

**IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT IN
AND FOR PALM BEACH COUNTY,
FLORIDA
Family Division
Case No. 501971 DR004137XXDIFD**

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

and

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

**Motion in Opposition to Deposition Duces Tecum and Discovery and
Motion for Protective Order**

COMES NOW WILLIAM A. CABANA, pro se, respectfully objecting to Respondent's Notice of Taking Deposition Duces Tecum from PayPal, Inc., Wachovia Securities and Colonial Bank of financial documents. In support he offers,

1. The Former Wife's starting point and most significant point in any modification proceeding, contempt proceeding or other action against the Former Husband must be a demonstrated **NEED** for alimony as a basis for the action. Case law for this is Chief Judge Farmer's concurring opinion in Hillier v. Iglesias, 4th DCA Case #4D03-4204 (May 2005). It places this motion in proper context and dramatically changes the landscape in this district for adjudicating alimony awards and modifications.
2. Former Wife has offered insufficient financial information to support her need for the arrearages, concurrent or future alimony. She does not come to court with clean hands.

3. This discovery is unlikely to lead to admissible evidence.
4. The court has no accurate assessment of income to determine her needs and without a demonstrated need; extensive and far-reaching discovery such as this exceeds the bound of the right of privacy to confidentiality of personal financial information. There is insufficient basis for her filing Notices of Taking Deposition Duces Tecum or any other similar motions particularly without this court rendering a hearing on the discovery issues and rendering a ruling on the need and appropriateness of the discovery.
5. Personal financial documents and information are of the utmost privacy to a Floridian.
6. Sharon Mayo request for Former Husband's personal financial records in the Notices of Deposition Duces Tecum when she has failed to disclose her own financial information pursuant to Request to Produce interrogatories of June 30, 2005, and for which she has failed to offer accurate financial records which would demonstrate a need for alimony, is a violation of the Florida Constitutional Right of Privacy (Article I Section 23) of all persons on the accounts.
7. William A. Cabana has previously moved this court to rule on the constitutionality of the Family Law Procedures and Chapter 61 discovery rules and statutes.
8. It is improper to set the deposition and discovery without a court ruling on the facial and as applied constitutionality of the Chapter 61 and Family Rules of Procedure relating to discovery of personal financial information 33 years after entrance of a dissolution of marriage judgment without a demonstrated need for support by the party requesting discovery.

9. The state lacks a compelling state interest to require the Petitioner to disclose personal financial information over 33 years after dissolution of his marriage when Sharon Ann Mayo has not complied with discovery requests for financial information and has not demonstrated a need for alimony.

10. The state lacks a compelling state interest to require the Petitioner to disclose personal financial information when a fairly recent financial affidavit filed with this court on June 9, 2005 indicates the Petitioner's financial status, i.e. he has income below the United States Department of Health and Human Services 2004 poverty income level for a single person. The financial affidavit indicates his assets and liabilities and income.

11. The discovery Family Law Rules and Chapter 61 discovery provisions are inextricably intertwined with F.S. 61.08 without which no discovery would be conducted.

12. F.S. 61.08 impermissibly infringe Florida Constitution Article I Section 23 Right of Privacy and Florida Constitution Article II Section 3 separation of powers. See N. Fla. Women's Health & Counseling Servs., Inc. v. State, 866 So. 2d 612, 635 (Fla. 2003) (right of privacy); Littlejohn v. Rose, 786 F.2d 785, 786 (6th Cir. 1985) (citing Zablocki v. Redhail, 434 at 385) (divorce is within the umbrella of the right of privacy); and Bush v. Schaivo, 885 So. 2d 321, (Fla. 2004) (it is impermissible for legislatures to delegate legislative authority to a second branch of government through non specific statutes which permit unbridles discretion by the second branch of government, citing State v. Cotton, 769 So. 2d 345, 353 (Fla. 2000); Sims v. State, 754 So. 2d 657, 668 (Fla. 2000); "and the statute must so clearly define the power delegated that the [executive] is precluded from acting through whim, showing favoritism, or exercising unbridled

discretion." Lewis v. Bank of Pasco County, 346 So. 2d 53, 55-56 (Fla. 1976); Chiles v. Children A, B, C, D, E, & F, 589 So. 2d 260, 264 (Fla. 1991).

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

1. Former Wife's intent to deliberately misrepresent her financial affidavit of August 14, 2003 and June 9, 2005 as delineated in the Motion to Terminate Alimony, filed July 25, 2005, with many erroneous entries represents unclean hands conduct such that all her motions and notices must be denied and her claims for attorney fees be denied;
3. Based on Former Wife failure to provide evidence of financial need....her failure to provide the required accurate financial affidavit to this court.... her 2005 financial affidavit in which her assets are in excess of \$770,000 and income of \$6,458/month show no present need....and Former Husband's inability to pay as evidenced by his June 9, 2005 financial affidavit... all of the Former Wife's motions must be denied and termination of alimony is proper;
3. Declare F.S. 61.08 alimony provisions and associated discovery rules impermissibly infringe the FL. Con Art I Sec. 23 right of privacy and Art. II Sec 3 separation of powers
4. Former husband prays that this Honorable Court enter an order protecting him from the subject discovery and for such and other relief as may be proper.

5. Awarding WILLIAM A. CABANA all costs pursuant to F.S. §86.011, and a reasonable attorneys' fee for the prosecution of this action pursuant to 42 U.S.C. 1988 and Florida common law

Respectfully submitted,



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Certificate of Service

I certify that a copy of this Motion in Opposition to Deposition Duces Tecum and Discovery was mailed to Cathy L. Kamber, P.A., Attorneys for former wife, 1675 Palm Beach Lakes Boulevard, The Forum, Tower A, Suite 700, West Palm Beach, FL 33401 this 4th day of August, 2005



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