

STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS

SUPERIOR COURT

Docket No. 218-2020-CV-00673

BLYTHE BROWN,
Plaintiff,

v.

DANIEL GERHARD BROWN,
Defendant.

REPLY IN SUPPORT OF MOTION TO QUASH SUBPOENA

Mary Tenn, Esquire, by and through her attorneys, McLane Middleton, Professional Association, hereby replies in support of her motion to quash and states as follows:

1. Defendant Dan Brown has no legitimate basis to seek the deposition of his ex-wife's counsel. Defendant has crafted a fiction, presumably to justify his extraordinary request. To be sure, his attack on counsel's integrity, ethics and professionalism are vicious and offensive. That attack is unavailing.

2. The salient issue in this case is whether Defendant filed a false financial affidavit, and if he knew it. In this case, as in every divorce case, a financial affidavit is the affidavit of a party; it is the party who swears under oath to the veracity of the content of that affidavit.

Defendant alone is the person who can testify to what *he* knew and when *he* knew it.

3. Defendant now claims that, in essence, neither he nor his experienced counsel bothered to read carefully his financial affidavit before he executed it. He points to his ex-wife's counsel for this failure and remarkably seeks her deposition supposedly intended to confirm his failings.

4. The documents that were indisputably exchanged by the parties in the underlying divorce, standing alone, show the illogic of the Defendant's position as follows:

- a. Nearly six weeks before Defendant submitted his sworn Financial Affidavit, as of at least September 13, 2019, Defendant possessed Plaintiff's Financial Affidavit, which included the line item of "projects anticipated or in the works *per Dan*: None." (Ex. 2 to Mot. to Quash (Sept. 13, 2019, Email from D. Brown to S. Seward) (Emphasis added)).
- b. On that date, Attorney Tenn sent Defendant's divorce attorney, Attorney Ross, a draft of *Plaintiff's* Financial Affidavit. Defendant himself received the documents, and emailed them directly to his financial advisor, writing "oops, here it is." (*Id.*).
- c. Defendant's divorce attorney presumably then drafted and finalized *Defendant's separate* Financial Affidavit. This is evidenced by the fact that Plaintiff's and Defendant's Financial Affidavits are not identical, but instead include differences in formatting and in some of the language (not implicated here).
- d. Defendant's divorce attorney not only reviewed and finalized *his* client's Financial Affidavit, but he even suggested redactions for the court-filed version— including redactions to the very misrepresentation at issue. (Ex. A, Oct. 24, 2019, Email from J. Ross to M. Tenn).

5. It is facially plain that Plaintiff's Attorney could not have misled either the Defendant's attorney or the Defendant who had the unfettered ability (and unmistakable legal obligation) to have reviewed and assured the accuracy of the Defendant's own individual financial affidavit. It is undisputed that Defendant had his own experienced counsel and was not represented by Attorney Tenn.

6. Defendant posits that: "At the heart of the current dispute is whether Ms. Tenn participated in a subterfuge, the objective of which was to see if Defendant would unwittingly sign a Financial Affidavit that he did not realize had been modified. The nature of the modification was such that the affidavit might later be considered 'false' if his near-term future earnings exceeded expectations." As noted, the documents identified above show this contention to be false.

7. Following Defendant's claim to its illogical end, is that Defendant would now have preferred to submit a financial affidavit that said nothing about ongoing projects.

Presumably, then the Defendant's financial affidavit would have been false by omission. In other words, if Defendant's affidavit is false, that is because he did not abide by his separate obligation to assure a full and frank disclosure of his assets and their value and has only himself to blame for those failures. As between he and his then wife, the Defendant was the one who would have known what projects he anticipated or what projects he had in the works.

8. Even a cursory review of Defendant's Objection to the Motion to Quash underscores that in addition to the irrelevant, burdensome and vexatious nature, he is seeking to invade his ex-wife's attorney and client privilege and work product. At Paragraph 12 of his motion, Defendant details certain areas of inquiry virtually all of which call for privileged testimony. For example, he queries whether Attorney Tenn "did, or did not, recognize that the reference to 'projects anticipated or in the works,' more appropriately belonged in the Permanent Stipulation than in the asset statement, but that she knew Mr. Ross would clearly pick up on it there." Paragraph 12 (c). In order to fully respond to this question necessarily invades attorney and client privilege and work product, which privileges are sacrosanct. Likewise, the question calls for one attorney to speculate as to the mindset of another. It also assumes that the Defendant's assertion that he had no further assets to disclose was false because if the financial affidavit were accurate there would be nothing to include in the Permanent Stipulation. If, on the other hand, there were "projects anticipated or in the works" those were omitted from Defendant's financial affidavit.

