

Limiting Private Financial Disclosures

By K. Dean Kantaras and Azhar Cheema

It's not unusual for a parent with custody of a young child to seek an increase in child support from the other parent. Disputes over discovery of finances and income in such cases are commonplace.

Discovery refers to the process by which parties obtain information and evidence from each other to prepare their case. Parties may obtain discovery by depositions, written interrogatories, production of documents, and requests for admission.

In family law, a component of discovery is mandatory disclosure. Mandatory disclosure refers to the requirement for each party to provide the other party with certain financial information and documents. Mandatory disclosure is governed by Rule 12.285, *Florida Family Law Rules of Procedure*. However, Rule 12.285(a)(1) states that "[e]xcept for the provisions as to financial affidavits, any portion of this rule may be modified by order of the court or agreement of the parties."

Additionally, the court has the authority to conditionally seal the financial information required by rule 12.285 if it is likely that access to the information would subject a party to abuse.

Moreover, on motion by a party from whom discovery is sought, and for good cause shown, the court may make an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense that justice requires, including one or more of the following:

1. that the discovery not be had;
2. that the discovery may be had only on specified terms and conditions, including a designation of the time or place;
3. that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;
4. that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters; and



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5. that the discovery be conducted with no one present except persons designated by the court.

Woodward v. Berkery, 714 So. 2d 1027 (Fla. 4th Dist. App. 1998) is a case that involves the well-known singer and entertainer Tom Jones. He and the mother met after one of his concerts, and they conceived a child. The mother brought a paternity action against Jones and the parties settled the case. Thereafter, the mother initiated a modification action to increase the amount of support due.

The mother served Jones with the standard, broad discovery requests generally applicable in routine family law matters. Jones argued that no permissible change in the support amount would entail the kind of broad, generalized discovery that the trial court allowed to take place. Moreover, he urged that the power of a Florida court to force him to respond with financial worth information for her to make

her claim does not allow her to use the compulsory discovery process to make his private finances available to the world.

The court stated that where there has been no prior adjudication of the support issue, as for example when a dissolution of marriage or paternity case is first filed, it is usually necessary to require broad disclosure by both parties to provide a trial judge with an evidentiary basis to decide contested issues as to support. However, the scope of discovery in a modification proceeding is necessarily narrower than in a plenary proceeding to establish the need and amount of such support in the first instance.

Additionally, the constitution of the State of Florida contains an express right of privacy. Although there is no catalogue in our constitutional provision as to those matters encompassed by the term privacy, personal finances are among those private matters kept secret by most people.

Overall, the broad standard for discovery is that the information sought be relevant, admissible evidence, or be reasonably calculated to lead to admissible evidence. However, even the possibility of unearthing some admissible evidence from routine discovery responses is constrained by a proper limitation of the discovery to the range of the permissible issues to be litigated. ♦

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