth in Family Code §§ 1615(c)(1)-(5). In effect the  
21 UPA places an evidentiary burden upon the party seeking to enforce a Premarital Agreement  
22 where he or she must be prepared to present evidence sufficient for the court to make the Family  
23 Code §§ 1615(c)(1) through (5) findings; otherwise, the Premarital Agreement must be held  
24 unenforceable as having been involuntarily executed.

25           11. Family Code § 1615 (c), as amended and effective January 1, 2002 provides as  
26 follows:

27                      “(a) A premarital agreement is not enforceable if the party against whom  
28 enforcement is sought proves either of the following:

(1) That party did not execute the agreement voluntarily.

(2) The agreement was unconscionable when it was executed and, before  
execution of the agreement, all of the following applied to that party:

(A) That party was not provided a fair, reasonable, and full disclosure of the  
property or financial obligations of the other party.

(B) That party did not voluntarily and expressly waive, in writing, any right to  
disclosure of the property or financial obligations of the other party beyond the  
disclosure provided.

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(C) That party did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the other party.

(b) An issue of unconscionability of a premarital agreement shall be decided by the court as a matter of law.

(c) For the purposes of subdivision (a), it shall be deemed that a premarital agreement was not executed voluntarily unless the court finds in writing or on the record all of the following:

(1) The party against whom enforcement is sought was represented by independent legal counsel at the time of signing the agreement or, after being advised to seek independent legal counsel, expressly waived, in a separate writing, representation by independent legal counsel.

(2) The party against whom enforcement is sought had not less than seven calendar days between the time that party was first presented with the agreement and advised to seek independent legal counsel and the time the agreement was signed.

(3) The party against whom enforcement is sought, if unrepresented by legal counsel, was fully informed of the terms and basic effect of the agreement as well as the rights and obligations he or she was giving up by signing the agreement, and was proficient in the language in which the explanation of the party's rights was conducted and in which the agreement was written. The explanation of the rights and obligations relinquished shall be memorialized in writing and delivered to the party prior to signing the agreement. The unrepresented party shall, on or before the signing of the premarital agreement, execute a document declaring that he or she received the information required by this paragraph and indicating who provided that information.

(4) The agreement and the writings executed pursuant to paragraphs (1) and (3) were not executed under duress, fraud, or undue influence, and the parties did not lack capacity to enter into the agreement.

(5) Any other factors the court deems relevant."

12. As discussed herein above, the *Family Code* §§ 1615(c) provisions set forth above took effect on January 1, 2002. Those amendments introduce procedural requirements that had no counterpart in prior versions of the UPA or in the common law. To the extent that *Family Code* §§ 1615(c) could operate to invalidate a pre-2002 agreement because of procedural requirements the parties could not have foreseen when the agreement was executed (such as waiver of independent counsel by separate written agreement, and a seven-day review period before signing), it is doubtful the statute can constitutionally be applied retroactively. However this issue has not been decided under California Law.

1           13.    Contractual Defenses Available Under California Law : Notwithstanding the  
2 provisions and application of the UPAA, a premarital agreement, which is a contract between  
3 prospective spouses, must comply with general principles of contract law and can be challenged  
4 under California Law on the basis of the various affirmative contractual defenses such as  
5 unilateral mistake, bilateral mistake, duress, economic duress, undue influence and fraud.

6           14.    “Fraud” may be a valid defense to a premarital agreement where consent to the  
7 agreement is obtained through concealment or misrepresentation of material facts. Under such  
8 circumstances the agreement is voidable for fraud. [California Civil Code § 1572; see *Marriage*  
9 *of Cairo* (1988) 204 CA3d 1255, 1261, 251 CR 731, 734—where a quitclaim deed transmuting  
10 Wife’s Community Property interest into Husband’s Separate Property was held *invalid* where  
11 evidence showed Husband fraudulently induced Wife to sign by misrepresenting nature of  
12 transaction; Similarly in *Estate of Nelson* (1964) 224 CA2d 138, 142-143, 36 CR 352, 354-355,  
13 the Premarital Agreement was found unenforceable because of (among other things) prospective  
14 Husband’s misrepresentations to prospective Wife].

15           15.    “Menace” or “Duress” are also other affirmative contractual defenses available in  
16 contesting a premarital agreement. Generally, contracts are voidable on ground of “menace” or  
17 “duress” to the extent a party’s threats or coercion operated to prevent the other party from  
18 exercising “free will” (i.e., threats or coercion directed at the safety or liberty of the party, his or  
19 her property or a family member). See *California Civil Code* §§ 1569-1570.

20           16.    “Undue Influence” is also a valid affirmative defense to challenge the  
21 enforcement of a premarital agreement where one party uses confidence or authority over the  
22 other to procure an unfair advantage, or takes unfair advantage of the other party’s weakness of  
23 mind or distress. As in cases of ‘menace’ or ‘duress’ above, the exertion of such ‘undue influence’  
24 deprives the other party of the ability to exercise ‘free will.’ [California Civil Code § 1575; See,  
25 e.g., *Marriage of Saslow* (1985) 40 C3d 848, 864, 221 CR 546, 554— where trust agreement  
26 designating corpus as Wife’s Separate Property was set aside on evidence of Wife’s undue  
27 influence over Husband.

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1           17. In conformity with the common law, California decisional law also recognizes a  
2 wholly nonphysical form of personal duress, often called economic duress or business  
3 compulsion.

4           The *Restatement (First) of Contracts* §§ 492 (1932) also defines Duress as follows:

5           “(a) any wrongful act of one person that compels a manifestation of apparent  
6 assent by another to a transaction without his volition, or  
7 (b) any wrongful threat of one person by words or other conduct that induces  
8 another to enter into a transaction under the influence of such fear as precludes  
9 him from exercising free will and judgment, if the threat was  
10 intended or should reasonably have been expected to operate as an inducement.”

11           18. In the instant case, the Agreement at Paragraph 6 C, Page 7 provides that  
12 Plaintiff, Ellen Turner, was informed of said duress. This paragraph in part provides that  
13 “ELLEN has been informed, and both parties acknowledge, that JON is pursuing his career as an  
14 independent producer, writer. JON is writing a controversial article for Vanity Fair Magazine,  
15 for which he anticipates that he will be sued for defamation. JON and ELLEN agree that a large  
16 part of the consideration for entering into this Premarital Agreement is ELLEN’s forbearance of  
17 any of the financial benefits of JON’s written materials in exchange for the promise that JON’s  
18 liabilities are his sole and separate property, that JON will hold ELLEN harmless therefrom and  
19 completely and thoroughly indemnify her from any liabilities therefrom. In the event that any of  
20 the foregoing assumptions or expectations of the parties prove to be misplaced, such ultimate  
21 determination shall in no way affect the efficacy of this agreement or any of its provisions.”

22           19. In *Lepeer v. Beltrami* (1959) 53 Cal.2d 195, the Court addressed the issue of a  
23 contracting party’s knowledge of duress exercised by a third party in the context of rescinding a  
24 real property transaction. The *Lepeer* facts and decision are relevant to the instant case to the  
25 extent that Plaintiff may argue that the economic duress experienced by Defendant was not of  
26 her doing.

27           In *Lepeer*, the plaintiffs sought recovery of money paid allegedly under the duress of  
28 certain of the defendants. The plaintiffs also sought to recover real property conveyed to another  
defendant (third party) under the same duress. The plaintiffs alleged in their complaint that  
Thomas Lepeer (“Lepeer”) borrowed \$10,150 from Frank Weber and executed a promissory

1 note and also, as security, a mortgage on certain ranch property owned by Lepeer in Sutter  
2 County, and another mortgage on ranch property owned by Lepeer in Sacramento County.  
3 Thereafter, Lepeer served as Weber's attorney. By a separate written agreement the fees earned  
4 by Lepeer in acting as Weber's attorney were to be applied on the debt. Pursuant to this  
5 agreement and the services rendered by Lepeer, the debt was fully discharged by the year 1951.  
6 Although further services were rendered during the year 1951, by mutual agreement between  
7 Weber and Lepeer, all debts owing each other were canceled, and no other debts were thereafter  
8 contracted.

9 Subsequently, in 1951 plaintiff Abbie Leeper, Thomas Leeper's wife, signed a bond with  
10 George Yeary for \$10,000. The bond was forfeited and the district attorney demanded payment  
11 of the \$10,000 by Abbie. The district attorney threatened to force an execution sale of Abbie's  
12 Sacramento home, her separate property (not the same as the mortgaged Sacramento ranch  
13 property). In order to facilitate the payment of the bond by his wife without the necessity of  
14 sacrificing the home property, and for other reasons, Thomas Leeper deeded both the  
15 Sacramento and Sutter ranch properties to Abbie and Yeary, Yeary's only interest being to pay  
16 the bond.

17 However, by the fall of 1952 judgment was obtained against Abbie on the bond for  
18 \$10,000 and execution was levied on her home property. An execution sale was threatened. In  
19 the meantime, Frank Weber, Thomas Leeper's former creditor died. On or about August 15,  
20 1952, the representatives of his estate, Beltrami and Scarlett, two of the defendants in this case,  
21 "falsely plotted to make Leeper and his wife pay the \$10,150.00 debt a second time." They filed  
22 an action to foreclose the mortgages on the Sacramento and Sutter ranch properties, and filed *lis*  
23 *pendens* against the properties. At the time the defendants took the action, they knew that  
24 nothing was due on either the note or the mortgages securing the same.

25 On October 28, 1952, Abbie and her bondsman found a buyer for the *Sutter* ranch  
26 property who was willing to pay \$18,000, which was enough to satisfy the bond judgment.  
27 However, the buyer refused to buy, unless Abbie cleared the title of the allegedly false claim  
28 pressed by the defendants, Beltrami and Scarlett. The defendants, although they knew the debt



1 had been satisfied, refused to withdraw their claims despite Abbie's request that they do so.  
2 Since the buyer refused to complete the transaction without Abbie clearing title to the property,  
3 Abbie was forced to sell the property to the third defendant, Scheidel, for \$10,760, a third of the  
4 actual value of that property. The sale was alleged to have been made under compulsion arising  
5 out of the extortionary claim of defendants Beltrami and Scarlett, and from fear of Abbie's losing  
6 her Sacramento home because of the bond judgment.

7         The *Lepeer* Court concluded that the defendants wrongfully, with knowledge of the  
8 falsity of their claim, attempted to foreclose on a mortgage which had already been satisfied.  
9 Beltrami and Scarlett filed a suit to foreclose the mortgage. A *lis pendens* filed in connection  
10 with that suit clouded the title of the property owned by Abbie. As a result of these actions,  
11 Abbie, was placed in a situation where she was not able to sell the property without paying the  
12 allegedly false claim and conveying other property to Scheidel. The Court found that Abbie had  
13 alleged sufficient facts to show that the defendants Beltrami and Scarlett were guilty of duress as  
14 against her.

15         The *Lepeer* Court also noted the availability of the defense, where, if the plaintiffs had a  
16 reasonable alternative to the parting with the consideration to satisfy the false claim, the payment  
17 was not made under duress. [Internal Citation to (*Western etc. Oil Co. v. Title Ins. & Trust Co.*,  
18 92 Cal.App.2d 257, 265 [206 P.2d 643]; *Texas Co. v. Todd*, 19 Cal.App.2d 174, 188 [64 P.2d  
19 1180]; *Myers v. City of Calipatria*, 140 Cal.App. 295, 299 [35 P.2d 377].]. The defendants  
20 attempted to raise this defense by claiming that Abbie should have allowed her home property to  
21 be sold to satisfy the sheriff's judgment; then she could have contested the foreclosure action.  
22 The Court found this alleged alternative not to be reasonable and stated "to allow one's home to  
23 be sold at a foreclosure sale is not a reasonable alternative. A reasonably prudent person would  
24 not take such a course. This is the test. (*Young v. Hoagland*, 212 Cal. 426, 431 [208 P. 996, 75  
25 A.L.R. 654].) (9) Whether Abbie acted as a reasonably prudent person is a question of fact.  
26 (*Kolias v. Colligan*, 172 Cal.App.2d 384, 386- 387 [342 P.2d 265]; *Steffen v. Refrigeration*  
27 *Discount Corp.*, 91 Cal.App.2d 494, 498 [205 P.2d 727].)".  
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1           The *Lepeer* Court concluded that under the allegations of the complaint, and because of  
2 the circumstances in which she found herself, Abbie had no reasonable alternative except to pay  
3 the false claim. Abbie also alleged that she was compelled to convey the Sacramento ranch  
4 property for a third of its actual market value to defendant Scheidel. The conveyance is alleged  
5 to have been made as a result of the extortionary claim of Beltrami and Scarlett and from fear  
6 that Abbie would lose her Sacramento home property. Scheidel is alleged to have had  
7 knowledge of the duress which was being exercised by Beltrami and Scarlett.

8           In addressing Scheidel's actions and knowledge of the duress exercised by the two  
9 defendants, the *Lepeer* Court noted that "no active wrongdoing ha[d] been alleged against this  
10 defendant [Scheidel]". The actual duress was that of Beltrami and Scarlett. [Scheidel], however,  
11 is alleged to have had knowledge of the situation in which Abbie found herself in. Therefore, the  
12 question which the Court addressed was whether the wrongful acts of a third party constituting  
13 duress may be sufficient to allow rescission of a contract with a party, who, although not  
14 participating in those wrongful acts, had knowledge of the innocent party's position.

15           In addressing this issue the *Lepeer* Court relied on "The *Restatement of Contracts*" and  
16 found that contracting party's knowledge of a duress exerted by a third party makes the  
17 transaction voidable. The Court opined that the *Restatement of Contracts* at Section 496 states  
18 that the duress of a third party renders a transaction voidable by a party induced thereby to enter  
19 into it under the same circumstances as the rule stated in section 477 relating to fraud. Section  
20 477 reads: "Fraud or material misrepresentation [or duress] by a third person renders a  
21 transaction voidable by a party induced thereby to enter into it if the other party thereto (a) has  
22 reason to know of the fraud or misrepresentation [or duress] before he has given or promised in  
23 good faith something of value in the transaction or changed his position materially by reason of  
24 the transaction, ..." (See also 62 A.L.R. 1477, 1478; 4 A.L.R. 864; *Bumgardner v. Corey*, 124  
25 W. Va. 373 [21 S.E.2d 360, 364]; *Wells Fargo Nevada Nat. Bank v. Barnett*, 298 F. 689, 691;  
26 *McDonald v. Pend Oreille Mines & Metals Co.*, 189 Wash. 389 [65 P.2d 1250, 1257].) This is  
27 also the rule in California. (*Harper v. Murray*, 184 Cal. 290, 294 [193 P. 576]; *Carroll v.*  
28 *Carroll*, 16 Cal.2d 761, 770-771 [108 P.2d 420].)" *Supra* at 206.

1 Under the rule of the cases relied upon by the *Lepeer* Court, the allegations that Scheidel  
2 had knowledge of Abbie's predicament are sufficient to give rise to the right of rescission.  
3 "Scheidel had no legal right to take advantage, knowingly, of the wrongdoing of third parties.  
4 When he did, he "connived" with the wrongdoers as that term is used in the statute relating to  
5 rescission. (*Civil Code*, § 1689.)" *Id.*

6 20. Pursuant to California Law, another affirmative defense available to Defendant to  
7 contest the validity and enforceability of the Agreement is that of "undue influence". An  
8 agreement lacks valid consent where one party uses confidence or authority over the other to  
9 procure an unfair advantage, or takes unfair advantage of the other party's weaknesses of mind  
10 or distress. Ordinarily, the determination turns on inferences drawn from the underlying facts  
11 and events. Many factors have been held indicative of undue influence, such as physical or  
12 mental weakness (including the disability, sickness, pregnancy or economic duress being  
13 experienced by the party claiming undue influence), substantial bargaining disparity between the  
14 parties, gross inadequacy of consideration, absence of independent legal representation and a  
15 Party's ignorance of his or her legal rights.

16 21. In *In Re Marriage of Bonds* (2000) 24 Cal. 4th 1, 28, 99 Cal.Rptr. 2d 252  
17 (involving the baseball great, Barry Bonds), which was also decided prior to the January 2002  
18 amendment to the UPAA, analyzed and set out the many factors that have been held as  
19 indicative of undue influence. Subsequent to and as a result of the *Bonds* decision, which held  
20 that "[T]he circumstance that one of the parties was not represented by independent counsel is  
21 only one of several factors that must be considered in determining whether a premarital  
22 agreement was entered into voluntarily." (*Id.* at p. 6), the California Legislature amended *Family*  
23 *Code* § 1615 to require additional procedural safeguards in connection with execution of  
24 Premarital Agreements. These amendments have been set forth herein above.

25 However, notwithstanding its ultimate holding, in addressing the issue of undue  
26 influence, the *Bonds* Court stated that "in sum, it is clear from the cases cited in the comment to  
27 the enforcement section of the Uniform Act, and from the record of the proceedings of the  
28 National Conference of Commissioners on Uniform State Laws that the commissioners intended

1 that the party seeking to avoid a premarital agreement may prevail by establishing that the  
2 agreement was involuntary, and that evidence of lack of capacity, duress, fraud, and undue  
3 influence, as demonstrated by a number of factors uniquely probative of coercion in the  
4 premarital context, would be relevant in establishing the involuntariness of the agreement. Not  
5 only did the commissioners intend that the above factors be considered in determining whether a  
6 premarital agreement was entered into voluntarily, but the same intention safely may be  
7 attributed to the California Legislature, because an examination of the history of the enactment  
8 of *Family Code* §1615 in California indicates that the Legislature adopted the views of the  
9 commissioners in all respects relevant to the present discussion.<sup>1</sup> *Supra* at 264.