9. The Court has the discretion to protect against a party's effort to transform a dispute between litigants into a dispute between counsel. To allow Defendant's subpoena, would cause a sea change in domestic relations practice. A disgruntled post-divorce litigant, as here, could seek tactical advantage by attacking opposing counsel. Such conduct threatens to drive a

wedge between counsel and client, and imposes enormous cost in time and money on clients, counsel and the judicial system.

10. The personal nature of Defendant's invective against opposing counsel is troubling, and inexplicable when juxtaposed with his recent suggestion that, in essence, neither his lawyer nor he read carefully his financial affidavit before Defendant executed it under oath and swore to its veracity.

11. Finally, the Defendant argues that Attorney Tenn "irrevocably waived the right to seek" to quash the subpoena. This is incorrect. Defendant bases that argument on selective quotations from an email Attorney Tenn sent to Defendant's counsel agreeing to waive formal service of the subpoena. Defendant omits Attorney Tenn's express statement that she would accept service of the subpoena, "in order to expedite service and waive only the formalities of service; **but, as you would expect do so without waiver as to any other rights, objections or defenses.**" There can be no credible claim of waiver.

WHEREFORE, Mary Tenn prays that this Honorable Court:

- A. Quash the Subpoena issued to her; and
- B. Grant such further relief as deemed just and equitable.

Respectfully submitted,

MARY E. TENN

By her Attorneys,

MCLANE MIDDLETON
PROFESSIONAL ASSOCIATION

Dated: September 21, 2021

By: /s/ Scott H. Harris
Scott H. Harris, Esquire (NH Bar 6840)
900 Elm Street, P.O. Box 326
Manchester, New Hampshire 03105-0326
Telephone: (603) 625-6464
Email: scott.harris@mclane.com

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of September 2021, I served the foregoing Reply In Support Of Motion To Quash Subpoena by filing with the Court's electronic filing system and therefore serving on all parties of record.

/s/ Scott H. Harris
Scott H. Harris, Esq.

EXHIBIT

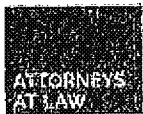
Mary Tenn

From: Jonathan Ross <jross@primmer.com>
Sent: Thursday, October 24, 2019 2:48 PM
To: Mary Tenn
Subject: Brown Redaction
Attachments: 2019 10 24 Local_User 18745.pdf

Mary: See attached as a suggestion on redaction for financial affidavits. Jon

L. Jonathan Ross | Attorney at Law

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**THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH**

<http://www.courts.state.nh.us>

Court Name: 7th Circuit - Family Division - Dover
 Case Name: In the Matter of Daniel Brown and Blythe Brown
 Case Number: [REDACTED]
 (If known)

Date 10/1/2019

FINANCIAL AFFIDAVIT

1. General Information

Name Daniel Brown
 Street Address [REDACTED]
 City, State, Zip [REDACTED]
 Mailing Address, if different [REDACTED]
 Date of Birth [REDACTED]
 Social Security Number [REDACTED]
 Highest Grade or Degree Completed Bachelors
 Date of Marriage 8/17/1997
 Date of Separation or Divorce

2. Children born to, or adopted by, the Parties (Full Name, DOB & SSN)

2a Number of people currently living in household including self 1

3. Employment Information

Name, Address, Phone # of Employer self

Date and Place of Last Employment

Job Skills Writing

7. Assets

Fair Market Value

Related Debt

Additional Information

- Homestead
- Other Real Estate
- Primary Motor Vehicle
- Other Motor Vehicles
- Furniture and Appliances
- Checking Accounts
- Investments
- Life Insurance
- Business Interests
- Pensions
- Retirement Accounts

SEE ASSET SUMMARY ATTACHED

4. Monthly Income - Miscellaneous

TANF and Food Stamps \$
 Other Public Assistance \$
 Children's Income \$
 Child Support \$

