

# Family Matters e-Newsletter



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## NEWS FOR MARCH 2016

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## **Is Your Life an Open Book?**

### **Part 1 of 2**

### **Protective Orders in Civil Discovery**

By Amy A. Edwards

In family law cases, such as [alimony](#), [the division of marital property](#) or [child custody](#) and support, your life will often become an open book. Courts discourage trial by ambush. Instead, the courts require people to share significant personal information with each other, the attorneys and the judge. The other party typically has access to your

credit card statements, bank records, deeds, mortgage and debt records, pay statements and documentation of rents or any other income you have, retirement and investment records, and tax returns in most cases. This applies both to marital property and separate property.

However, there are times when the court can limit access based on court rules concerning what each person is entitled to get. [Civil discovery](#) is a process that allows each of the parties in a lawsuit to ask written questions called Interrogatories to the other party, who must then answer the questions in writing [under oath](#). Civil discovery also includes something called a "Request for Production of Documents and Things." The law requires the parties to exchange documents requested by the attorneys. A request for "things" might be a request to access a mobile device with videos stored on it. The responses to such a request are also made under oath, including any explanation as to why the item or document is not available or clarification that a request is not applicable.

### **What Does a Protective Order Do?**

When the judge rules on a motion for a protective order, he or she reviews the discovery requests to decide whether they are necessary or reasonable. If a motion for a protective order is granted by the judge, it "protects" you from having to produce documents/things or answer certain questions. Otherwise, refusal to respond to discovery requests as required without a court order excusing you means that you risk paying the other party's attorney's fees, among other penalties. The judge can decide to narrow the scope of what the other person is seeking. Instead of providing five years of bank statements, the judge might decide only three years of records must be produced.