10 22. Furthermore, the *Bonds* Court distinguished between Premarital Agreements and  
11 Commercial Contracts and the affirmative defenses available to contest them and stated:  
12 “although the Uniform Act contemplated that contract defenses should apply, in the sense that an  
13 agreement should be free from fraud (including constructive fraud), duress, or undue influence,  
14 it is clear from the debate of the commissioners who adopted the Uniform Act and the cases  
15 cited in support of the enforcement provision of the Uniform Act that subtle coercion that would  
16 not be considered in challenges to ordinary commercial contracts may be considered in the  
17 context of the premarital agreement. (See, e.g., *Lutgert v. Lutgert, supra*, 338 So.2d at pp. 1113-  
18 1116 [agreement presented too close to the wedding, with passage booked on an expensive  
19 cruise].) The obvious distinctions between premarital agreements and ordinary commercial  
20 contracts lead us to conclude that factual circumstances relating to contract defenses (see *Civil*  
21 *Code* §§ 1567) that would not necessarily support the rescission of a commercial contract may  
22 suffice to render a premarital agreement unenforceable. The question of voluntariness must be  
23 examined in the unique context of the marital relationship. (See Brandt, *The Uniform Premarital*  
24 *Agreement Act and the Reality of Premarital Agreements in Idaho* (1997) 33 Idaho L.Rev. 539,  
25 546-547, 562-564; Younger, *Perspectives on Antenuptial Agreements: An Update* (1992) 8 J.

26  
27 <sup>1</sup> See Senate Committee on Judiciary, Report on Senate Bill No. 1143 (1985-1986  
28 Reg. Sess.) page 2; Assembly third reading digest of Senate Bill No. 1143 (1985-1986 Reg.  
Sess.), as amended August 28, 1985, page 3.

1 Am. Acad. Matrim. Law. 1, 19-20; Younger, *Perspectives on Antenuptial Agreements*, *supra*, 40  
2 \*27 Rutgers L.Rev. at p. 1075; see also ALI, Principles of the Law of Family Dissolution:  
3 Analysis and Recommendations (Tent. Draft No. 4, Apr. 10, 2000) §§ 7.02, coms. (a), pp. 90-91,  
4 (c), pp. 92-94; *id.*, §§ 7.05, com. (b), pp. 100-101; *id.*, §§ 7.07, com. (b), pp. 132-134.)” *Supra* at  
5 269.

6 23. Under California Law a rebuttable presumption of undue influence also arises if  
7 the parties were in a 'confidential relationship' and one obtained an advantage over the other in  
8 an economic transaction. See *Marriage of Bonds*, *Supra*; *Marriage of Mathews* (2005) 133  
9 CA4th 624, 628-629, 35 CR3d 1, 4; *Marriage of Delaney* (2003) 111 CA4th 991, 996, 4 CR3d  
10 378, 381-382; *Marriage of Lange* (2002) 102 CA4th 360, 364, 125 CR2d 379, 382-383.

11 Generally, a spouse obtains an advantage over the other in a property transaction if his or  
12 her 'position is improved,' he or she 'obtains a favorable opportunity,' or he or she 'otherwise  
13 gains, benefits, or profits.' *Marriage of Mathews*, *supra*, 133 CA4th at 629, 35 CR3d at 4;  
14 *Marriage of Lange*, *supra*, 102 CA4th at 364, 125 CR2d at 382.

15 24. Under California Law, the statutory intraspousal confidential relationship permits  
16 the application of the presumption of undue influence in connection with transmutation and  
17 other marital agreements. *Family Code* § 721(b). *Marriage of Bonds*, *Supra*, at 269; See also  
18 *Marriage of Barneson* (1999) 69 CA4th 583, 588, 81 CR2d 726, 730-- whether valid  
19 transmutation occurred depends not only on compliance with Fam.C. § 852 but also on  
20 compliance with rules governing fiduciary relationships (i.e., rebuttable presumption transaction  
21 advantaging one's spouse was induced by undue influence). See *Marriage of Lange*, *Supra*, 102  
22 CA4th at 364-365, 125 CR2d at 382-383, where the presumption of undue influence applied to  
23 render a promissory note and deed of trust signed by Husband in Wife's favor unenforceable,  
24 holding that Wife received an advantage from the transaction because she then became a secured  
25 creditor additionally entitled to 10% interest on Husband's obligation; See also *Marriage of*  
26 *Haines* (1995) 33 CA4th 277, 301-302, 39 CR2d 673, 688-689 where the presumption of undue  
27 influence applied in a transmutation dispute controlled over the conflicting Evidence Code § 662  
28 title presumption, permitting Wife to set aside a transaction quitclaiming her interest in the

1 family home to Husband for 'clearly inadequate consideration. See also *Marriage of Delaney*,  
2 *Supra*, at 111 CA4th at 995-1000, 4 CR3d at 381-385 which involved another transmutation  
3 dispute, where the presumption of undue influence trumped the conflicting *Evidence Code* § 662  
4 and *Family Code* § 2581 title presumptions, permitting Husband to set aside a grant deed  
5 transferring his Separate Property residence to Joint Tenancy title in connection with obtaining a  
6 remodeling loan.

7 25. Lastly, under California Law, a premarital agreement may also be unenforceable  
8 if found to be unconscionable when it was executed and the requisite disclosures were lacking  
9 and not waived. Moreover, a spousal support provision of a premarital agreement is not  
10 enforceable if found to be unconscionable at the time of enforcement. See *Family Code* §§  
11 1612(c).

12 26. Pursuant to *Family Code* §§ 4, the §§ 1612(c) 'unconscionability at time of  
13 enforcement' standard applies even to premarital agreements executed before the statute's  
14 January 1, 2002 effective date unless the trial court determines its application to a particular pre-  
15 2002 agreement would 'substantially interfere with the conduct of the proceedings or the rights  
16 of the parties or other interested persons ... *Family Code* §§§§ 4(a), (b),(c) & (h).

17 I declare under penalty of perjury under the laws of the State of California that the  
18 foregoing is true and correct.

19 Executed this 25 day of May, 2006, at Los Angeles, California.

20  
21  
22 STACY D. PHILLIPS  
23  
24  
25  
26  
27  
28

# *Stacy D. Phillips*

2029 Century Park East, Suite 1200  
Los Angeles, California 90067  
TEL:(310) 277-7117; FAX: (310) 286-9182  
Direct e-mail address: [sdpdissoqueen@pllilaw.com](mailto:sdpdissoqueen@pllilaw.com)

## LEGAL EXPERIENCE

- 8/00 - Present LAW OFFICES OF PHILLIPS, LERNER, LAUZON & JAMRA, LLP  
Los Angeles, California  
Litigator and mediator with exclusive focus on family law matters
- 10/95 - 7/00 LAW OFFICES OF MANNIS & PHILLIPS, LLP  
Los Angeles, California  
Litigator and mediator with exclusive focus on family law matters
- 12/93 - 9/95 LAW OFFICES OF PHILLIPS & BAUMAN  
Los Angeles, California  
Litigator and mediator with exclusive focus on family law matters
- 11/90 - 12/93 LAW OFFICES OF STACY D. PHILLIPS  
Los Angeles, California  
Litigator and mediator with exclusive focus on family law matters
- 6/90 -10/90 LAW OFFICES OF ARTHUR SOLL, P.C.  
Los Angeles, California  
Associate. Litigator with exclusive focus on family law matters
- 1/86 - 5/90 JAFFE & CLEMENS  
Beverly Hills, California  
Associate. Litigator with exclusive focus on family law matters
- 1/86 - Present PACIFIC ASSOCIATES, MEDIATORS OF CHILDREN'S ISSUES IN DIVORCE  
Beverly Hills, California  
Co-proprietor. Mediate child custody disputes and set up parenting plans with psychologist co-proprietor
- 1984 - 1986 DIVORCE MEDIATORS ASSOCIATES  
Beverly Hills, California  
Co-proprietor. Mediator of family dissolution actions
- 11/84 - 12/85 WYMAN, BAUTZER, ROTHMAN, KUCHEL & SILBERT  
(name of firm at that time)  
Los Angeles, California  
Associate. Litigator with almost exclusive focus on family law matters

- 9/83 - 9/84 HONORABLE EDWARD RAFEEDIE, UNITED STATES  
DISTRICT COURT, Los Angeles, California  
Law Clerk
- Summer 1982 LOEB & LOEB, Los Angeles, California  
Summer Associate
- Summer 1981 HONORABLE ABRAHAM D. SOFAER, UNITED STATES  
DISTRICT COURT, New York, New York  
Summer Clerk

### LEGISLATIVE EXPERIENCE

Assisted in the drafting of Senate Bill 924, a bill to extend the limitations period within which victims of domestic violence may sue their abusers in civil court. I testified in support of the legislation before the Assembly Judiciary Committee as a family law expert. The bill was enacted into law, and is codified as California Civil Procedure § 340.15.

### COMMUNITY ACTIVITIES

- 2005 - Present Member, Columbia University School of Law Board of Visitors
- 2005 - Present Board of Governors, Vista Del Mar Child and Family Services
- 2003 - 2004 Member, Board of Directors, Bnai Zion
- 2002 - Present Member, Board of Directors, Legal Momentum (formerly known as the NOW Legal Defense and Education Fund)
- 2002 - Present Co-Chair, California Leadership Council of Legal Momentum (formerly known as the NOW Legal Defense and Education Fund)
- 2000 - Present Founder, Phillips, Lerner, Lauzon & Jamra LLP Adopt-A-Center Program
- 2000 - 2004 Member, Executive Committee, Vista Del Mar Child and Family Services, Strategic Planning Committee and Chair of the Corporate Development Committee
- 1999 - 2004 Member, Board of Directors, Vista Del Mar Child and Family Services
- 1999 - 2001 Member, Cedars-Sinai Sports Spectacular Steering Committee
- 1999 - 2000 Member, Cedars-Sinai Sports Spectacular Luncheon Committee
- 1999 - 2000 Founder, Mannis & Phillips, LLP Adopt-A-Center Program
- 1999 - Present Member, Advisory Board, Women of Los Angeles
- 1998 - Present Member, Women of Los Angeles
- 1997 - Present Member, Board of Trustees, Alternative Living for the Aging
- 1997 - 2002 Member, Women's Leadership Forum
- 1997 and 1998 Co-Chair, Women's Political Committee
- 1996 - 1997 President, Board of Directors, Alternative Living For the Aging
- 1995 - Present Member, Legal Momentum (formerly known as the NOW Legal Defense and Education Fund)
- 1995 - Present Member, National Partnership of Women and Families (formerly known as the Women's Legal Defense Fund)
- 1994 - 1996 Vice President, Board of Directors, Alternative Living for the Aging
- 1991 - 2000 Member, Women's Political Committee
- 1991 - 1997 Member, Board of Directors, Alternative Living for the Aging
- 1990 Co-Founder of The Phillips Family Fund at the Ethics Institute at Dartmouth College Family Services
- 1984 - 1986 Family Law Section Pro Bono volunteer attorney representing the abused and neglected children program coordinated by the Los Angeles Superior Court and the Los Angeles County Bar Association



## PROFESSIONAL ASSOCIATIONS / ACTIVITIES/DISTINCTIONS

Listed in *The Best Lawyers in America* 2003-2004 Edition and 2005-2006 Edition

"AV" rated by Martindale-Hubbell Registry

Certified Family Law Specialist by the State Bar of California Board of Legal Specialization

Chancery Club of Los Angeles

Family Law Section American Bar Association

Family Law Section Los Angeles Bar Association

Family Law Section Beverly Hills Bar Association

Trained attorneys in mediation for Association Mediator Referral Service

Volunteer Mediator Los Angeles Superior Court, West District

Host, "Through the Eyes of a Child," a benefit art auction for the Free Arts of Abused Children Foundation

Life Member of Kingston National Registry of Who's Who

Marquis Who's Who

Marquis Who's Who of American Women

Executive Nomination to receive American Medal of Honor from American Biographical Institute

## PANELS/SPEAKING

2006 Co-Chair West Legal Works Conference (*Your Future As a Rainmaker: Marketing Boot Camp for Lawyers*) and moderator for two panels: *Managing Existing Client Relationships and Who Knows You Are Out There? Using Promotion and Communication to Raise Your Profile*

2005 Chair Findlaw Business Development Conference (*Successful Marketing Techniques for Profitability and Results*) and moderator for "Why These Firms Are Best of Breed" and also a break out panel moderator on Family Law

2005 Chair and Panel Participant, The Seminar Group, *Relationship Agreements* (cohabitation, new domestic partnership laws and alternative dispute resolution)

2005 Panel Participant, City National Bank, *Divorce Hollywood Style: Avoiding Common Pitfalls*

2005 L.A. County Bar Association – panelist, "Effective Representation of Family Law Clients in Mediation"

2004 Findlaw Business Development Conference (*Successful Marketing Techniques for Profitability and Results*) serving on the panel "Why These Firms Are Best of Breed" (her firm named among them) and also serving as co-panelist with Fox News' Robert Massi on "Practice Area Marketing: Learn From the Masters."

Guest Lecturer and speaker before various university and professional groups including continuing education courses for attorneys and therapists (UCLA, Loyola Law School, Southwestern Law School, Pepperdine Law School, Western University School of Law, The Rutter Group, Continuing Education of the Bar, Los Angeles County Bar Association, Beverly Hills Bar Association, Women Lawyers Association, California Women Lawyers)

## HONORS/AWARDS/COMMENDATIONS

Named "Woman to Watch" by Jewish Women International - 2005

Named "Southern California Super Lawyer" (2004, 2005 and 2006) and listed as one of the "Top 50 Female Super Lawyers of Southern California" 2005 and 2006 by *LA Magazine* (a survey jointly conducted by *Law & Politics* and *Los Angeles Magazine*) ranking in the top 100 vote-getters in 2006  
Named one of the "Top 50 Women Litigators in California" by *Los Angeles Daily Journal* for 2003, 2004 and 2006 and when that publication extended the number of honorees in 2005, Phillips was among the top 75 for 2005

Recipient of the *Women of Achievement Award* 2005 by AMIT

Recipient of the *Women of Achievement Award* 2002 by the Century City Chamber of Commerce

Recipient of the *Women Who Make a Difference Award* 2001 by the *Los Angeles Business Journal*

Recipient of the *Women of Accomplishment Award* 2001 by the Bnai Zion Foundation

Recipient of the *Patricia A. McClure Award* 2001 by the Asthma & Allergy Foundation of America

Recipient of the *Women of Action Award* 2000 by the Israel Cancer Research Fund

Named one of the "50 Most Powerful Women in Los Angeles Law" (*Los Angeles Business Journal*, 1998)

Named one of the top 20 lawyers in Los Angeles under the age of 40 (*Daily Journal - California Law Business*, 1998)

**ARTICLES/ FEATURES/ QUOTES/BROADCAST APPEARANCES**

**Authored Articles**

*California Law Business*

*Divorce Magazine*

*Female Entrepreneur*

*iVillage.com*

*In Touch*

*Los Angeles Daily Journal*

*Making Bread Magazine. Com*

*Philanthropy Alert*

*Small Firm Business*

*Women on Top-“An Inflexible Ex: You and the Children”*

*Women on Top-“Emotions Have No Place in Divorce Court”*

*Women on Top-“Fighting Just to Win: is it Worth it?”*

*Women on Top-“MEDIATION VS TRIAL: What’s More Productive and Why”*

*Women on Top- “Prenuptial Agreements”*

*Women on Top-“Resolving to Keep Your Marriage Together”*

*Women on Top-“Trial & Error- More Than Your Share”*

*Women on Top-“Visitation and the Inflexible Ex”*

*Women on Top-“What’s Ours is Ours...but What’s Mine Should Always be Mine!”*

*Yahoo! Personals*

**Features/Profiles**

*ABA Journal*

*Angelino Magazine*

*Beverly Hills Times*

*California Law Business*

*Columbia Law School Report*

*Dartmouth Alumni Magazine –March/April 2006*

*Divorce Magazine*

*Divorce Lawyer Trusts Mantra: Maintain Control*

*Divorce, the Civilized Way*

*Gracious Giving*

*In Touch*

*Jewish Women Magazine*

*Los Angeles Business Journal*

*Los Angeles Daily Journal*

*Los Angeles Magazine*

*Los Angeles Times*

*OC Register*

*Prevention Magazine*

*Small Firm Business*

*Women On Top*

**Print Quotes**

*Amazon.com*

*The Advocate*

*Anderson Independent Mail*

*Baby Talk*

*Business Week*

*CBS Market Watch*

*CNN Money*

*California Law Business*

*Chicago Tribune*

*Cosmopolitan*

*CourtTV.com*

*Daily Journal*

*Divorce Magazine*

*ET Online*  
*Female Entrepreneur*  
*Glamour Magazine*  
*The Globe*  
*HR Wire*  
*iVillage.com*  
*iParenting.com*  
*Ladies Home Journal*  
*Los Angeles Daily Journal*  
*MarketingIdeaShop.com*  
*Maxim Magazine*  
*More Magazine*  
*People*  
*Philly Women*  
*PR Newswire ProfNet Round-Up*  
*Sacramento Bee*  
*SE Missourian*  
*Town & Country*  
*Us Weekly*  
*Wall Street Journals*  
*Womenswallstreet.com*  
*Yahoo Personals*

**Broadcast**

*Access Hollywood*  
*BBC News*  
*CBS Marketwatch*  
*Celebrity Justice*  
*The Cybill Shepard Show*  
*E! Entertainment Television*  
*Entertainment Tonight*  
*Findlaw.com news segment commentator—media satellite tour, radio/television nationwide*  
*Good Morning America*  
*Hard Copy*  
*InflightRadioProgramming/ United and American Airlines*  
*Inside Edition*  
*The Insider 12/1/05, 11/30/05, 6/2005, 1/19/05*  
*Joan Quinn Profiles*  
*Judge for Yourself*  
*KTLA News*  
*KMGH-TV*  
*MSNBC Rita Crosby Show*  
*MomTalk Radio*  
*STAR! TV's Because I Said So (Canada)*  
*Stepfamily Radio Talk Network*  
*Television/Radio National Media Tour*  
*Too Jewish Radio*  
*VH1's All Access: Celebrity Breakups*  
*VH1 – Celebrity Prenuptial Agreements*  
*WFMZ-TV*  
*WGHP-TV*