5. Monthly Income Before Taxes

Base Pay from Salary, Wages \$
 Overtime and Shift Differential \$
 Commissions, Tips, Bonuses \$
 Part-time Employment \$
 Self-employment \$ [REDACTED]
 Unemployment and Veteran's Benefits \$
 Disability, Worker's Compensation \$
 Pension and Retirement Benefits \$
 Social Security Benefits (SSA) \$
 Interest and Dividends \$ [REDACTED]
 Trust and Other Investment Income \$ [REDACTED]
 Rental Income and Business Profits \$ [REDACTED]
 All other sources \$

Total Section 5 Monthly Income \$ [REDACTED]

6. Monthly Expenses

Court Ordered Support for Others \$
 State Income Taxes \$ [REDACTED]
 Mandatory Pension \$
 Health Insurance for Parties' Children \$
 Day Care for Parties' Children \$
 50 % of actual self-employment taxes paid \$ [REDACTED]

Total Section 6 Monthly Expenses \$ [REDACTED]

8. Additional Assets - If you have an interest in any property which is held solely by or jointly with any other person or entity, and which has not already been disclosed, or if you are owed money from any source, please explain.

Case Name: In the Matter of Daniel Brown and Blythe Brown

Case Number: 632-2019-DM

Date 10/1/2019

FINANCIAL AFFIDAVIT

9. Tax Return Information

Year of last return filed [redacted]
Single or joint return Joint
My Total W-2's and 1099s = \$ [redacted]
If Self-Employed, check here and attach copy of most recent IRS Schedule C

11. Debts

Table with 3 columns: Who is debt owed to?, Who owes debt?, Balance. Rows show 0.00 for multiple entries.

10. Insurance

Life
Company
Type and Face Amount
Beneficiaries
Health
Company
Type
Description of Coverage
Dental
Company
Description of Coverage

12. Retirement Plans

Plan or Account Name
Type
Most Recent Value
Value at Filing 0.00
if Defined Benefit, status of vesting and description of Benefit

13. Attachments: [] Paystub, [] Monthly Expenses, [] Schedule C, [] Other (describe)
[] Check here if parties agree to waive Monthly Expenses form

14. Additional Information

I swear (affirm) that :

- A. To the best of my knowledge and belief, I have fully disclosed all income and all assets having any substantial value; and
B. I have reasonably estimated the fair market value of each asset ; and
C. I understand that I have a duty to update the information provided in this financial affidavit for each court hearing; and
D. I understand that if a support order is issued in this case obligating me to pay support, it shall be my responsibility to immediately provide the Court with any change of address in writing. If I fail to do so, I may be held in default, found in contempt of court and a warrant may be issued for my arrest. (See USO Standing Order SO-4G.)

E. Rule 1.25-A Compliance -- Family Division Only: (Initial one)

X I have complied with Rule 1.25-A regarding mandatory disclosure; OR
I understand my obligation to comply with Rule 1.25-A regarding mandatory disclosure. I have not fully complied with Rule 1.25-A due to:

Date 10-2-2019

Signature [redacted]

State of [redacted], County of [redacted]

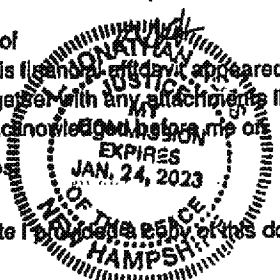
The person signing this financial affidavit appeared and signed this before me and took oath that the statements set forth in this Financial Affidavit, together with any attachments listed in section 13 above, are true to the best of his or her knowledge and belief. This instrument was acknowledged before me on 10-2-2019 by Daniel J. Brown

My commission expires [redacted]
Affix seal, if any
I certify that on this date I received a copy of this document to: Mary Fern, Esq.