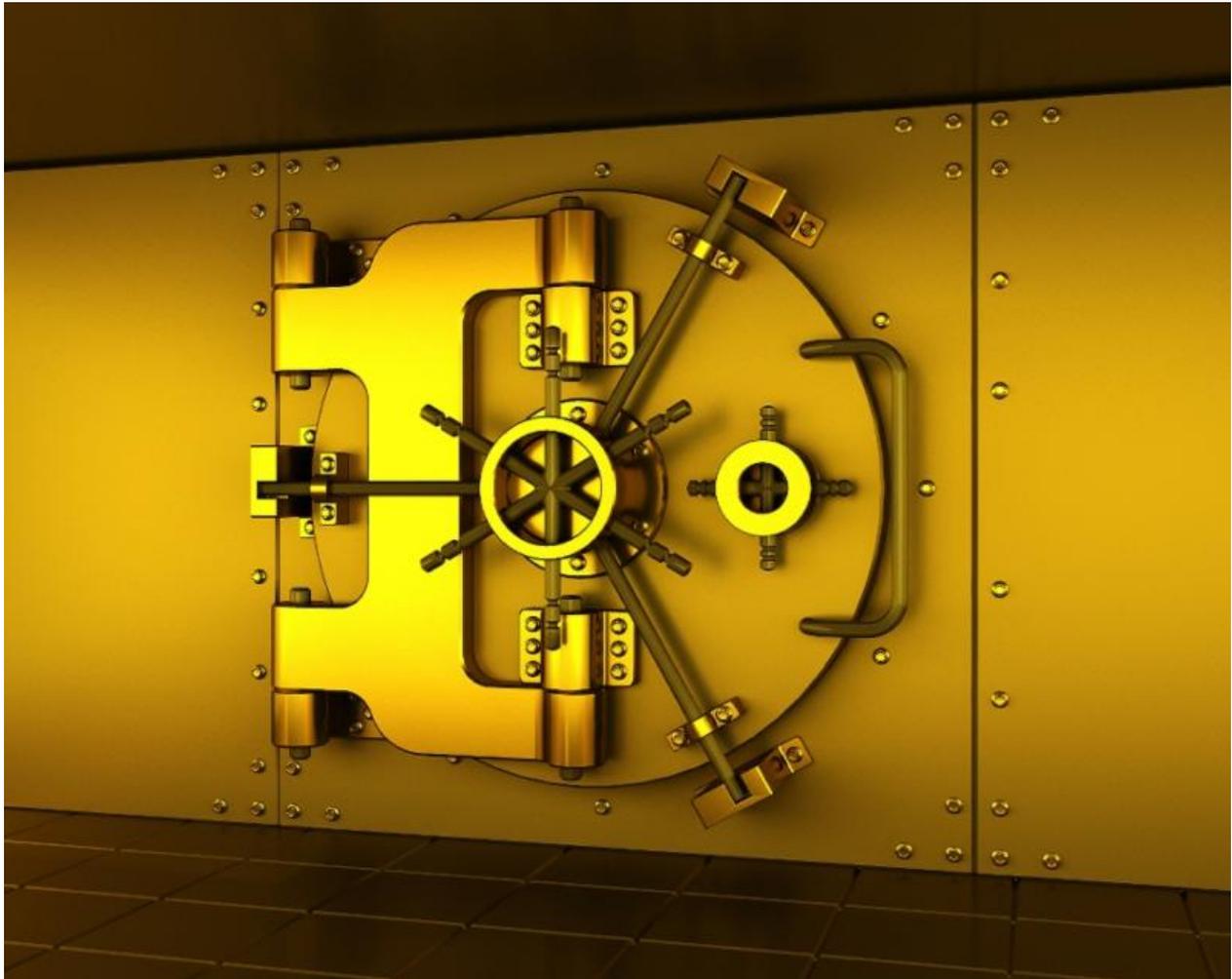
### **When Protective Orders Are Used**

A judge might enter a protective order when discovery requests include confidential records like medical records or computer passwords. If parties are arguing about the income and profitability of a business for

determining support, or the value of the business as a marital asset for purposes of a marital property case, a protective order might be appropriate to protect other co-owners of a business or the business itself. It can prevent confidential information and trade secrets of the business from being shared with anyone except the other party in the lawsuit, the attorneys and any other appropriate individuals. Sometimes the information requested in discovery is difficult or costly to gather. A protective order can address who pays the cost and even the manner in which the information will be obtained, especially when seeking electronically stored information.

Amy A. Edwards is a family law attorney in Greenville, NC, certified by the NC State Bar Board of Legal Specialization as a Family Law Specialist, and is licensed only in NC. Laws change. This article is current as of March 2016.  
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# The Is Your Life an Open Book?

## Part 2 of 2

### Quashing Subpoenas

By Amy A. Edwards

Subpoenas require witness to appear at the courthouse to testify and/or produce evidence such as "records, books, papers, documents, electronically stored information, or other tangible things." (NC Subpoena form). Although people sometimes call it squashing, the motion to quash a [subpoena](#) has nothing to do with the yellow vegetable with the same name. Instead, it is a motion that can be filed if the person or entity being subpoenaed objects to the request for information and/or the presence of a witness in court or at a [deposition](#). If the subpoena is quashed, that means the judge can render it void, or possibly limit it to make it more reasonable. Family law cases usually involve the spouse, former spouse and other family members as witnesses. But there are also third party witnesses such as teachers, doctors, social workers, neighbors, or co-workers. A witness might also be an alleged sexual partners of a spouse.

#### **What's Fair Game?**

Most of the time in family law cases, the parties in the lawsuit must disclose information about assets, debts, and in some cases, marital fault. Subpoenas in property cases usually mean there are subpoenas issued for bank accounts, vehicle titles, retirement documents and anything that shows there are assets or debts. A co-owner of assets might be subpoenaed for information related to the value of a business.

#### **Marital Fault**

If you're not happy about being subpoenaed by your girlfriend's ex-husband, is that a ground for filing the motion to quash? Probably not, if

her husband is alleging she engaged in an adulterous relationship with you, because that is an allegation of [marital fault](#). Perhaps your credit card statements are also subpoenaed because you met her on a social networking dating web site that will appear on the statement. It might well be fair game too. On the other hand, a judge might grant the motion to quash the subpoena if the case involves the division of marital property, which involves only [financial fault](#), not marital fault involving an intimate sexual relationship.