**AUTHOR/EDITOR/REVIEWER**

Self-help book – *Divorce: It's All About Control: How to Win the Emotional, Psychological and Legal Wars (ExecuProv Press-2005)*  
Editor of legal content for the book: *"Money-Smart Divorce"*  
Editor for various continuing education books  
Book reviewer on several business and family law books  
Managing editor—*Family Matters* (PL LJ's regular newsletter publication)  
*Divorce Magazine*—contributing writer

Yahoo.com Personals – contributing writer  
*Women on Top* magazine – contributing writer

**BOOKSIGNING/DISCUSSION**

Book Soup, Los Angeles- January 15, 2006  
Book Soup, Costa Mesa- March 15, 2006  
Dutton's Brentwood Books-May 3, 2006  
Vroman's Bookstore-May 15, 2006

**EDUCATION**

**COLUMBIA UNIVERSITY SCHOOL OF LAW, New York, N.Y.**

Juris Doctor, May 1983

**Honors & Activities**

Letter of Commendation - Family Law (1983)  
First Year Moot Court Program Editor (1981-82), Judge (1982-83)  
Intern, Morningside Heights Legal Services, Clinic in Child Advocacy (1982-83)  
ABA Law School Division Representative to the  
ABA Judicial Administration Division (1982-83)  
Faculty Research Assistant to Professors Linda Silberman  
and Andrew Schepard (Mediation Systems in California, 1983),  
Results furnished to New York Law Revision Commission.  
Participant, Criminal Clerkship Program,  
New York Criminal Courts, Judge Harold Rothwax (1983)  
Participant, Family Law Workshop (1982)  
Law School Senator (1980, 1982-83)  
Student Representative to Associates Committees

**DARTMOUTH COLLEGE, Hanover, New Hampshire**

Bachelor of Arts, History and Religion, May 1980

**Honors**

**Cum Laude**

High Distinction in Double Major  
Policy Studies Internship Grant (1979)  
Green Key Society (honorary service society 1979-80)

**UNIVERSITY OF LONDON/KING'S COLLEGE,**

London, England (Fall 1978)

PETITIONER: RESPONDENT: OTHER:	CASE NUMBER:
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**APPLICATION FOR SEPARATE TRIAL**

Attachment to  Order to Show Cause (form FL-300)  Notice of Motion (form FL-301)

I, (name): \_\_\_\_\_, request that the court sever (bifurcate) and grant an early and separate trial on the following issue or issues:

1. a.  Dissolution of the status of the marriage (Fam. Code, § 2337).  
 I will serve with this application my preliminary *Declaration of Disclosure* and completed *Schedule of Assets and Debts* unless they have been previously served or the parties have stipulated in writing to defer service.
- b.  I request the following conditions be made:
  - (1)  That I indemnify and hold the other party harmless from "taxes, reassessments, interest, and penalties" payable in the event that a dissolution prior to the property division results in taxes that would not have been payable if the parties were still married at the time of the division.
  - (2)  That I maintain health and medical insurance for the other party and minor children as long as possible, and then must obtain comparable coverage or pay any expenses that would have been covered by insurance.
  - (3)  That I hold the other party harmless re probate homestead.
  - (4)  That I hold the other party harmless re probate family allowance.
  - (5)  That I hold the other party harmless re pension benefits, elections, or survivors' benefits.
  - (6)  That I join the pension plan and, if the other party has a private plan covered by ERISA, will cause a Qualified Domestic Relations Order (QDRO) to be served on the plan.
  - (7)  That I hold the other party harmless re social security benefits.
  - (8)  Any other condition that the court determines is just and equitable.
2.  Permanent custody and visitation of the children of the marriage.
3.  Date of separation of the parties.
4.  Alternate valuation date for property.
5.  Validity of marital settlement agreement entered into prior to or during the marriage.
6.  Other (specify): \_\_\_\_\_
7. a.  I request that the court conduct this separate trial on the hearing date.  
 or  
 b.  I will, at the hearing, ask the court to set a date for this separate trial.
8. The reasons in support of this request are (specify):  
 Points and authorities attached.  Supporting declarations attached.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

\_\_\_\_\_  
 (TYPE OR PRINT NAME) ▶ \_\_\_\_\_  
 (SIGNATURE OF DECLARANT)

COURT OF COMMON PLEAS  
DIVISION OF DOMESTIC RELATIONS  
HAMILTON COUNTY, OHIO

ELLEN TURNER, : Case No: DR0500131  
Plaintiff, : Magistrate Theile  
 : Judge Panioto  
v. :  
JON ENTINE, : AFFIDAVIT IN SUPPORT OF  
 : MOTION FOR CONTEMPT  
Defendant. :

STATE OF OHIO :  
 :SS  
COUNTY OF HAMILTON :

I, Jon Entine, being first cautioned and sworn, state that I am over eighteen years of age, and have personal knowledge of the facts as set forth below:

1. I am the Defendant/Father in the above case.
2. This Affidavit supports my Motion for Contempt.
3. Plaintiff/Mother and I and entered into a Shared Parenting Plan which was approved Magistrate Theile and entered of record with this Court on November 30, 2005.
4. Pursuant to the terms of the Shared Parenting Plan, "parents shall pay for the activity selected by them except for piano, which both parents shall support and share equally in the cost as long as Maddie is at CCDS."
5. Plaintiff/Mother has failed to comply with the provisions of the Shared Parenting Plan by failing to equally share the costs of the minor child's piano lessons, despite demand.
6. I have paid \$1500.00 for the piano lessons in full by check, copies of which are attached.
7. Currently Plaintiff/Mother owes me \$375.00 for one-half of the Spring, 2006 semester and \$375.00 for the Fall, 2006 semester.

GREGORY W. HARTMANN  
CLERK OF COURTS  
HAMILTON COUNTY, OH

MAY 25 P 2:41

FILED

BUECHNER, HAFFER,  
O'CONNELL, MEYERS,  
HEALEY & KOENIG  
CO., L.P.A.  
Suite 300  
105 East Fourth Street  
Cincinnati, Ohio 45202  
(513) 579-1500

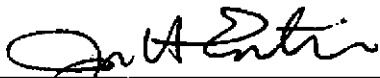


8. I request that the Court find Plaintiff in contempt of Court for her violation of the previous Order of this Court.

9. I further request sanctions, reimbursement of \$750.00 for Plaintiff/Mother's share of the cost of the piano lessons, incarceration, and any and all other remedies which the Court finds equitable.

10. I further request that the Court order Plaintiff to reimburse me in the amount of \$ 1,500.00 for attorneys' fees that I have incurred in processing this contempt motion.

**FURTHER AFFIANT SAYETH NAUGHT.**

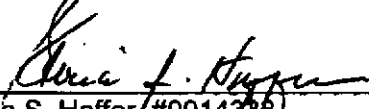
  
\_\_\_\_\_  
Jon Entine

Sworn to before me and subscribed in my presence this 25 day of May, 2006.

  
\_\_\_\_\_  
Notary Public

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing Motion for Contempt has been served upon Sallee M. Fry, Esq., Law Office of Sallee M. Fry, 2345 Ashland Avenue, Cincinnati, Ohio 45206 and upon Randal S. Bloch, Esq., Wagner & Bloch, LLC, 2345 Ashland Avenue, Cincinnati, Ohio 45206, on this 25<sup>th</sup> day of May 2006.

  
\_\_\_\_\_  
Gloria S. Haffer #0014386  
Attorney for Defendant

BUECHNER, HAFFER,  
O'CONNELL, MEYERS,  
HEALEY & KOENIG  
CO., L.P.A.  
Suite 300  
105 East Fourth Street  
Cincinnati, Ohio 45202  
(513) 579-1500

106120

COURT OF COMMON PLEAS  
DIVISION OF DOMESTIC RELATIONS  
HAMILTON COUNTY, OHIO

Ellen Turner

CASE NO. D20500131

..-VS-

Jon Entine

WRITTEN REQUEST FOR SERVICE  
(TYPE OF PAPERS BEING SERVED)

Motion for Contempt

PLAINTIFF / DEFENDANT REQUESTS:

CERTIFIED MAIL SERVICE

PERSONAL SERVICE \_\_\_\_\_

PROCESS SERVICE \_\_\_\_\_

REGULAR MAIL SERVICE \_\_\_\_\_

RESIDENCE SERVICE \_\_\_\_\_

FOREIGN SHERIFF \_\_\_\_\_

FILED  
2008 MAY 25 P 2:46  
GREGORY HARTMANN  
CLERK OF COURTS  
HAMILTON COUNTY, OH



IN ACCORDANCE WITH CIVIL RULE 4.6(C) OR (D) AND  
4.6(E) AN ORDINARY MAIL WAIVER IS REQUESTED

LIST NAME AND ADDRESS OF PERSON(S) TO BE SERVED

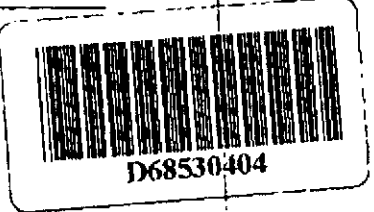
Ellen Turner  
7719 Shawnee Run Rd.  
45243

Marcelle Trunk  
SIGNATURE

5 McCormick Trail  
ADDRESS

624-0110  
PHONE NUMBER

#6014333  
ATTORNEY NUMBER





PRE-DECREE ( ) POST-DECREE

( ) Chg. of Cust.  
( ) Vis. Enforce/Mod.  
( ) Sup. Enforce/Mod.

COURT OF COMMON PLEAS  
DIVISION OF DOMESTIC RELATIONS  
HAMILTON COUNTY, OHIO

ELLEN TURNER,	:	Case No:DR0500131
	:	
Plaintiff,	:	Magistrate Thelle
	:	Judge Panioto
v.	:	
	:	<u>MOTION FOR CONTEMPT</u>
JON ENTINE,	:	
	:	
Defendant.	:	

Now comes Defendant Jon Entine, hereafter "Father," by and through counsel, and hereby moves the Court to find Plaintiff, Ellen Turner, hereafter "Mother," in contempt for her failure to equally share the costs of the minor child's piano lessons. This Motion is supported by the following Memorandum and Affidavit of Jon Entine.

Gloria S. Haffer  
Ohio Reg. No. 0014333  
Attorney for Defendant, Jon Entine  
BUECHNER, HAFFER, O'CONNELL,  
MEYERS, HEALEY & KOENIG CO., L.P.A.  
105 East Fourth Street  
300 Fourth & Walnut Centre  
Cincinnati, Ohio 45202  
Telephone No.: 513-579-1500  
Fax No.: 513-977-4361

GREGORY HARTMAN  
CLERK OF COURTS  
HAMILTON COUNTY, OH

FILED

2006 MAY 25 P 2:41



BUECHNER, HAFFER,  
O'CONNELL, MEYERS,  
HEALEY & KOENIG  
CO., L.P.A.  
Suite 300  
105 East Fourth Street  
Cincinnati, Ohio 45202  
(513) 579-1500

**MEMORANDUM**

The parties entered into a Shared Parenting Plan which was approved by Magistrate Theile and entered of record with this Court on November 30, 2005.

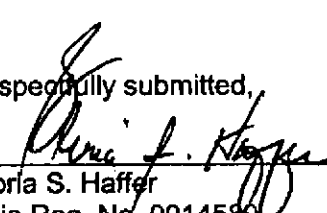
Pursuant to the terms of the Shared Parenting Plan, "parents shall pay for the activity selected by them except for piano, which both parents shall support and share equally in the cost as long as Maddie is at CCDS."

Mother has violated the provisions of the parties' Shared Parenting Plan by failing to pay her half of the cost of the piano lessons. Currently, Mother owes Father \$375.00 for one-half of the Spring, 2006 semester and \$375.00 for one-half of the Fall, 2006 semester, despite demand by Father.

**WHEREFORE**, Father hereby moves the Court for a finding of contempt of court, sanctions, incarceration, and any and all other remedies which the court finds equitable.

Father further moves the Court for attorney's fees in the amount of \$500.00 incurred in bringing this Motion for Contempt.

Respectfully submitted,

  
\_\_\_\_\_  
Gloria S. Haffer  
Ohio Reg. No. 0014589  
Attorney for Defendant, Jon Entine  
BUECHNER, HAFFER, O'CONNELL,  
MEYERS, HEALEY & KOENIG CO., L.P.A.  
105 East Fourth Street  
300 Fourth & Walnut Centre  
Cincinnati, Ohio 45202  
Telephone No.: 513-579-1500  
Fax No.: 513-977-4361

BUECHNER, HAFFER,  
O'CONNELL, MEYERS,  
HEALEY & KOENIG  
CO., L.P.A.  
Suite 300  
105 East Fourth Street  
Cincinnati, Ohio 45202  
(513) 579-1500

**NOTICE OF HEARING**

Please take notice that a hearing on the foregoing has been scheduled for the 14 day of June, 2006 at 9:00 a.m./p.m. before Magistrate Theille, at the Hamilton County Court of Common Pleas, Division of Domestic Relations, 800 Broadway, Cincinnati, Ohio 45202.

  
Gloria S. Haffer #0014589

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing Motion for Contempt has been served upon Sallee M. Fry, Esq., Law Office of Sallee M. Fry, 2345 Ashland Avenue, Cincinnati, Ohio 45206 and upon Randal S. Bloch, Esq., Wagner & Bloch, LLC, 2345 Ashland Avenue, Cincinnati, Ohio 45206, on this 25<sup>th</sup> day of May, 2006.

  
Gloria S. Haffer #0014333  
Attorney for Defendant

106052

BUECHNER, HAFFER,  
O'CONNELL, MEYERS,  
HEALEY & KOENIG  
CO., L.P.A.  
Suite 300  
105 East Fourth Street  
Cincinnati, Ohio 45202  
(513) 579-1500

JON ENTINE  
INDIAN HILL  
RUNJONERUN@EARTHLINKNET  
CINCINNATI OH 45243

20-418/740  
12450033

1732

DATE 12/05/05

PAY TO THE ORDER OF CCDS \$ 750-

Seven hundred and fifty — 00/100 DOLLARS

FIRST INTERNET BANK

MEMO: from Wilson's Spring

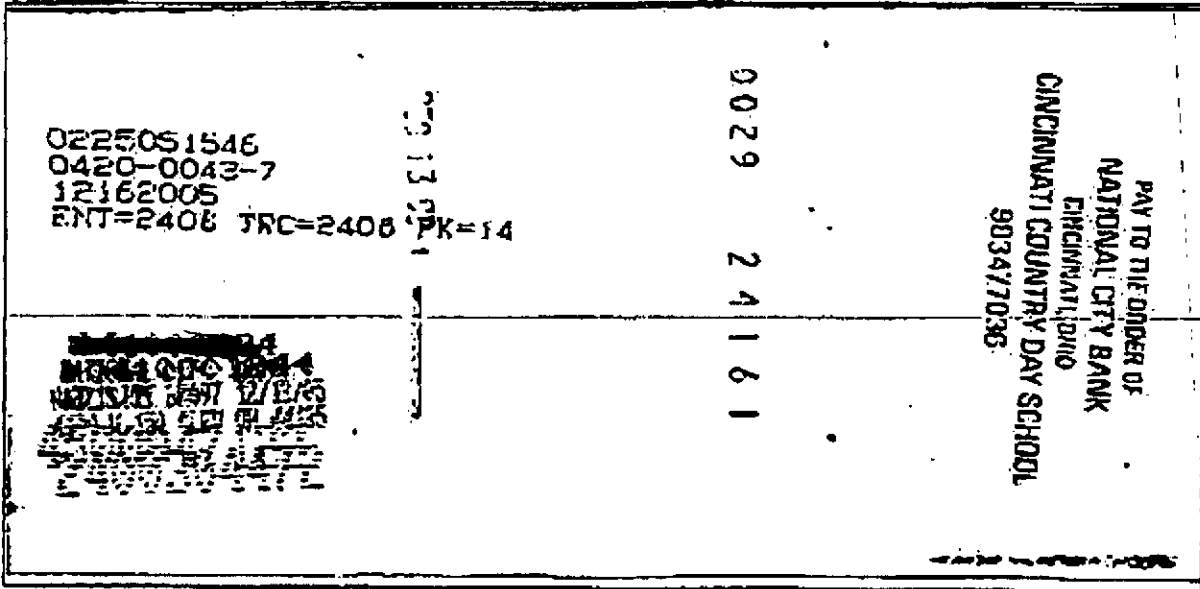
Jon Entine

⑆0000075000⑆

Front

Back

Close



Back

Front

Close

JON ENTINE  
INDIAN HILL  
21-1181720 1815  
12185203  
05/18/2006 0 1 430798129 1975 81  
CINCINNATI, OH 45243 DATE 4-6-06