Signature of Notary Public/Title [Signature]

Date 10-2-2019

Signature [Signature]



<p>[REDACTED] Accounts [REDACTED] Owner: [REDACTED] Account #'s ending [REDACTED] As of July 8, 2018</p>		[REDACTED]		
<p>[REDACTED] Accounts [REDACTED] Owner: Dan Account #'s ending: [REDACTED] Services As of October 2018</p>	[REDACTED]			
<p>[REDACTED] Joint Account [REDACTED] [REDACTED] Owner: As of October 2018</p>	[REDACTED]			
<p>Transferred from Joint Account [REDACTED] [REDACTED] As of October 2018</p>		[REDACTED]		
Total Financial Accounts	[REDACTED]	[REDACTED]	[REDACTED]	
Notes Receivable				
<p>Note Receivable [REDACTED] [REDACTED] [REDACTED] [REDACTED] (principle sum) & Interest</p>		[REDACTED]		
<p>Note Receivable [REDACTED] Payable to [REDACTED]</p>		[REDACTED]		
Total Notes Receivable		[REDACTED]		
Retirement Assets				
<p>[REDACTED] [REDACTED] [REDACTED] Account # As of July 8, 2018</p>		[REDACTED]		
<p>[REDACTED] [REDACTED] [REDACTED] Account #: As of July 8, 2018</p>	[REDACTED]			
Total Financial/Investment/Retirement	[REDACTED]	[REDACTED]		
LLC's and Realty Trusts				
<p>[REDACTED] Accounts [REDACTED] Owner: [REDACTED] As of July 8, 2018</p>		See above under real estate		

[REDACTED] accounts Owner: [REDACTED] As of July 8, 2018		See above under real estate		
[REDACTED] accounts Owner: [REDACTED] As of July 8, 2018		See above under real estate		
[REDACTED] accounts Owner: [REDACTED] As of July 8, 2018		See above under real estate		
[REDACTED] Owner: [REDACTED] As of	not valued			
[REDACTED] Owner: [REDACTED] As of July 8, 2018	See above under real estate			
[REDACTED] Owner: [REDACTED] As of July 18, 2018	See above under real estate			
[REDACTED] Owner: [REDACTED] As of July 8, 2018	See above under real estate			
Motor Vehicles				
[REDACTED] Volvo Owner: [REDACTED]		[REDACTED]		
[REDACTED] Jeep Owner: [REDACTED]		[REDACTED]		
[REDACTED] Dodge Owner: [REDACTED]		[REDACTED]		
[REDACTED] Dodge Owner: [REDACTED]		[REDACTED]		
[REDACTED] Trailer Owner: [REDACTED]		[REDACTED]		
[REDACTED] *Estimated		[REDACTED]		
[REDACTED] Carriages Owner: [REDACTED]		[REDACTED]		
[REDACTED] *Estimated		[REDACTED]		
[REDACTED] Carriage Owner: [REDACTED]		[REDACTED]		
[REDACTED] *Estimated		[REDACTED]		
Tessia Owner: [REDACTED]	[REDACTED]	[REDACTED]		
Jeep Owner: [REDACTED]	[REDACTED]	[REDACTED]		
Dodge Owner: [REDACTED]	[REDACTED]	[REDACTED]		
Total Motor Vehicles	[REDACTED]	[REDACTED]		

ATTACHMENTS TO FINANCIAL AFFIDAVIT OF DANIEL BROWN

The parties have divided their assets based on values as of July 2018
and have divided those assets on an equal basis of agreed values.

Real Estate:				
[REDACTED] As of July 8, 2018 *Estimated Value Per Dan	[REDACTED]			
[REDACTED] Owner: [REDACTED] As of July 8, 2018 *Estimate Value per Dan	[REDACTED]			
[REDACTED] Owner: [REDACTED] As of July 8, 2018 (based on purchaes price)		[REDACTED]		
[REDACTED] Owner: [REDACTED] As of July 8, 2018 (based on purchaes price)		[REDACTED]		
[REDACTED] Owner: [REDACTED] As of July 8, 2018 (based on purchaes price)		[REDACTED]		
[REDACTED] Owner: [REDACTED] As of July 8, 2018 (based on purchaes price)		[REDACTED]		
[REDACTED] Owner: [REDACTED] As of July 8, 2018 *Estimated Value		[REDACTED]		
[REDACTED] Owner: [REDACTED] As of July 8, 2018 *Estimated Value per Dan	[REDACTED]			
Total Real Estate *Estimated	\$10,070,204	\$9,980,090		
Financial Accounts				
[REDACTED] Bank [REDACTED] Owner: [REDACTED] As of July 8, 2018			[REDACTED]	

Other				
[REDACTED]				
[REDACTED]				
[REDACTED] and [REDACTED] by				
Missionary				
[REDACTED] count,				
Equipment *		some included above		
Projects anticipated or in the works	None			