## **Medical Records**

If your ex has served you with a subpoena to produce your medical records, those records may or may not be required by the judge. Medical records are privileged, meaning the general rule protects you from disclosing them. After all, they document everything from your weight, medications and illnesses, to STDs and possible substance abuse. As with any rules, there are some exceptions. The judge in a [child custody](#) case might deny your motion to quash the subpoena because he or she makes a ruling that the best interest of your child overrides privileged medical records. If you have an alcohol addiction, for example, the judge might very well deny the motion to quash the subpoena because your child's safety is at issue. If you have a pending [child support](#) case and you are alleging you are unable to work, the judge probably will require you to provide your medical records, but might limit how far back the records must be provided.

## **The Rules in North Carolina**

Anyone objecting to a subpoena has a legal duty to appear at the time indicated on the subpoena with the requested items unless the judge enters an order saying otherwise. In NC, the subpoena form itself states the protections and lists objections a judge will consider if you make a motion to quash a subpoena. Grounds to file a motion to quash the subpoena include avoiding undue burden or expense complying with it, allowing reasonable time for compliance, disclosing privileged or other

protected information and disclosing trade secrets. Subject to a judge's interpretation, a subpoena cannot be unreasonable or oppressive, and cannot be outside of certain legal procedures. A witness may be "reasonably compensated for the cost of producing the records, books, papers, documents, electronically stored information, or tangible things specified in the subpoena." (Subpoena form).

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# Two's Company and Three's a Crowd: Third Parties in Family Law Cases

By Amy A. Edwards

Family law cases can be contentious enough with two people, but when there's a third party, it gets even more contentious and complicated. Third parties occur most frequently when marital property is at issue, and when there is a custody battle underway.

## Third Party Rights

Once a third party is named as a party in the lawsuit, he or she is entitled to the same rights as the other named parties in the lawsuit. But in an equitable distribution case, those rights extend only to the asset. Third parties have the right to call witnesses to testify, perform depositions, serve discovery, file motions, present evidence to the court, etc.

## Equitable Distribution: Co-owners of Property

Most couples own property either in their joint names together or individually. But sometimes, a couple owns assets with a third party who is a co-owner (CO). For instance, when a couple purchases a home, the in-laws might co-sign the mortgage note so the couple will qualify for the loan. Since they share legal responsibility for the mortgage debt, the in-laws might then want their names added to the deed.

When a spouse files a lawsuit for [equitable distribution](#), the division of marital property, the court makes a ruling on ownership of assets and debts. In that scenario, four people would be COs even though the younger couple would be the only residents living in the home. The law requires COs to be joined as parties to the case so they can protect their ownership interest. If the third party COs are not included as parties to the lawsuit, the court does not have jurisdiction over that property. In the recent [Carpenter v. Carpenter](#), the NC Court of Appeals vacated a court order because the lower court made a ruling on an investment account without naming the child as a third party because the child was listed as an owner of the account. In another recent case, [Nicks v. Nicks](#), the same result occurred when there were ownership interests in a business, but the business was not joined as a third party to the lawsuit.

## **Child Custody Cases**

Both parents have a constitutional right to the care and custody of their children. When it comes to non-parents, third parties have a heavy burden to bear if they ask the court to intervene as a party in a child [custody case](#). The non-parent must show the parents' constitutional rights should be limited because they are unfit. Or, the non-parent must prove the parents have acted in a manner that is contrary with their parental obligations. In other words, non-parents must show there is a very serious problem with the parents before the court could designate them as third parties because the parents constitutional rights as parents. If they are granted the right to intervene in the case, they are then give the rights of any other party to the case.

## **Grandparents**

Grandparents face the same [hurdles](#) as any other third party when it comes to child custody cases. They have no special status in a child custody case. However, they do have one special rule. Because they are grandparents, they can in some circumstances be designated as third parties if a custody case is pending so they can ask the court for court-ordered visitation. This generally means the court will set aside time for visits, as opposed to giving them the ability to make parenting decisions or have any type of physical custody, which is really physical "possession" of the child.

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Amy A. Edwards

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