PAY TO THE ORDER OF CINCINNATI COUNTRY PAY \$ 7.50-

Seven hundred and fifty — 00/100 DOLLARS

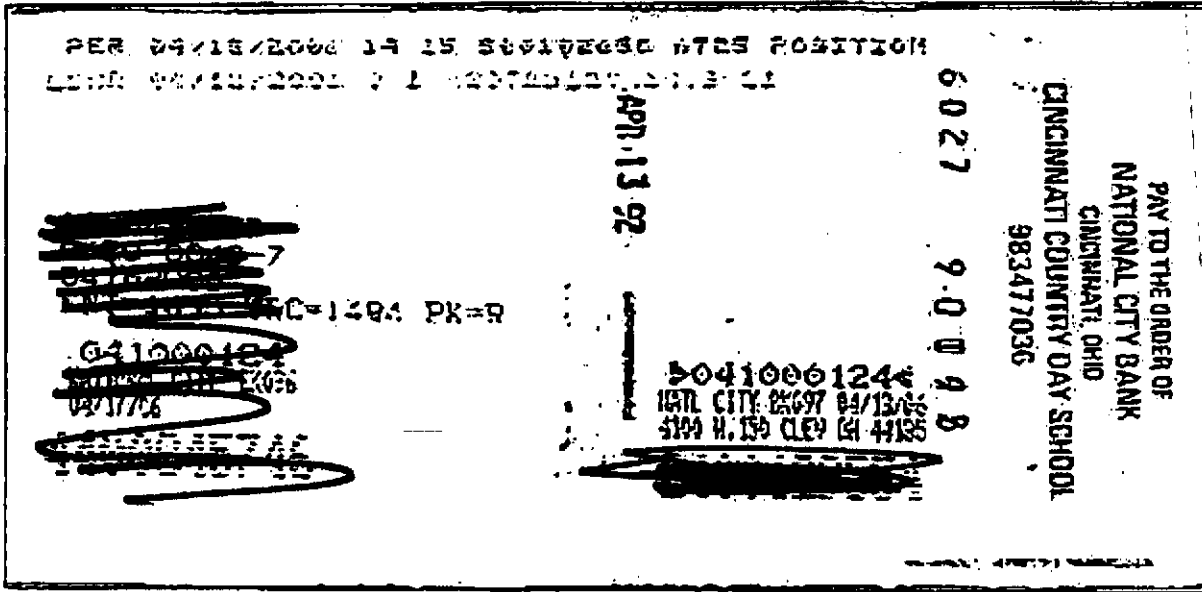
FIRST INTERNET BANK  
MEMO: *Student piano lessons / fall* *John Ent*

⑆0000075000⑆

Front

Back

Close



Back  
 (Front)  
 Close

~~PREVIOUS DECREE~~ ( ) POST DECREE  
 COURT OF COMMON PLEAS, DIVISION OF DOMESTIC RELATIONS  
 HAMILTON COUNTY, OHIO

( ) Sup. Enforcement  
 ( ) Sup. Enforcement  
 ( ) Other  
 Case No. DR0500191

ELLEN L. TURNER :  
 Plaintiff, : JUDGE PANIOTO  
 : MAGISTRATE THEILE  
 v. :  
 JON H. ENTINE : DEFENDANT'S MOTION TO  
 : VACATE DISCOVERY CUT-OFF  
 Defendant. : DATE AND TO COMPEL  
 : DISCOVERY

Pursuant to Civil Rules 26 and 37 of the Ohio Rules of Civil Procedure, Defendant Jon H Entine ("Husband"), by and through counsel, respectfully moves this Court for an Order vacating the discovery cut-off date set forth in the Court's Order of March 31, 2005, establishing a new discovery cut-off date, and compelling Plaintiff Ellen L Turner ("Wife") to fully and accurately answer Husband's First Set of Interrogatories and Request for Production of Documents Directed to Plaintiff, which were served on March 21, 2005, Husband's Second Set Request for Production of Documents served on March 31, 2005, and Husband's Third Request for Production of Documents Directed to Plaintiff, which was served on March 31, 2006 This Motion is supported by the following Memorandum

GREGORY HAMILTON  
 CLERK OF COURTS  
 HAMILTON COUNTY, OH

2006 MAY 24 P 3:56

FILED

*Robert J. Meyers*

Gloria S Haffer #0014333  
 Robert J Meyers #0044589  
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D68519237



## MEMORANDUM

### I. INTRODUCTION

This motion arises out of Wife's eleventh hour attempt to enforce the parties' premarital agreement. In January 2006, on the eve of the property trial, Wife surprised Husband by identifying an expert witness, a California attorney, who she intended to testify at the property trial regarding the validity of the premarital agreement under California law. This was Wife's first hint to Husband that she intended to have the Court enforce the parties' premarital agreement. Prior to January 2006, and throughout the entire case, the parties' premarital agreement was a non-issue as the parties had agreed that the premarital agreement would probably not be upheld by the Court and would not be litigated.

Husband and his counsel relied upon Wife's promise not to pursue the premarital agreement. In reliance upon Wife's promise not to seek to enforce the premarital agreement, Husband did not vigorously pursue discovery on matters related in any way to the premarital agreement.

Now that Wife has reversed her position and made the premarital agreement an issue to be litigated in this case, Husband would like a fair and meaningful opportunity to prepare his case in defense of the defective premarital agreement. He has already separately moved to continue the property trial and to bifurcate and try the issues surrounding the premarital agreement prior to resuming the property trial. Husband incorporates by reference his entire Motion to Continue Property Trial and to Bifurcate into this motion.

He now requests that the Court (1) vacate the prior discovery cut-off date established by the Court's March 31, 2005 Order, which states that general discovery will be completed within 120 days, (2) establish a new discovery cut-off date that provides sufficient time for the parties to engage in discovery on all issues surrounding the premarital agreement including claims as

to separate property, and (3) order Wife to fully and accurately respond to Husband's discovery requests, which were timely served upon Wife in March 2005 and March 2006

## **II. STATEMENT OF THE RELEVANT FACTS**

This action was commenced by Wife in January 2005. From the beginning of the case until January 2006, the parties had been negotiating a number of marital issues including an acceptable custody arrangement for their minor child and the disposition of the parties' assets. For the first year of the divorce proceeding, Wife and her counsel repeatedly represented to Husband and his counsel that they did not think the premarital agreement was enforceable and that they would not seek to enforce it. Wife did not include in her Complaint any allegations concerning enforcement of the premarital agreement nor did she advise the Court that she intended to rely upon California law for any issue in this case.

On March 21, 2005, Husband served his First Set of Interrogatories and First Request for Production of Documents upon Wife. Thereafter, on March 31, 2005, Husband served his Second Request for Production of Documents upon Wife.

Wife served her responses to Husband's discovery requests in May 2005. Wife's responses were consistent with her representation that she would not seek to enforce the premarital agreement. For example, Interrogatory No. 10 requested that Wife "[i]dentify and describe each and every asset in which you have any interest that you claim is marital property and include the date each interest was acquired and the method of acquisition." Wife answered Interrogatory No. 10 of Husband's First Set of Interrogatories by listing real estate, household goods, vehicles, financial accounts and income acquired during the marriage as marital assets.

Wife failed to produce all of the items requested by Husband. At that time, Husband did not pursue further discovery or a motion to compel against Wife for her incomplete responses because many of the omitted items were irrelevant to the case in the absence of an attempt to

enforce the premarital agreement. It would have been a waste of judicial resources, time, and legal fees and expenses to vigorously pursue discovery regarding non-issues.

In January 2006, Wife made it known that she had changed her position on the parties' premarital agreement and intended to pursue enforcement of it. She identified a California attorney as her so-called expert witness to testify regarding the premarital agreement at the property trial on February 7, 2006. Despite Husband's counsels' objections, the Court allowed the testimony.

On February 6, 2006, Wife served Husband with her Amended Response to Husband's First Set of Interrogatories. Wife attempted to amend her answer to Interrogatory No. 10. Her purported amended answer states that there is no marital property based upon the premarital agreement.

On March 31, 2006, Husband served his Third Request for Production of Documents upon Wife. This set of discovery was a follow-up to the previous set served in March 2005. It seeks documents and items related to the premarital agreement issues that were not previously produced by Wife. This discovery requests the following:

1. Copies of all check registers, checking account ledger summaries and/or other summaries of documents reflecting your accounting for all deposits, withdrawals and checks written for all checking accounts out of which you operated from January 1, 1993 to the present.
2. Copies of all records and statements pertaining to any interest that you may have (or had) in any account at the following banking institutions during the period of your marriage:
  - a. National City Bank (former Provident Bank),
  - b. NationsBank
  - c. Wells Fargo Bank
  - d. Chase Bank (former Bank One)
3. Copies of all mortgage documents pertaining to real estate (other than the S Clippinger residence).
4. Copies of all purchase documents and closing statements for real estate in which you acquired an interest during the period of your marriage located in the following:

cities Laguna Niguel, Atlanta, Georgia, Columbus, Ohio, Agoura Hills, California, and Portland, Oregon

- 5 Copies of all records verifying the moving expenses associated with each of the parties' relocations during the period of your marriage
- 6 Copies of all records related to the parties' wedding, including without limitation, receipts, invoices, contracts, correspondence, planning documents, gift registry lists, and lists of all gifts received
- 7 Copies of all correspondence including without limitation e-mails you have received or sent to executive headhunters, recruiters, colleagues, professionals, acquaintances, and friends regarding your "job searches" from the period of January 1, 2002 through December 31, 2005
- 8 Copies of all documents that substantiate Plaintiff's Exhibit 20 at the property trial (copy attached hereto)
- 9 Copies of all monthly credit card statements and annual summaries for all credit card accounts you used from January 1, 1993 to the present
- 10 Identify any recruiting companies and recruiters you have worked with since 1995
- 11 Copies of all federal, state and local income tax returns filed by you for the year 2004
- 12 Copies of all federal, state and local income tax returns filed or prepared by you (or prepared by someone else on your behalf) for the year 2005. If the 2005 returns have not yet been prepared, then identify the expected date of preparation and produce copies of all W-2s, 1099s and all other documents reflecting income you received or plan to claim in 2005 and copies of all expenses
- 13 Copies of all the iterations of your business plans, including the current plan, and identify the date when each plan was prepared
- 14 A copy of your contract with Bruce Humbert
- 15 Copies of all contracts in any form including without limitation letters or e-mails of agreements with all past, current, and prospective clients
- 16 An itemized list of all jewelry with a value of at least \$100.00 that you own or have in your possession or under your control and include the following information
  - a a detailed description of each piece,
  - b the date each piece was acquired,
  - c a detailed description of the circumstances surrounding the acquisition (e.g., gift, purchase, inheritance),
  - d the price of each piece,
  - e the current fair market value of each piece,
  - f a photograph of each piece,

- g copies of all appraisals for any or all pieces, and
- h copies of any policies of insurance insuring any or all pieces

- 17 A copy of your agreement with Sara Lee regarding your Lexus automobile and all other documents or agreements that relate in any way to your agreement with Sara Lee regarding the Lexus
- 18 Copies of all personal diaries and/or notes or lists maintained in any form (including without limitation tape recordings, handwritten journals, computer files, etc ) that you compiled or prepared in connection with your employment starting with your employment with Cadbury-Schweppes through Sara Lee
- 19 Copies of all personal diaries and/or notes or lists maintained in any form (including without limitation tape recordings, video recordings, handwritten journals, computer files, etc ) that you compiled or prepared during the period of your marriage regarding your marriage and/or Defendant
- 20 Copies of all personal diaries and/or notes or lists maintained in any form (including without limitation tape recordings, video recordings, handwritten journals, computer files, etc ) that you compiled or prepared during the period of your first marriage regarding your first marriage and/or your first husband which you retained in your possession during your second marriage

Wife refused to respond to Husband's Third Request for Production of Documents claiming that the discovery cut-off date passed <sup>1</sup> Yet, despite the fact that the discovery cut-off date had passed, Wife amended her response to Husband's Interrogatory No 10 to conform to her changed position that the premarital agreement is valid and enforceable Additionally, on May 8, 2006, despite the fact that the discovery cut-off date had passed, Wife issued a subpoena to Northlich Public Relations requesting records concerning Husband's relationship with Northlich, including all pay information, employment contracts, and personnel file A copy of the subpoena is attached as Exhibit B

At the February 7, 2006 property hearing, Wife in her testimony made a number of allegations concerning the conduct of the parties and the handling of their assets during the marriage She presented an exhibit book containing documents and/or summaries that support her position Husband disputes Wife's allegations and exhibits but does not have access to

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<sup>1</sup> A copy of Wife's counsel refusal to comply with the discovery request is attached as Exhibit B

many of the parties' documents that would support his position because Wife has refused to produce them. Wife possesses and/or has control over many of the parties' documents. Wife secretly vacated the marital residence unexpectedly in January 2005 while Husband was out of town in New York. She stripped the home of much of its furniture and took a majority of the parties' financial and other important legal documents to her new residence. She now refuses to produce these records which are relevant to her eleventh hour effort to enforce the premarital agreement and have this Court declare most of the parties' marital assets as her separate property.

### **III. LAW AND ARGUMENT**

The first part of Husband's motion seeks a new discovery period now that the previous discovery period expired and Wife has raised a new issue that did not exist prior to the discovery cut-off deadline. It is well-known in Ohio that a trial court has broad discretion in controlling the discovery process.<sup>2</sup>

Husband seeks a new discovery cut-off date to allow the parties to engage in meaningful discovery in preparation for litigating the premarital agreement. A new discovery cut-off date will not prejudice Wife. But the denial of discovery will substantially prejudice Husband. Wife has improperly removed and secreted in her residence or office the parties' important marital documents. She relies upon some of these documents to support her position. Husband is aware of documents that support his position but these documents are in Wife's possession and she has failed and/or refused to produce them. Wife has also failed and refused to produce certain documents that she claims support her position. Wife's conduct amounts to trial by ambush, a strategy that is highly disfavored in Ohio.

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<sup>2</sup> *Radovanic v. Cossler* (Cuyahoga, 2000), 140 Ohio App 3d 208

The second part of Husband's motion seeks an order compelling Wife to fully and accurately respond to all of Husband's previous discovery requests, which includes his First Set of Interrogatories and First Request for Production of Documents Directed to Plaintiff served on March 21, 2005, his Second Set Request for Production of Documents served on March 31, 2005, and his Third Request for Production of Documents Directed to Plaintiff, served on March 31, 2006

Civil Rule 37(A)(2) permits a party to move for an order compelling discovery if an opposing party fails to answer an interrogatory submitted under Rule 33 or fails to comply with a request for production of documents made under Rule 34 Local Rule 14(D) of the Rules of Practice of the Hamilton County Court of Common Pleas, applicable to this Court pursuant to Rule 10 of the Local Rules and Guidelines of the Court of Domestic Relations, complements Civ R 37 and permits the filing of a motion to compel discovery upon the failure of informal, out-of-court attempts at discovery

Husband's motion to compel is warranted because Wife failed to provide Husband with complete, accurate responses to Husband's requests Wife has control and possession of most of the documents that Husband seeks The parties stored most of these documents at their marital residence throughout their marriage Wife may have also retained some of the documents at her previous business office(s) to which Husband had no access When Wife vacated the marital residence unexpectedly in January 2005, she removed volumes of the parties' documents, among other things Husband cannot prepare his case on the premarital agreement issues without those documents, and Wife has refused to cooperate and provide copies to him

Husband's discovery requests were made in good faith, and Husband is entitled to discover the information sought in the requests There is no logical good faith reason to deny Husband copies of the parties' important legal documents Wife will not be prejudiced by having

to produce relevant, non-privileged documents. She should have produced the documents in response to Husband's initial discovery requests served more than a year ago. The only reason that Husband did not pursue a motion to compel sooner is because the parties had agreed that the premarital agreement was not an issue in the case.

By contrast, Husband will be prejudiced if he is not permitted access to these important legal documents and items. He is at a significant disadvantage now that Wife has belatedly decided to pursue the premarital agreement and has exclusive possession of the parties' legal documents. Wife should not be rewarded for her deceitful conduct whereby she waited until the discovery cut-off date passed and the property trial started to break her promise and raise the issue of enforcement of the prenuptial agreement.

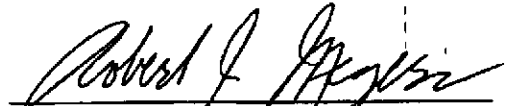
Not only is Wife's trial by ambush tactic appalling and unfair, so too is her refusal to cooperate in discovery. Fairness and equity demand that the discovery cut-off date be vacated to allow the parties to engage in discovery on all issues related to the premarital agreement. Furthermore, Wife should be compelled to answer all interrogatories and to produce all of the requested documents.

#### **IV. CONCLUSION**

Based upon the foregoing, Husband respectfully requests that this Court grant his Motion to Vacate the Discovery Cut-off Date and to Compel Discovery. Specifically, Husband requests that the Court vacate the previous discovery cut-off date and establish a new discovery cut-off date so that the parties may engage in additional discovery. Husband further requests that the Court issue an order compelling Wife to immediately produce the documents requested in Husband's First Set of Interrogatories, First Request for Production of Documents, Second Set Request for Production of Documents, and Third Request for Production of Documents. Alternatively, Husband requests that this Court rule that the premarital agreement is not at issue.



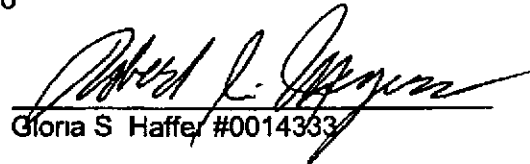
in this case, and will not be enforced



Gloria S Haffer #0014383  
Robert J Meyers #0014589  
Trial Attorneys for Defendant Jon H Entine  
Buechner, Haffer, O'Connell,  
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Telephone 513-579-1500  
Facsimile 513-977-4361  
E-mail [ghaffer@bhomh.com](mailto:ghaffer@bhomh.com)  
E-mail [rmeyers@bhomh.com](mailto:rmeyers@bhomh.com)

**NOTICE OF HEARING**

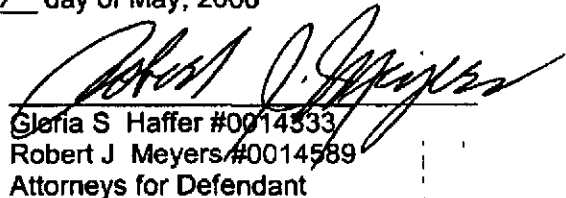
Please take notice that this Motion will be heard on the 20<sup>th</sup> day of May,  
2006 at 10:30 A M , before Magistrate Theile of the Hamilton County Ohio, Court of Common  
Pleas, Domestic Relations Division, Cincinnati, Ohio



Gloria S Haffer #0014383

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing Defendant's Motion to  
Vacate Discovery Cut-off Date and to Compel Discovery has been served by facsimile and  
regular U S Mail upon Sallee M Fry, Esq , Law Office of Sallee M Fry, 2345 Ashland Avenue,  
Cincinnati, Ohio 45206 and upon Randal S Bloch, Esq , Wagner & Bloch, LLC, 2345 Ashland  
Avenue, Cincinnati, Ohio 45206, on this 24<sup>th</sup> day of May, 2006



Gloria S Haffer #0014383  
Robert J Meyers #0014589  
Attorneys for Defendant

BUECHNER, HAFFER,  
O'CONNELL, MEYERS,  
HEALEY & KOENIG  
CO , L P A  
Suite 300  
105 East Fourth Street  
Cincinnati, Ohio 45202  
(513) 579-1500

105209

COURT OF COMMON PLEAS  
DIVISION OF DOMESTIC RELATIONS  
HAMILTON COUNTY, OHIO

ELLEN L. TURNER

Plaintiff,

v.

JON H. ENTINE

Defendant

CASE NO. DR0500131

JUDGE PANIOTO  
MAGISTRATE THEILE

SUBPOENA FOR WITNESS

Duces Tecum

**FILED**

STATE OF OHIO, HAMILTON COUNTY, SS:

MAY 0 8 2006

TO NORTHLICH  
720 EAST PETE ROSE WAY  
CINCINNATI, OHIO 45202

GREGORY HARTMANN  
COMMON PLEAS COURT

You are hereby commanded to appear on the date and time and location indicated below for the following purpose(s) in connection with the case captioned above

- 1 Attend and give testimony and bring with you the information requested in #2 regarding John H. Entine, whose date of birth is 04/30/1952 and social security number is 192-38-8388
- 2 In lieu of appearance provide the following information by May 31, 2006 (faxes are acceptable):
  - o All pay information including salary, bonuses, commissions, advances, any monies to which he may be entitled etc. and any other employment benefits.
  - o W-2's, 1099's, etc., since first employed or contracted year to date.
  - o Employment contract(s) and entire personnel file.
  - o Current and past job titles, hours of work, location(s) of employment

TIME: 9.00 A.M.  
 DATE: June 14, 2006  
 LOCATION: HAMILTON COUNTY COURT OF DOMESTIC RELATIONS  
 (To Appear) 800 BROADWAY  
 CINCINNATI, OHIO 45202  
 3rd FLOOR  
 BEFORE THE HONORABLE MAGISTRATE THEILE

NATURE OF PROCEEDING: PROPERTY TRIAL

You may be held in contempt of Court for failure to appear

Pursuant to Civil Rule 45(A)(2), this subpoena is signed by attorney SALLEE FRY and issued on behalf of the court shown in caption above

A COPY OF DIVISIONS (C) AND (D) OF CIVIL RULE 45 IS ATTACHED HERETO.

*Sallee M. Fry*  
 SALLEE M. FRY/ 0042625  
 Attorney for Plaintiff  
 2345 Ashland Avenue  
 Cincinnati, Ohio 45206  
 (513) 421-6000

WITNESS my hand and the seal of the said Court at Cincinnati, this 5<sup>th</sup> day of May A D 2006

GREGORY HARTMANN CLERK OF COURTS

BY *[Signature]*  
Deputy Clerk



## RULES OF CIVIL PROCEDURE

### RULE 45 Subpoena

#### (C) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

- (1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena.
- (2) (a) A person commanded to produce under Divisions (A)(1)(b)(II),(III),(IV) or (V) of this rule need not appear in person at the place of production or inspection unless commanded to attend and give testimony at a deposition, hearing or trial.
- (b) Subject to division (D)(2) of this rule, a person commanded to produce under Divisions (A)(1)(b)(II),(III),(IV), or (V) of this rule may, within fourteen days after service of the subpoena or before the time specified for compliance if such time is less than fourteen days after service, serve upon the party or attorney designated in the subpoena written objections to production. If objection is made, the party serving the subpoena shall not be entitled to production except pursuant to an order of the Court by which the subpoena was issued. If objection has been made, the party serving the subpoena, upon notice to the person commanded to produce, may move at any time for an order to compel the production. An order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the production commanded.
- (3) On timely motion, the Court from which the subpoena was issued shall quash or modify the subpoena, or order appearance or production only under specified conditions, if the subpoena does any of the following:
  - (a) Fails to allow reasonable time to comply,
  - (b) Requires disclosure of privileged or otherwise protected matter and no exception or waiver applies,
  - (c) Requires disclosure of a fact known or opinion held by an expert not retained or specifically employed by any party in anticipation of litigation or preparation for trial as described by Civ. R. 26(B)(4). If the fact or opinion does not describe specific events or occurrences of dispute and results from study by that expert that was not made at the request of any party;
  - (d) Subjects a person to undue burden.
- (4) Before filing a motion pursuant to Division (C)(3)(d) of this rule, a person resisting discovery under this rule shall attempt to resolve any claim of undue burden through discussions with the issuing attorney. A motion filed pursuant to Division (C)(3)(d) of this rule, shall be supported by an affidavit of the subpoenaed person or a certificate of that person's attorney of the efforts made to resolve any claim of undue burden.
- (5) If a motion is made under Division (C)(3)(c) or (C)(3)(d) of this rule, the Court shall quash or modify the subpoena unless the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated.

#### (D) DUTIES IN RESPONDING TO SUBPOENA

- (1) A person responding to a subpoena to produce documents shall, at the person's option, produce them as they are kept in the usual course of business or organized and labeled to correspond with the categories in the subpoena. A person producing documents pursuant to a subpoena for them shall permit their inspection and copying by all parties present at the time and place set in the subpoena for inspection and copying.
- (2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials under Civ. R. 26(B)(3) or (4), the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

#### CIVIL RULE 45(E) SANCTIONS

Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. A subpoenaed person or that person's attorney frivolously resisting discovery under this rule may be required by the court to pay the reasonable expenses, including reasonable attorney's fees, of the party seeking the discovery. The court from which a subpoena was issued may impose upon a party or attorney in breach of the duty imposed by division (C)(1) of this rule an appropriate sanction, which may include, but is not limited to, lost earnings and reasonable attorney's fees.

COURT OF COMMON PLEAS  
DIVISION OF DOMESTIC RELATIONS  
HAMILTON COUNTY, OHIO

5

ELLEN L. TURNER

Plaintiff,

v.

JON H. ENTINE

Defendant

CASE NO. DR0500131

JUDGE PANIOTO  
MAGISTRATE THEILE

SUBPOENA FOR WITNESS  
Duces Tecum

STATE OF OHIO, HAMILTON COUNTY, SS:

FILED

TO: NORTHLICH  
720 EAST PETE ROSE WAY  
CINCINNATI, OHIO 45202

MAY 08 2006

GREGORY HARTMANN  
CLERK OF COURTS

You are hereby commanded to appear on the date and time and location indicated on this subpoena for the purpose(s) in connection with the case captioned above.

- Attend and give testimony and bring with you the information requested in #2 regarding John H. Entine, whose date of birth is 04/30/1952 and social security number is 192-38-8388.
- In lieu of appearance provide the following information by May 31, 2006 (faxes are acceptable):
  - All pay information including salary, bonuses, commissions, advances, any monies to which he may be entitled etc. and any other employment benefits.
  - W-2's, 1099's, etc., since first employed or contracted year to date.
  - Employment contract(s) and entire personnel file.
  - Current and past job titles, hours of work, location(s) of employment

TIME: 9:00 A.M.  
 DATE: June 14, 2006  
 LOCATION: HAMILTON COUNTY COURT OF DOMESTIC RELATIONS  
 (To Appear) 800 BROADWAY  
 CINCINNATI, OHIO 45202  
 3rd FLOOR  
 BEFORE THE HONORABLE MAGISTRATE THEILE

NATURE OF PROCEEDING: PROPERTY TRIAL

You may be held in contempt of Court for failure to appear.

Pursuant to Civil Rule 45(A)(2), this subpoena is signed by attorney SALLEE FRY and issued on behalf of the court shown in caption above.

A COPY OF DIVISIONS (C) AND (D) OF CIVIL RULE 45 IS ATTACHED HERETO.

*160*  
*200*  
*800*

*Jonathan*  
*5-9-06*

*Sallee M. Fry*

SALLEE M. FRY/ 0042625  
 Attorney for Plaintiff  
 2345 Ashland Avenue  
 Cincinnati, Ohio 45206  
 (513) 421-6000

2006 MAY 10 P 2 58  
 HAMILTON COUNTY, OH  
 GREGORY HARTMANN  
 CLERK OF COURTS

WITNESS my hand and the seal of the said Court at Cincinnati, this 8<sup>th</sup> day of May A.D. 2006.

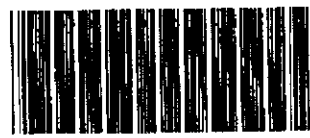
GREGORY HARTMANN CLERK OF COURTS

BY [Signature]  
Deputy Clerk



D68320143

22



D68320482

COURT OF COMMON PLEAS  
DIVISION OF DOMESTIC RELATIONS  
HAMILTON COUNTY, OHIO

ELLEN L. TURNER : CASE NO. DR0500131  
Plaintiff, : JUDGE PANIOTO  
 : MAGISTRATE THEILE  
v. :  
JON H. ENTINE : DEFENDANT'S MEMORANDUM IN  
 : OPPOSITION TO PLAINTIFF'S  
Defendant. : MOTION TO QUASH

I. INTRODUCTION

Defendant Jon Entine ("Husband"), by and through counsel, submits his Memorandum in Opposition to Plaintiff Ellen Turner's ("Wife") Motion to Quash regarding the subpoenas issued to Cincinnati Bell on April 19, 2006 and Cingular Wireless on April 19, 2006. For the reasons that follow, the Court must deny Wife's Motion to Quash and enforce Husband's record subpoenas directed to Cincinnati Bell and Cingular Wireless.

II. BRIEF STATEMENT OF THE RELATIVE FACTS

On April 19, 2006, Husband served Cincinnati Bell with record subpoenas requesting monthly statements for Wife's local and long distance service charges for Wife's land phones from January 1, 2005 to the present. Also on April 19, 2006, Husband served Cingular Wireless with record subpoenas requesting monthly statements for Wife's cell phone from January 1, 2005 through the present date. Husband requested this information for purposes of preparing his case and verifying Wife's allegations of phone calls she made and/or received. To date, Husband has not received a response from either Cincinnati Bell or Cingular Wireless.

III. LAW AND ARGUMENT

Wife's Motion to Quash must be denied for several reasons. First, according to Civ. R. 45, Wife is not entitled to quash the subpoena issued to Cincinnati Bell and Cingular Wireless. A motion to quash is available only to the person or entity commanded to respond to the

FILED  
2006 MAY 10 2 16 PM  
GREGORY BARTON  
CLERK OF COURT  
HAMILTON COUNTY, OH

BUECHNER, HAFFER,  
O'CONNELL, MEYERS,  
HEALEY & KOENIG  
CO., L.P.A.  
Suite 300  
105 East Fourth Street  
Cincinnati, Ohio 45202  
(513) 579-1500

subpoena.<sup>1</sup> In this case, only Cincinnati Bell and Cingular Wireless have standing to quash the subpoenas issued to them. Neither Cincinnati Bell or Cingular Wireless have filed a motion to quash or any other motion challenging this subpoena. Wife does not have standing to quash the subpoena. This Court can not entertain Wife's Motion to Quash, and it should be denied.

Even if Wife had standing to quash, which she does not, Wife has failed to comply with Civ. R. 45. Civ. R. 45(C)(3) (a) through (d) sets forth four specific conditions under which a court may quash a subpoena. These four specific conditions are as follows:

- a. The subpoena fails to allow reasonable time to comply;
- b. The subpoena requires disclosure of privileged or otherwise protected matter and no exception or waiver applies;
- c. The subpoena requires disclosure of a fact known or opinion held by an expert not retained or specially employed by any party in anticipation of litigation or preparation of trial as described by Civ.R. 26(B)(4), if the fact or opinion does not describe specific events or occurrences in dispute and results from study by that expert that was not made at the request of any party; and
- d. The subpoena subjects a person to undue burden.<sup>2</sup>

Wife has not argued any of these specific conditions as a ground to quash Husband's subpoena. None of these four conditions apply to this matter. Thus, this Court cannot properly quash Husband's subpoenas to Cincinnati Bell and Cingular Wireless.

<sup>1</sup> *Jones v. Records Deposition Serv. of Ohio, Inc.*, Lucas App. No. L01-1333, 2002-Ohio-2269, 2002 Ohio App. LEXIS 2295 (Copy attached).

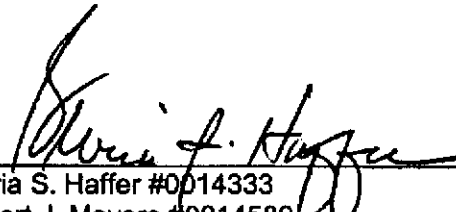
<sup>2</sup> Civ.R. 45(c)(3)(a) through (d).

The documents sought by Husband are relevant to this action because it enables Husband to verify allegations asserted by Wife throughout this case concerning communications and phone calls made or received by Wife.

Wife knows that Husband is entitled to this information yet she has attempted to block access with an improper motion to quash for which she does not have standing to assert. Husband submits that Wife's Motion to Quash has been interposed for improper purposes, namely, to delay these proceedings, to harass Husband, to avoid producing relevant discovery materials to which Husband is entitled, and to needlessly increase Husband's legal fees and expenses. Husband is entitled to an award of reasonable expenses, including attorneys' fees, for having to oppose this frivolous Motion to Quash.

#### IV. CONCLUSION

Based upon the foregoing, Wife's Motion to Quash the Cincinnati Bell and Cingular Wireless subpoenas must be denied. Husband respectfully requests that the Court enforce the two subpoena and order Wife to pay Husband's reasonable attorney's fees incurred in the defense of her Motion to Quash because it is without merit and fails to comply with the mandatory provisions of the Civil Rules and Ohio law. Husband's reasonable attorney's fees in defending this Motion are \$1,500.00.



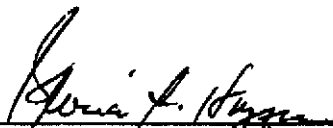
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Gloria S. Haffer #0014333  
Robert J. Meyers #0014589  
Trial Attorneys for Defendant Jon H. Entine  
Buechner, Haffer, O'Connell,  
Meyers, Healey & Koenig Co., L.P.A.  
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BUECHNER, HAFFER,  
O'CONNELL, MEYERS,  
HEALEY & KOENIG  
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Suite 300  
105 East Fourth Street  
Cincinnati, Ohio 45202  
(513) 579-1500

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing Defendant's Memorandum In Opposition to Plaintiff's Motion to Quash has been served upon Sallee M. Fry, Esq., Law Office of Sallee M. Fry, 2345 Ashland Avenue, Cincinnati, Ohio 45206 and upon Randal S. Bloch, Esq., Wagner & Bloch, LLC, 2345 Ashland Avenue, Cincinnati, Ohio 45206, on this 10<sup>th</sup> day of May, 2006.



Gloria S. Haffer #0014883  
Robert J. Meyers #0004589  
Attorneys for Defendant

105474

BUECHNER, HAFFER,  
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COURT OF APPEALS OF OHIO, SIXTH APPELLATE DISTRICT, LUCASCOUNTY

2002 Ohio 2269; 2002 Ohio App. LEXIS 2295

May 10, 2002, Decided

**PRIOR HISTORY:** [\*\*1] Trial Court No. CI-98-4180.

**DISPOSITION:** Trial court's judgment was affirmed.

**CASE SUMMARY:**

**PROCEDURAL POSTURE:** The case was an appeal from a judgment of the Lucas County Court of Common Pleas (Ohio) which sanctioned appellant lawyer, pursuant to Ohio R. Civ. P. 11, for filing and prosecuting an unsupportable case against appellee corporation.

**OVERVIEW:** The appellate court found that where the lawyer knew that there had been a waiver of his client's confidentiality rights and he failed to challenge subpoenas in the underlying civil action to prevent improper disclosure of her records, and purposely chose to resolve the subpoena issue by means of legal action rather than by challenging the discovery in the underlying civil action, he had violated Ohio R. Civ. P. 11. The lawyer admitted at the sanction hearing that he did not know if any of the medical records released went beyond those relevant to his client's civil action. Therefore, the lawyer had no basis for arguing that the corporation obtained more information than it should have. While the trial court erred in finding the client lacked standing to bring the action, the client had waived her right to challenge the subpoenas she contested because she did not make an objection nor move for a protective order in the underlying civil action. The lawyer did not have sufficient facts to justify filing the action.

**OUTCOME:** The lower court decision was affirmed.

**LexisNexis(R) Headnotes**

**Civil Procedure: Sanctions: Baseless Filings**  
[HN1] See Ohio R. Civ. P. 11.

**Civil Procedure: Sanctions: Baseless Filings**  
[HN2] Appellate courts must determine as a matter of law whether there were any legal grounds for the

pleading and review a trial court's determination of whether there is a willful violation of Ohio R. Civ. P. 11 and whether sanctions should be awarded on an abuse of discretion standard.

**Civil Procedure: Appeals: Standards of Review: Abuse of Discretion**

[HN3] An abuse of discretion is found only if appellate courts find that the trial court made more than error of law or judgment. Appellate courts must find that the trial court's ruling reflected an unreasonable, arbitrary, or unconscionable attitude.

**Civil Procedure: Sanctions: Baseless Filings**

[HN4] To constitute a willful violation of Ohio R. Civ. P. 11, a party must willfully sign a pleading which, to the best of his knowledge, information and belief, is not supported by good ground.

**Torts: Malpractice Liability: Healthcare Providers**

**Torts: Malpractice Liability: Misconduct Generally**

[HN5] The Supreme Court of Ohio has recognized the tort of breach of confidentiality where there is a wrongful inducement of another to breach their duty of confidentiality.

**Torts: Malpractice Liability: Healthcare Providers**

**Torts: Malpractice Liability: Misconduct Generally**

[HN6] Disclosure of confidential information is permitted where the disclosure is mandated by the Ohio Revised Code, a common law duty, or public policy. This exception is analogous to the exception to the physician-patient testimonial privilege legislatively expressed in *Ohio Rev. Code Ann. § 2317.02(B)(1)(a)(iii)*.

**Civil Procedure: Disclosure & Discovery: Privileged Matters**

**Evidence: Privileges: Doctor-Patient Privilege**

**Torts: Malpractice Liability: Healthcare Providers**

[HN7] A physician can be compelled to disclose privileged information if the patient signs a release or there is a pending civil action and the information is sought pursuant to Ohio's Civil Rules of Procedure.

Civil Procedure: Disclosure & Discovery: Privileged Matters

Evidence: Privileges: Waiver of Privilege

[HN8] Ordinarily, a party brings a breach of confidentiality action after disclosure of the medical information.

COUNSEL: George C. Rogers, for appellant.

Tim L. Collins, for appellee.

JUDGES: Peter M. Handwork, J. Melvin L. Resnick, J., James R. Sherck, J., CONCUR.

OPINIONBY: HANDWORK

OPINION: DECISION AND JUDGMENT ENTRY

HANDWORK, J.

[\*P1] This appeal is from the June 25, 2001 judgment of the Lucas County Court of Common Pleas which sanctioned George Rogers, pursuant to Civ.R. 11, for filing and prosecuting an, unsupportable case against appellee, Records Deposition Service of Ohio, Inc. Upon consideration of the assignment of error, we affirm the decision of the lower court. Appellant, George Rogers, asserts the following sole assignment of error on appeal:

[\*P2] "THE TRIAL COURT COMMITTED PREJUDICIAL ERROR WHEN IT IMPOSED CIVIL RULE 11 SANCTIONS AGAINST APPELLANT."

[\*P3] The following facts were established by the trial court. In 1995, Lora Jones was injured in a work-related accident. She brought suit against her employer. Jones signed a release permitting her employer's attorney to obtain her medical records. Appellee was hired by the attorney for Jones' employer to obtain her medical records. By the time Rogers, Jones's attorney, [\*2] learned of the subpoenaed records, the medical providers had already sent Jones' records to appellee. Rogers argues that the subpoenas were invalid because they did not meet the requirements of Civ.R. 45. He demanded that appellee return the records to Jones. Appellee refused to do so. Rogers complained to the attorney for Jones' employer and he agreed to work out a compromise. Rogers also filed the current action against appellee, on behalf of Jones, seeking declaratory judgment that the subpoenas were defective and asserting claims of tortious invasion of privacy and conversion.

[\*P4] The trial court dismissed the declaratory judgment action on summary judgment holding that appellant lacked standing to complain about the

sufficiency of service on the third-party medical providers. Furthermore, the court held that even if appellant could assert the rights of the subpoenaed witnesses, he failed to timely raise his objections. The court also granted summary judgment to appellee on the claims for invasion of privacy and conversion of Jones' medical records. The court held that Jones waived her patient-physician confidentiality privilege by giving a medical release to counsel[\*3] for her employer and by filing a lawsuit against her employer. Since appellee did nothing more than retrieve the medical records as an agent for counsel for Jones' employer, the court concluded that appellee did not violate Jones' patient-physician privilege.

[\*P5] Appellee then sought sanctions against Rogers for filing this suit allegedly in violation of Civ.R. 11. The court granted appellee's motion and sanctioned Rogers. The court awarded appellee \$9,174.25 for its expenses and reasonable attorney fees expended to defend this action plus interest beginning December 19, 2000. Rogers then sought an appeal to this court.

[\*P6] In his sole assignment of error, Rogers asserts several issues. All of the issues relate to the court's imposition of sanctions against Rogers for filing this suit.

[\*P7] [HN1] Civ.R. 11 provides:

[\*P8] "Every pleading, motion, or other paper of a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, \*\*\*. The signature of an attorney or pro se party constitutes a certificate by the attorney or party that the attorney or party has read the document; [\*4] that to the best of the attorney's or party's knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. \*\*\* For a willful violation of this rule an attorney or pro se party, upon motion of a party or upon the court's own motion, may be subjected to appropriate action, including an award to the opposing party of expenses and reasonable attorney fees incurred in bringing any motion under this rule. \*\*\*"

[\*P9] On appeal, [HN2] we must determine as a matter of law whether there were any legal grounds for the pleading. *NationsRent v. Michael Const. Co.* (Mar. 27, 2002), 2002 Ohio 1380, 2002 Ohio App. LEXIS 1388, Summit App. No. 20755, at 5. We review the trial court's determination of whether there was a willful violation of Civ.R. 11 and whether sanctions should have been awarded on an abuse of discretion standard. *State ex rel. Fant v. Sykes, Director, Ohio Dept. of Admin. Services* (1987), 29 Ohio St.3d 65, 505 N.E.2d 966. [HN3] An abuse of discretion is found only if we find that the trial court made more than error of law or

judgment. We must find that the trial court's ruling reflected an unreasonable, arbitrary, or unconscionable attitude. *Tracy v. Merrell Dow Pharmaceuticals, Inc.* (1991), 58 Ohio St.3d 147, 152, 569 N.E.2d 875. [\*\*5] [HN4] To constitute a willful violation of Civ.R. 11, a party must have "willfully signed a pleading which, to the best of his knowledge, information and belief, was not supported by good ground." *NationsRent v. Michael Const. Co.*, supra, 2002 Ohio App. LEXIS 1388 at \*6 citing *Haubeil & Sons Asphalt & Materials, Inc. v. Brewer & Brewer Sons, Inc.* (1989), 57 Ohio App.3d 22, 23, 565 N.E.2d 1278.

[\*P10] Rogers contends that Jones has an actionable claim against appellee for unlawfully inducing her medical providers to breach their physician confidentiality duty not to disclose Jones' medical records by knowingly sending them invalid subpoenas.

[\*P11] In *Biddle v. Warren Gen. Hosp.* (1999), 86 Ohio St. 3d 395, 715 N.E.2d 518, paragraphs one, two, and three of the syllabus, [HN5] the Supreme Court of Ohio has recognized the tort of breach of confidentiality where there is a wrongful inducement of another to breach their duty of confidentiality. However, the Biddle court also held that [HN6] disclosure of confidential information is permitted where the disclosure is mandated by the Ohio Revised Code, a common law duty, or public policy. *Id.* at paragraph two of the [\*\*6] syllabus. This exception is analogous to the exception to the physician-patient testimonial privilege legislatively expressed in *R.C. 2317.02(B)(1)(a)(iii)*. Therefore, we would agree with appellee that [HN7] a physician can be compelled to disclose privileged information if the patient signed a release or there is a pending civil action and the information is sought pursuant to Ohio's Civil Rules of Procedure.

[\*P12] While Rogers contends on appeal that appellee obtained records beyond those contemplated by *R.C. 2317.02(B)(1)(a)(iii)*, he admitted at the sanction hearing that he did not know if any of the medical records released went beyond those relevant to Jones' civil action. Therefore, Rogers has no basis for arguing that appellee obtained more information than it should have.

[\*P13] Rogers argues that the trial court erred by finding that Jones lacked standing to bring a declaratory judgment action to raise the issue of service of the subpoenas. The trial court properly concluded that only the person subpoenaed has standing to file a motion challenging the subpoena under Civ.R. 45(C) in order to quash the subpoena. [\*\*7] *North Olmsted v. Pisani* (Nov. 22, 1995), 1995 Ohio App. LEXIS 5204, Cuyahoga App. No. 67986 & 67987 and *Ramus v. Ramus* (Aug. 19, 1976), 1976 Ohio App. LEXIS 7431, Cuyahoga App. No.

34965. However, Jones did not seek to quash the subpoena in this case. Rather, she sought to prove that the subpoena was improperly served in order to demonstrate that appellee wrongfully induced Jones' medical providers into disclosing her medical records. Therefore, we agree that the trial court erred in finding that Jones lacked standing to bring this action.

[\*P14] However, we agree with the trial court that even if Jones had standing to seek declaratory judgment, she waived her right to challenge the subpoenas. Ordinarily [HN8] a party brings a breach of confidentiality action after disclosure of the medical information. However, in this case, we agree with the trial court that Jones lost her right to assert this issue because she did not make an objection nor move for a protective order in the underlying civil action. Had she done so, the trial court could have determined whether appellee gained access to records beyond those relevant to the pending lawsuit and thereby prevented an improper disclosure of Jones' medical records. We need not [\*\*8] reach the issue of whether the subpoenas were properly prepared or served.

[\*P15] Rogers argues that there was sufficient grounds to justify his filing of the present lawsuit. Upon a review of the evidence in this case, we find that Rogers did not have sufficient facts to justify filing this action. Rogers knew that there had been a waiver of Jones' confidentiality rights and that he failed to challenge the subpoenas in the underlying civil action to prevent improper disclosure of her records.

[\*P16] Finally, Rogers argues that there was no evidence that he willfully violated Civ.R. 11. He argues that there was no evidence to support the court's finding of personal animus against appellee.

[\*P17] At the sanction hearing, Rogers submitted into evidence a letter sent to the attorney for Jones' attorney in which Rogers wrote that he had been involved in a prior incident involving appellee and their process of serving allegedly improper subpoenas. He also stated that he would "not allow non-parties, Records Deposition Service for one, to get disclosure of my client's records and certainly not with a phony subpoena. I will sue the parties responsible [\*\*9] for any disclosure of medical records that are obtained by false or fraudulent means." Rogers clearly indicated at the hearing that he intended to bring suit against appellee. He purposely chose to resolve the subpoena issue by means of this action rather than by challenging the discovery in the underlying civil action. For that reason, the trial court found that Rogers willfully filed this action. We cannot find that the trial court abused its discretion by imposing sanctions against Rogers. Appellant's sole assignment of error is found not well-taken.

[\*P18] Having found that the trial court did not commit error prejudicial to Rogers, the judgment of the Lucas County Court of Common Pleas is affirmed. Pursuant to App.R. 24, Rogers is hereby ordered to pay the court costs incurred on appeal.

JUDGMENT AFFIRMED.

Peter M. Handwork, J. Melvin L. Resnick, J., James R. Sherck, J., CONCUR.

COURT OF COMMON PLEAS  
DIVISION OF DOMESTIC RELATIONS  
HAMILTON COUNTY, OHIO

ELLEN L. TURNER

Plaintiff,  
v.

JON H. ENTINE

Defendant

CASE NO. DR0500131

JUDGE PANIOTO  
MAGISTRATE THEILE

SUBPOENA FOR WITNESS

Duces Tecum

**FILED**

MAY 08 2006

GREGORY HARTMANN  
COMMON PLEAS COURT

STATE OF OHIO, HAMILTON COUNTY, SS:

TO NORTHLICH  
720 EAST PETE ROSE WAY  
CINCINNATI, OHIO 45202

You are hereby commanded to appear on the date and time and location indicated below for the following purpose(s) in connection with the case captioned above

- 1 Attend and give testimony and bring with you the information requested in #2 regarding John H Entine, whose date of birth is 04/30/1952 and social security number is 192-38-8388
- 2 In lieu of appearance provide the following information by May 31, 2006 (faxes are acceptable)
  - o All pay information including salary, bonuses, commissions, advances, any monies to which he may be entitled etc and any other employment benefits
  - o W-2's, 1099's, etc , since first employed or contracted year to date
  - o Employment contract(s) and entire personnel file
  - o Current and past job titles, hours of work, location(s) of employment

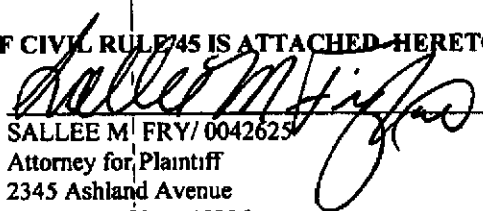
TIME: 9 00 A M  
 DATE: June 14, 2006  
 LOCATION: HAMILTON COUNTY COURT OF DOMESTIC RELATIONS  
 (To Appear) 800 BROADWAY  
 CINCINNATI, OHIO 45202  
 3rd FLOOR  
 BEFORE THE HONORABLE MAGISTRATE THEILE

NATURE OF PROCEEDING: PROPERTY TRIAL

You may be held in contempt of Court for failure to appear

Pursuant to Civil Rule 45(A)(2), this subpoena is signed by attorney SALLEE FRY and issued on behalf of the court shown in caption above

A COPY OF DIVISIONS (C) AND (D) OF CIVIL RULE 45 IS ATTACHED HERETO.

  
 SALLEE M. FRY/0042625  
 Attorney for Plaintiff  
 2345 Ashland Avenue  
 Cincinnati, Ohio 45206  
 (513) 421-6000

WITNESS my hand and the seal of the said Court at Cincinnati, this 8<sup>th</sup> day of May A.D. 2006

GREGORY HARTMANN CLERK OF COURTS

BY   
Deputy Clerk

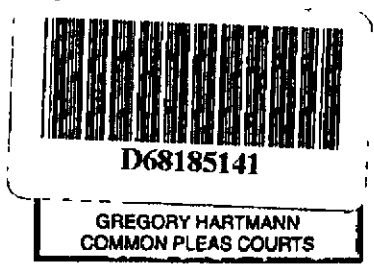


Child Cust.  
 Vis Enforce/MCO  
 Sub Enforce/MCO  
 Other

Randal S Bloch, #0010124  
Attorney for Plaintiff

**COURT OF COMMON PLEAS  
 DIVISION OF DOMESTIC RELATIONS  
 HAMILTON COUNTY, OHIO**

<b>ELLEN TURNER</b>	:	<b>Case N. DR05000131</b>
Plaintiff	:	<b>File No.</b>
-vs-	:	<b>Judge Panioto Magistrate Theile</b>
<b>John Entine</b>	:	<b><u>MOTION TO QUASH</u></b>
Defendant	:	



Now comes Plaintiff, Ellen Turner, by and through her counsel, and moves this Court to quash the subpoenas issued on April 19, 2006 to Cincinnati Bell, 201 E Fourth Street, Cincinnati, Ohio 45274 and Cingular Wireless, 5020 Ash Grove Road, Springfield, Illinois 62711. Said subpoenas request information concerning monthly statements for Plaintiff's cell phone from January 1, 2005 through the present and telephone and long distance charges for Plaintiff's phone calls from January 1, 2005 to the present. The information requested requires disclosure of " . privileged or otherwise protected matter and no exception of waiver applies. Ohio Rules of Civil Procedure 45(C)(3)(b)

GREGORY HARTMANN  
 CLERK OF COURTS  
 HAMILTON COUNTY, OHIO  
 MAY 11 P 2:33  
**FILED**

The information invades the personal privacy of Plaintiff and is essentially harassment to her by her husband, the Defendant herein.

WHEREFORE, for the above-noted reasons, Plaintiff respectfully requests that this Court quash the subpoenas issued to Cincinnati Bell and Cingular Wireless, for costs of this action, including but not limited to attorneys fees, and for any and all other relief this Court deems necessary and proper.



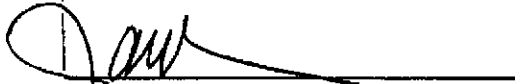
RANDAL S. BLOCH #0010124  
Attorney for Plaintiff  
2345 Ashland Avenue  
Cincinnati, Ohio 45206  
(513) 751-4420  
Fax (513) 751-4555  
[wagbloch@yahoo.com](mailto:wagbloch@yahoo.com)

**NOTICE OF HEARING**

A hearing on the within matter has been scheduled for 5/26, 2006 at 10:30 a.m. before Magistrate Theile, Room 02-102 of the Hamilton County Domestic Relations Court, 800 Broadway, Cincinnati, Ohio 45202

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Motion has this 1 day of May, 2006 been served by ordinary mail upon Gloria S Haffer and Robert J. Meyers, Attorney for Defendant, 300 Fourth & Walnut Centre, 105 E Fourth Street, Cincinnati, Ohio 45202.



RANDAL S BLOCH

*Handwritten initials*

Randal S Bloch, #0010124  
Attorney for Plaintiff

**COURT OF COMMON PLEAS  
DIVISION OF DOMESTIC RELATIONS  
HAMILTON COUNTY, OHIO**

**ELLEN TURNER**

Plaintiff

-vs-

**John Entine**

Defendant

Case N. DR05000131

File No.

Judge Panioto  
Magistrate Theile

AFFIDAVIT IN SUPPORT OF MOTION



GREGORY HARTMANN  
COMMON PLEAS COURTS

STATE OF OHIO, COUNTY OF HAMILTON) SS:

I, Randal S Bloch, Counsel for Plaintiff, have not had any discussions with  
Counsel for Defendant regarding resolution of the issuance of the subpoenas in this  
matter.

*Handwritten signature of Randal S. Bloch*  
RANDAL S. BLOCH  
**FILED**  
2006 MAY 11 P 2:31  
GREGORY HARTMANN  
CLERK OF COURTS  
HAMILTON COUNTY, OH

Sworn to before me and subscribed in my presence this 1 day of May, 2006.

*Handwritten signature of Notary Public*  
\_\_\_\_\_  
Notary Public



COURT OF COMMON PLEAS  
DIVISION OF DOMESTIC RELATIONS  
HAMILTON COUNTY, OHIO

*Lead*

ELLEN TURNER,

Plaintiff,

v

JON ENTINE,

Defendant.

Case No DR0500131

*EZ 3-3 96:9*

Magistrate Theile

Judge Panioto

*4-20-06*

ENTRY APPOINTING  
PARENTING COORDINATOR

1 Ellen Turner and Jon Entine (the Parents) have entered into an Agreed Shared Parenting Plan. They agree that it is of utmost importance that they work to reduce their level of conflict in the best interests of their daughter, Madeleine (Maddie).

2 A Parenting Coordinator (PC) is hereby appointed to assist the parents to work on stabilizing their relationship as it relates to Maddie. Sherri Goren Slovin is appointed as PC.

3 The PC's fundamental role is to minimize the conflict to which Maddie is exposed by the Parents.

Limits to power

4 The PC shall not make any modification to any Order, Judgment or Decree in this case. The PC shall not divest the court of exclusive jurisdiction to determine the fundamental issues of the allocation of parental rights and responsibilities, parenting time, and child support.

General Role/Scope of Authority

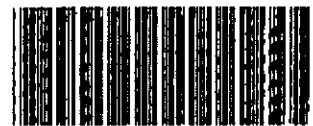
5 The PC's role is to aid the parties in

- Identifying disputed issues
- Reducing misunderstandings
- Clarifying priorities
- Exploring possibilities for compromise
- Developing methods of collaboration in parenting
- Complying with the Court's order of allocation of parental rights
- All issues regarding Maddie's custodial account



6 In order to carry out the general role, the PC has the authority to resolve the following type of issues in order to minimize that conflict:

A. Clarification of parenting time/access schedules or conditions including vacation, holiday and temporary variation from existing parenting plan. (The PC does not have



D68125202

the authority to substantially modify time allocation )

B Transitions/exchanges of the child including date, time, place, means of transportation and transporter,

C Health care management including medical, dental, orthodontic and vision care,

D Therapy or mental health care, including substance abuse assessment or counseling for the child,

E Parent's communication with others regarding the other spouse in Maddie's presence and outside of Maddie's presence

F Education or daycare including tutoring, summer school participation, attendance in and at activities

G Enrichment and extracurricular activities including camps and jobs,

H Child's travel and passport arrangements,

I Clothing, equipment and personal possessions of Maddie,

J Communication by a parent with the child including telephone, cell phone pager, fax and email when they are not in that parents care,

K Role of and contact with significant others and extended families

L Issues around attendance at religious events

M Communication when Maddie is traveling with the other parent

N Frequency and tone of email and telephone conversations

O Access to Maddie at public events during the other parent's time

### **Term**

7 The term of the PC services shall be for a period of 1 year from the date of this Order. There shall be an automatic renewal at the end of 1 year for an additional year if neither party objects.

8 The PC may withdraw at any time. Withdrawal will be effectuated by written notice to the Parents. The withdrawal of the Sherril Goren Slovin as PC will end the term of Parenting Coordination. If both parents wish to jointly name a new PC, and agree to substitute that person in this agreement, they may do so.

9 If one Parent wishes to terminate the PC, but the other parent does not, the parent who

wishes to terminate will provide notice to the PC and the other parent. If the matter cannot be resolved in 28 days, the parent who wished to terminate the PC shall file a Motion with the court to terminate the PC. If the court determines that it is reasonable to remove the PC and thereby terminate the use of a PC, the court may do so. All costs to be paid by the parent seeking the removal.

### **Decisions**

10 The PC will decide any issue as set forth above within the scope of her authority by any appropriate dispute resolution method. During the process, the PC may coach and educate the parents about ways to better communicate about the child.

### **Decision-Making Process**

11 Both parents will abide by the rules and procedures set forth by the PC for the scheduling and conduct of meetings.

12 If a parent has a dispute, he/she will email the PC with the nature of the dispute. The PC will then call that parent to ask clarifying questions. The PC will then contact the other parent, either by email or telephone to present the issue. The PC will then gather the information she deems relevant from the parents and any other material source (therapist, school, doctor, etc.). The PC will issue a written binding recommendation on a timely basis and will email the same to the parents.

13 The PC may communicate with the parents, the attorneys and any other relevant person. Contact may take place over the phone, email or in-person.

14 If a parent objects to the binding recommendation, he or she has the option to file a Motion within 14 days requesting a court decision. Either parent may present any and all relevant evidence on the issue to the Court. The PC binding recommendation shall be presented as a joint exhibit. If either parent wishes to call the PC, he or she may do so at his or her cost. Said costs shall be paid in advance. If the Court issues a Decision consistent with the binding recommendation of the PC, the party disputing the PC binding recommendation shall pay the attorneys fees and costs of the other party. If the decision is consistent with moving parties' position, the "losing" parent will pay the fees and cost of the other. The court has continuing jurisdiction to order a division of fees in these disputes.

15 If a parent objects to the binding recommendation of the PC, the recommendation is stayed pending court determination. The matter WILL be heard by the court, even if the same is moot at the time it is heard.

16 If a parent fails to abide by the binding recommendation of the PC, after information gathering, the PC has the authority to fine the recalcitrant parent or render other consequences the PC determines are reasonable. Either parent may file a Motion contesting the fine or consequences. If the court determines the consequences are reasonable, the moving parent shall pay the costs and fees of the other parent. If the court determines the consequences are not reasonable, the court shall determine the payment of fees and costs.

**Confidentiality**

17 There is no confidentiality concerning communications between the parents and the PC, or between the PC and any other person. The parents recognize that the PC can be called to testify in a dispute regarding any issue, including the allocation of parental rights and responsibilities, although the same is not contemplated by either parent or the PC.

**Fees**

18 The parties shall pay the PC for all of her time and costs incurred in processing the case. This time includes but is not exclusively, time reviewing documents and correspondence, meetings, telephone calls with the parents, attorneys and other professionals involved in the case, and deliberation and issuance of decisions, court appearances. Costs shall include long-distance telephone calls, copies, fax charges and other similar costs incurred by the PC pursuant to this Order.

19 The PC's hourly fee in the amount of \$250.00 shall be paid as follows. Each parent will pay for their individual time with the PC, with joint time split pursuant to the PC agreement attached hereto and incorporated herein.

20 If either parent calls the PC to testify regarding a contested issue, that parent will deposit a retainer for all of the time anticipated to be spent by the PC on the disputed issue.

21 The contract of the PC shall be enforceable by the Court of Domestic Relations and is attached hereto and incorporated herein.

Ellen Turner 4-20-06  
ELLEN TURNER DATE

Sallee Fry  
SALLEE FRY 0042625  
Attorney for Ellen Turner 4-20-06  
2345 Ashland Avenue  
Cincinnati, OH 45206  
Phone (513) 421-6000  
Fax (513) 763-3522

Jon Entine 4-20-06  
JON ENTINE DATE

Gloria S. Haffer  
GLORIA S. HAFFER 0014333  
Attorney for Jon Entine  
Fourth & Walnut Center  
105 E Fourth Street, Suite 300  
Cincinnati, OH 45202-4015  
Phone (513) 721-2120  
Fax (513) 977-4361

**PARENTING COORDINATOR**  
**AGREEMENT- SHERRI GOREN SLOVIN**

In high-conflict separations or divorces, parenting issues may arise with greater frequency that continues to bring parents back to Court for resolution. This strategy is both untimely and expensive. An alternate strategy to manage such disputes as they arise is through the use of a Parenting Coordinator.

A Parenting Coordinator is a neutral person to whom parents can turn when in dispute on matters relating to the children. Parents may access the service of a Parenting Coordinator in a more timely fashion and costs are almost always less than going to Court.

The role of the Parenting Coordinator is to help parents to come to a successful resolution between themselves.

However, the Parenting Coordinator is also empowered by the parents or by Court Order, to make recommendations binding on the parents in the event the parents are unable to agree on solutions. In other words, the decision of the Parenting Coordinator must be followed by the parents, as if ordered by a Court.

**Costs and Payment:**

- 1 This service is provided at the cost of \$250.00 per hour.
- 2 The parents will provide a retainer for the estimated cost as per the above process in advance of service in the amount of \$5,000.00. Each party is to pay one-half of the retainer. Time spent communicating with each parent individually will be billed to that parent. The billing division shall be at the discretion of the Parenting Coordinator.
- 3 In the event the process takes less time than estimated, the balance will be returned. In the event the process takes longer, parents will be billed accordingly and payment will be due upon receipt or parents may be asked to increase the retainer as service continues. Failure to pay may result in service delay or termination.
- 4 Out of office meetings, correspondences or any other activities required will be accounted for and billed accordingly. This time includes time reviewing documents and correspondence, meetings, telephone calls with the parents, attorneys and other professionals involved in the case, and deliberation and issuance of decisions. Costs shall include long-distance telephone calls, copies, fax charges and other similar costs incurred by the Parenting Coordinator.

**Authority:**

The Parenting Coordinator will have the authority to resolve the following types of issues:

- 1 Minor changes or clarification of parenting time/access schedules or conditions including vacation, holiday and temporary variation from existing parenting plan.

- 2 Transitions/exchanges of the child including date, time, place, means of transportation and transporter,
- 3 Health care management including medical, dental, orthodontic and vision care,
- 4 Therapy or mental health care, including substance abuse assessment or counseling for the child,
- 5 Psychological testing or other assessment of the child,
- 6 Education or daycare including tutoring, summer school participation, attendance in activities
- 7 Enrichment and extracurricular activities including camps and jobs,
- 8 Children's travel and passport arrangements,
- 9 Clothing, equipment and personal possession of the children,
- 10 Communication by a parent with the children including telephone, cell phone pager, fax and email when they are not in that parents care,
- 11 Role of and contact with significant others and extended families,
- 12) Issues around attendance at religious events,
- 13) General child rearing issues

**It is Understood:**

- 1 The parents, having obtained independent legal advice, or upon the order of the Courts, agree to attend and participate with the Parenting Coordinator service as described above
- 2 The parents agree to cooperate fully with the process as outlined and attend a may be required to resolve parenting issues
- 3 The parents, having obtained independent legal advice, or upon the order of the Courts, agree to empower the Parenting Coordinator to make binding recommendations. Such binding recommendations will be consistent with existing Court Orders
- 4 In the event a parent seeks to challenge a binding recommendation, they may do so by initiating Court action within 15 days of receiving the binding recommendation. If the Court finds in favor of the binding recommendation, the parent who initiated the action will be responsible for all associated costs, subject to the discretion of the Court
- 5 The parents consent to free and open disclosure between the Parenting coordinator and each parent, children, lawyers, teachers, therapists or others as deemed necessary at the full discretion of the Parenting Coordinator. Signature on this Agreement gives the Parenting

Coordinator permission to speak with these necessary others

6 The parties to this agreement shall not bring any actions for damages or any other claims of any kind or character against the Parenting Coordinator for any acts or omissions under the terms of this agreement

7 The parents understand and appreciate that the Parenting Coordinator has a duty to report any concern related to abuse of the children and will also report any concern related to abuse of either parent or the Parenting Coordinator process

8 Shern Goren Slovin's background is that of a lawyer and mediator She has permission to speak with the child's therapist to obtain feedback on how the therapist believes a given decision might impact the child She also has permission to meet with the child so long as the child's therapist agrees

We the undersigned and with regard to our children, agree to retain Sherri Goren Slovin, Esq. as parenting Coordinator for service and conditions as described above.

Ellen Turner / Ellen Turner  
MOTHER (Print, then sign)

4-20-06  
Date

JB. Entine / JB Entine  
FATHER (Print, then sign)

4-20-06  
Date

Sherri Goren Slovin / Sherri Goren Slovin  
Sherri Goren Slovin

Ryzy M Thud  
Magistrate 4-26-08

GREGORY HARTMANN  
CLERK OF COURTS  
HAMILTON COUNTY, OH

2006 MAR -2 A 10: 31

FILED

GREGORY HARTMANN  
800 BROADWAY ROOM 347  
CINCINNATI OH 45202  
DOMESTIC RELATIONS

PS Form 3800 (6/02)

**CERTIFIED MAIL**



7194 5168 6310 0257 5163

RETURN RECEIPT REQUESTED

**COMPLETE THIS SECTION ON DELIVERY**

A: Signature  Addressee or  Agent  
*[Signature]*

B: Received By: *[Signature]*  
(Please Print Clearly)

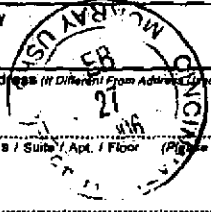
C: Date of Delivery

D: Addressee's Address (If Different From Address Used by Sender.)

Secondary Address / Suite / Apt. / Floor (Please Print Clearly)

Delivery Address

City State ZIP + 4 Code



Article Addressed To:  
02/24/2006 MOTION  
DR0500131 D1 WAIVER  
JON ENTINE  
6255 S CLIPPINGER  
CINCINNATI OH 45243



D67400205



COURT OF COMMON PLEAS  
HAMILTON COUNTY, OHIO

Ellen Turner

Plaintiff

vs.

Jon Entine

Defendant

CASE NO. DR0500131

WRITTEN REQUEST FOR SERVICE  
OF: VERIFIED MOTION FOR  
CONTEMPT

DEFENDANT REQUESTS:

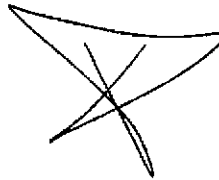
CERTIFIED MAIL  \_\_\_\_\_ REGULAR MAIL SERVICE \_\_\_\_\_

PERSONAL SERVICE \_\_\_\_\_ RESIDENCE SERVICE \_\_\_\_\_ PROCESS SERVER \_\_\_\_\_

FOREIGN SHERIFF \_\_\_\_\_

IN ACCORDANCE WITH CIVIL RULE 4.6(C) OR (D) AND 4.6(E) AN  
ORDINARY MAIL WAIVER IS REQUESTED

ON: Jon Entine  
6255 S. Clippenger  
Cincinnati, OH 45243

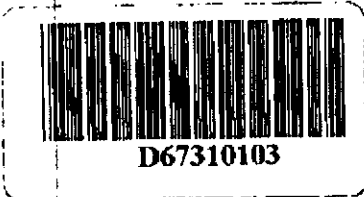


FILED

2008 FEB 23 P 2:54

GREGORY HARTMANN  
CLERK OF COURTS  
HAMILTON COUNTY, OH

RANDAL S. BLOCH 0010124  
2345 Ashland Avenue  
Cincinnati, OH 45206  
(513) 751-4420



Cler. of Dist.  
 Vis. Enforce/Mod.  
 Sup. Enforce/Mod.  
 Others Randal S. Bloch, #0010124  
 Attorney for Plaintiff

**COURT OF COMMON PLEAS  
 DIVISION OF DOMESTIC RELATIONS  
 HAMILTON COUNTY, OHIO**

<b>ELLEN TURNER</b>	:	<b>Case N. DR0500131</b>
Plaintiff	:	
-vs-	:	Judge Panioto Magistrate Theile
<b>JON ENTINE</b>	:	
Defendant	:	<b><u>VERIFIED MOTION FOR CONTEMPT</u></b>

Now comes Plaintiff, Ellen Turner, and respectfully requests that Defendant, Jon Entine, be found in Contempt of the Shared Parenting Plan entered with this Court on November 30, 2005. In accordance with Article II(F), "[W]hen either parent is traveling out-of-town with Maddie, an email itinerary shall be provided to the non-traveling parent..." From February 16 to 18, 2006, Defendant traveled out-of-town and failed to give any information to Ellen Turner, even failing to advise her that he was taking Maddie out-of-town. Such actions of Defendant violate the specific terms and conditions of the Shared Parenting Plan.

Wherefore, Plaintiff respectfully requests that Defendant be found to be in contempt of the Shared Parenting Plan as ordered by this Court, that she be awarded her fees in the pursuit of this motion, that Defendant be fined and ordered to pay the court costs of this motion and for any and all other relief as found by this Court to be appropriate and reasonable.

FILED  
 2006 FEB 23 PM 2:54  
 GREGORY HARTMANN  
 CLERK OF COURTS  
 HAMILTON COUNTY, OH





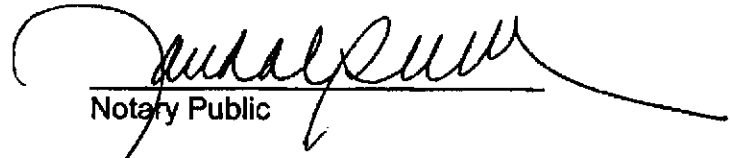
RANDAL S. BLOCH #0010124  
Attorney for Plaintiff  
WAGNER & BLOCH, LLC  
2345 Ashland Avenue  
Cincinnati, Ohio 45206  
(513) 751-4420  
Fax: (513) 751-4555  
[wagbloch@yahoo.com](mailto:wagbloch@yahoo.com)

**STATE OF OHIO, COUNTY OF HAMILTON) SS:**

I, Ellen Turner, being first duly cautioned and sworn, state that the facts contained here are true and accurate to the best of my knowledge and belief.

  
ELLEN TURNER

Sworn to before me and subscribed in my presence this 23 day of February, 2006.

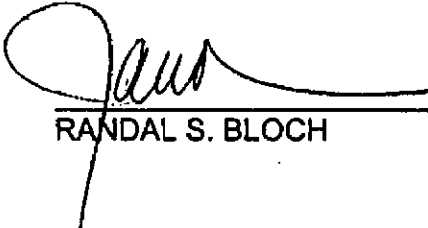
  
Notary Public

**NOTICE OF HEARING**

A hearing on the within Motion will be heard on the 14 day of June, 2006 at 9:00a .m. before Randal S. Bloch, Room \_\_\_\_\_ of the Hamilton County Domestic Relations Court, 800 Broadway, Cincinnati, Ohio 45206.

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing has been served by ordinary mail this \_\_\_\_ day of February, 2006 upon Gloria S. Haffer and Robert J. Meyers, Attorneys for Defendant, 105 E. Fourth Street, Suite 300, Cincinnati, Ohio 45202.

  
\_\_\_\_\_  
RANDAL S. BLOCH

**COURT OF COMMON PLEAS  
DIVISION OF DOMESTIC RELATIONS  
HAMILTON COUNTY, OHIO**

Ellen Turner  
Plaintiff / Petitioner

Date: 2-10-06

Case No. DR0500131

-vs/and-

File No. E233969

Jon Entine  
Defendant / Petitioner

CSEA No. \_\_\_\_\_

Judge Pavista  
Judge / Magistrate's

**ORDER FOR CONTINUANCE**

Whereas, Plaintiff / Defendant / Other \_\_\_\_\_, has(have) requested a continuance of the hearing set for \_\_\_\_\_, 20 \_\_\_\_\_ for the following reason(s):

- |   |   |
|---|---|
| <input type="checkbox"/> conflict of trial assignment               | <input checked="" type="checkbox"/> continued in progress |
| <input type="checkbox"/> for the presence of a necessary witness    | <input type="checkbox"/> failure of service               |
| <input type="checkbox"/> for the presence of a party                | <input type="checkbox"/> other _____                      |
| <input type="checkbox"/> to obtain additional information/discovery | _____   |

Whereas, the complaint / petition / motion was filed on \_\_\_\_\_, and there have been \_\_\_\_\_ previous continuances;

Whereas,  no other party / counsel objects to this continuance OR  \_\_\_\_\_ objects to the continuance.

**THEREFORE, IT IS HEREBY ORDERED:**

This case is hereby continued to 6-14, 6-15, 6-16-06 at 9:00 am/pm for 3 half days hour(s), Court of Common Pleas, Division of Domestic Relations, 800 Broadway in Courtroom 2-102 before Judge/Magistrate Theile

For (type of hearing) \_\_\_\_\_

- The motion for a continuance is denied.
- Further Orders are as follows: \_\_\_\_\_

This Order is effective immediately. If a Magistrate has issued this Order, either party may appeal the Order by filing a Motion to Set Aside the Order within ten (10) days of the date this Order is filed. The pendency of a Motion to Set Aside the Order does not stay the effectiveness of this Order unless the Magistrate or Judge grants a stay.

[Signature]  
Judge / Magistrate

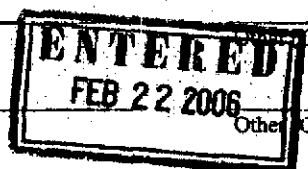
By signature below, both parties / counsel acknowledge receipt of this Order.



Plaintiff  
[Signature]  
Attorney for Plaintiff

Defendant  
\_\_\_\_\_  
Attorney for Defendant

Other (CSEA / GAL) \_\_\_\_\_



| | COURT | | FILE | | CSEA | | PARTY 1 | | PARTY 2

COURT OF COMMON PLEAS  
DIVISION OF DOMESTIC RELATIONS  
HAMILTON COUNTY, OHIO



D67093456

Ellen L. Turner  
Plaintiff

Address: 7719 Shawnee Run Road  
Cincinnati Ohio 45243

-vs-and-

Jon H. Entine  
Defendant

Address: 6255 S. Chippinger Drive  
Cincinnati, Ohio 45243

Date: \_\_\_\_\_

Case No. DR0500131

File No. \_\_\_\_\_

CSEA No. \_\_\_\_\_

Judge Panloto

**AFFIDAVIT OF INCOME, EXPENSES  
AND FINANCIAL DISCLOSURE**

STATE OF OHIO, SS:

Now comes Jon H. Entine affiant herein, and having been duly cautioned and sworn, states that he/she has been advised that this affidavit may be used for any or all of the following purposes: (1) to make complete disclosure of affiant's income, liabilities and expenses; (2) to assist in determining orders of child support or spousal support when applicable or any changes thereto; and (3) to provide for the issuance of the appropriate deduction order for support.  
Minor and/or Dependent Children of this Marriage:

Madeleine Rose Entine

age 6

is residing with Father

age \_\_\_\_\_

is residing with \_\_\_\_\_

age \_\_\_\_\_

is residing with \_\_\_\_\_

**GROSS YEARLY INCOME**

**SECTION I**  
Husband (1)

\$ 50,000.00

Yes ..... Employed ..... Wife (2)  Yes

..... Actual ..... Base Yearly Wages ..... Actual .....

\$ \_\_\_\_\_

..... Yearly Averages Overtime, Commission & Bonus Income .....

American Enterprise Institute

..... Employer .....

Sara Lee Severance Plus Stock Options

1150 17<sup>th</sup> St., NW

..... Payroll Address .....

& Other Benefits

Washington Dc 20036

..... City, State, Zip .....

Payable Over 15 Months

24

..... Scheduled Paychecks Per Year ..... 24

\$ 0.00

..... Unemployment Benefits ..... \$ 0.00

\$ \_\_\_\_\_

..... Workers' Compensation ..... \$ 0.00

\$ 0.00

Social Security or Other Disability Benefits

..... List Sources in Section D-2 ..... \$ 0.00

\$ 0.00

..... Spousal Support Received ..... \$ 0.00

\$ 0.00

Interest / Dividend Income

..... List Sources in Section D-2 ..... \$ 0.00

(\$0.00)

..... Public Assistance or Income Supplement Security ..... (\$0.00)

\$ 18,000.00

..... Other Income Received ..... \$ \_\_\_\_\_

\$ 68,000.00

..... **TOTAL YEARLY INCOME** ..... \$ 406,275.00

**FILED**

2001 FEB - 7 A 8 49  
GREGORY HARRISON  
CLERK OF COURT  
HAMILTON COUNTY OH

Husband (1)

Wife (2)

**ANNUAL INCOME, OVERTIME AND BONUSES EARNED  
(Past Three Years)**

	Base Income	Overtime, and/or Bonuses		Base Income	Overtime and/or Bonuses
year 3 .....	\$ _____	\$ _____		year 3 .....	\$ _____
year 2 .....	\$ _____	\$ _____	<b>MOST RECENT YEAR</b>	year 2 .....	\$ _____
year 1 .....	\$ _____	\$ _____		year 1 .....	\$ _____

**ADJUSTMENTS**

\$ <u>0.00</u> per year	.....	Court Ordered Support Paid for other child(ren)	.....	\$ <u>0.00</u> per year
\$ <u>0.00</u> per year	.....	Court Ordered Spousal Support Paid to a Former Spouse	.....	\$ <u>0.00</u> per year
0	.....	Number of Other Dependent Children living with the Party (Excluding Unadopted Step Children)	.....	
\$ <u>0.00</u> per year	.....	Child Support Received for Other Dependent Children Indicated Immediately Above	.....	\$ <u>0.00</u> per year
\$ <u>0.00</u> per year	.....	Health Insurance Premium Paid by Party if Children Included	.....	\$ <u>0.00</u> per year
\$ _____ per year	.....	For Post Decree Modifications Only Gross Income of Current Spouse or Other Contributor in Household	.....	\$ _____ per year

**SECTION II**

**AFFIANT'S MONTHLY EXPENSES**

List expenses below for your present household. There are 1 adults and 1 children in my household.

<b>A. Housing:</b>		
1. Rent or Mortgage (including taxes and insurance) .....		\$ <u>4,350.00</u>
2. Utilities .....		\$ <u>370.00</u>
a. Gas & Electric .....		\$ <u>90.00</u>
b. Water & Sewer .....		\$ <u>45.00</u>
c. Telephone (excluding long distance) .....		\$ _____
d. Trash Collection .....		\$ <u>74.00</u>
e. Cable Television .....		\$ <u>71.00</u>
3. Other <u>Internet connection and cable hook-up</u> <u>Snow Removal/Spring clean-up &amp; fertilizing/limb trimming</u> .....		\$ <u>200.00</u>
<b>TOTAL HOUSING</b> .....	\$	<u>5200.00</u> (A)
<b>B. Other</b>		\$ <u>150.00</u>
1. Car Repairs and License .....		\$ <u>70.00</u>
2. Insurance: _____ .....		\$ <u>950.00</u>
3. Medical Expenses (not covered by insurance) .....		\$ <u>325.00</u>
4. Clothing .....		\$ <u>350.00</u>
5. Grocery Items (to include food, laundry and cleaning products/toiletries, etc.) .....		\$ <u>0.00</u>
6. Child Related Expenses .....		\$ <u>200.00</u>
a. (employment related only) .....		\$ <u>150.00</u>
b. Other <u>Supplies, activities</u> .....		\$ <u>100.00</u>
7. Gasoline & Oil .....		\$ _____
8. Other: <u>CPA, taxes</u> .....		\$ <u>225.00</u>
<b>MONTHLY TOTAL</b> .....	\$	<u>2,370.00</u> (B)

**C. MONTHLY INSTALLMENT PAYMENTS**  
 (Do not list expenses previously listed in Section B)

To Whom Paid	Purpose	Balance Due	Monthly Payment
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____
MONTHLY TOTAL .....			\$ <u>0.00</u> (C)
GRAND TOTAL MONTHLY EXPENSE (Sum A,B,C, plus D (optional))			\$ <u>10,145.00</u>

**SECTION III FINANCIAL DISCLOSURE**

A. List all funds on deposit in any and all accounts, in any bank, savings & loan, credit union, regulated investment company, mutual fund or other financial institution. Account includes any of the following: checking, certificate of deposit ("CD"), investment, savings, individual retirement ("IRA"), stock option, etc. Attach additional pages if needed.

Name & Address of Financial Institution	Account No.	Name(s) on Account	Balance Date of this Affidavit
<u>SEE ATTACHED</u>	_____	_____	\$ _____
_____	_____	_____	\$ _____

B. Other income source listed in Section I (i.e., retirement / pension benefits, disability income, interests dividend income, rentals, annuities, etc. not listed in Section III-A). Attach additional pages if needed. Need not complete pre-decree.

Name & Address of Source	Identifying Description (Account No., Claim No., etc.)	Income or Benefits
Miscellaneous Writing/Speaking/Consulting		\$ <u>1,500.00</u> per month

**SECTION IV OTHER ASSETS AND LUMP SUM INCOME**

1. Describe assets of more than \$1,000 in value not otherwise listed in this affidavit (equity in real estate, stocks, bonds, other investments, etc.). Attach additional pages if needed.

(a)	Value \$ _____
(b)	\$ _____
(c)	\$ _____

2. List any lump sum income (bonus, gifts, inheritance, etc.) in excess of \$500, expected to be received within the next six months, not otherwise listed in this affidavit. Attach additional pages if needed.

Source	Value \$ <u>0.00</u>
Address	

Affiant state that the information contained herein is complete and accurate to the best of his/her information, knowledge or belief under penalty of law.

Attorney for Pharis J. Huggins # 0014333  
 Affiant  Plaintiff / Petitioner (1)  
 Defendant / Petitioner (2)

Sworn to and subscribed on my presence this 7<sup>th</sup> day of February, 2007

Notary Public  
 My commission expires  
 GLORIA S. HAEFFER  
 Notary Public  
 State of Missouri  
 My commission expires 12/31/07



**D. OPTIONAL**

**( Additional Monthly Expenses )**

Complete if an award of spousal support is at issue or in the event that you are seeking a significant deviation from the child support schedule.

1. Special and Unusual Needs of the Children, Specify	\$ _____
2. Extraordinary Parenting Time -Related Travel Expenses .....	_____
3. Extraordinary Obligations to other children, minor and handicapped, not step-children .....	_____
4. Mandatory Deduction from Wages (Not taxes, Social Security) .....	_____
5. Hair Care, Dry Cleaning .....	<u>\$65.00</u>
6. Newspapers, Periodicals, and Books .....	<u>\$125.00</u>
7. Child Care (not employment related) .....	<u>50.00</u>
8. Children's School Lunch Program .....	_____
9. Children's Allowances, Activities .....	<u>\$225.00</u>
10. Tuition (for Minor Children or Self) .....	_____
11. Entertainment .....	<u>\$400.00</u>
12. Contributions .....	<u>\$180.00</u>
13. Additional Taxes Paid (not from wages) .....	_____
14. Memberships (Associations, Clubs) .....	<u>\$90.00</u>
15. Travel, Vacations .....	<u>\$650.00</u>
16. Water Softener .....	_____
17. House Repairs .....	<u>\$170.00</u>
18. Housekeeping .....	<u>\$150.00</u>
19. Lawn Service .....	<u>\$90.00</u>
20. Other (Specify) Synagogue Membership .....	<u>\$150.00</u>
window cleaning .....	<u>\$70.00</u>
Pet care .....	<u>\$160.00</u>
<b>TOTAL OTHER EXPENSES (D)</b>	<b><u>\$2,575.00</u></b>

**FINANCIAL DISCLOSURE AS OF FEB. 7, 2006**

**Note: Some of the accounts listed below are marital assets and some may be Jon's or Ellen's exclusively**

**SAVINGS AND MONEY MARKET ACCOUNTS**

**Jon Entine**

1 <sup>st</sup> Internet Bank of Indiana checking account	\$2,000 (estimate)
1 <sup>st</sup> Internet Bank of Indiana checking account	\$25,000 (estimate)

**Jon Entine Debt**

United Airlines Visa Card	\$8,000 owed
---------------------------	--------------

**Ellen Turner**

Numerous unknown banking and checking and possibly brokerage accounts

101677

COURT OF COMMON PLEAS  
DIVISION OF DOMESTIC RELATIONS  
HAMILTON COUNTY, OHIO

Ellen Turner  
Plaintiff / Petitioner

Enter: Pamso

Date: 2/1/06

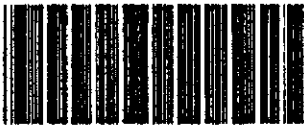
Case No. DR0500131

-vs-and-

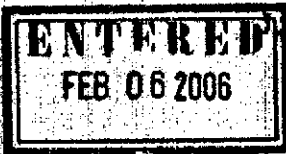
File No. \_\_\_\_\_

Jon Exline  
Defendant / Petitioner

CSEA No. \_\_\_\_\_



D67084404



Judge PAMSO

ENTRY

The motion of plaintiff having been filed Jan 31, 2006  
& being amended to be captioned "MOTION" as opposed  
to "Request, Motion for Contempt & Review" same as to  
be held & now held on February 1, 2006, by agreement  
of the parties & with consent of the court the following  
is hereby ordered:

1) The father has relinquished time pursuant to  
the plan, hearing plan adopted No. 30, 2005 on Thursday  
2/2/06 & through Monday, 2/27/06, & on Friday 2/3/06,  
& Madeline is having surgery 2/2/06, mother  
shall see Madeline for trials, 2/2/06 between  
some 7am at father's home or at Madeline can  
have, father's home at mother's home. The decision

EX. 200  
at a time the  
parties are present

Pamso  
Magistrate

Ellen Turner 2/1/06  
Plaintiff / Petitioner

Kevin L. Hagan # 14933  
Defendant / Petitioner

J. [Signature] 2/1/06  
Attorney for Plaintiff

[Signature] 2/1/06  
Attorney for Defendant

COURT OF COMMON PLEAS  
DIVISION OF DOMESTIC RELATIONS  
HAMILTON COUNTY, OHIO

ELLEN TURNER  
Plaintiff / Petitioner

Enter: \_\_\_\_\_

Date: 2/1/06

Case No. DR 0500131

-vs/and-

File No. \_\_\_\_\_

JON ENTINE  
Defendant / Petitioner

CSEA No. \_\_\_\_\_

Judge PANIOTO

Page 2

**ENTRY**

will be made by Dr. Scott if madeline can leave  
father's home if not. If mother comes to father's home,  
a person will be present. If Mr. Madeline can leave  
the home, father will take her to mother's & mother  
will return her to father's after 2 hours.

2) On Friday, 2/3/06, mother shall have  
madeline from 2pm to 4pm, with father taking  
madeline to mother & mother returning her to father's.  
On Saturday, mother shall have 2pm to 4pm & on  
Sunday, 12-2pm with transportation as above noted.

3) On Saturday, father shall deliver madeline to  
mother's as all times per previous court orders. ~~father shall~~  
~~not deliver madeline from 2pm to 4pm, mother shall deliver~~

for this on finance  
at 11:00am.

EX  
EB

Magistrate

Ellen Turner 2/1/06

Plaintiff / Petitioner

Defendant / Petitioner

[Signature] 2/1/06

Attorney for Plaintiff

Attorney for Defendant

COURT OF COMMON PLEAS  
DIVISION OF DOMESTIC RELATIONS  
HAMILTON COUNTY, OHIO

Ellen Turner  
Plaintiff / Petitioner

-vs/and-

Jill Lerner  
Defendant / Petitioner

Enter: \_\_\_\_\_

Date: 2/1/06

Case No. DR 0500131

File No. \_\_\_\_\_

CSEA No. \_\_\_\_\_

Judge PANIOTO

**ENTRY**

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~~Plaintiff to furnish a power of attorney to the defendant  
before 4:30pm to proceed.~~ EX. 10/3  
On Sunday, 2/7/06, parties shall pick  
matter up at 4pm to proceed & return  
all at 5pm.

\_\_\_\_\_  
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\_\_\_\_\_  
\_\_\_\_\_

Magistrate \_\_\_\_\_

Ellen Turner 2/1/06  
Plaintiff / Petitioner

Defendant / Petitioner \_\_\_\_\_

Jill Lerner 2/1/06  
Attorney for Plaintiff

Attorney for Defendant \_\_\_\_\_