

4. The Plaintiff herself has made written and oral statements that contradict sworn testimony by Mr. Bakhir including on July 12, 2004 under oath in court, testified that Mr. Bakhir had spent the night with her and Liam Smith in October 2003, prior to Mr. Bakhir's deposition.

5. Peter Berty, Mr. Bakhir's supervisor under oath testified that some of Mr. Bakhir's statements were incorrect and "does not see how it is possible" Mr. Bakhir could not know that he was Mrs. Smith's supervisor.

6. Rule 4:12(a)(3) states that "For purposes of this subdivision an evasive or incomplete answer is to be treated as a failure to answer."

7. According to Va. Code § 18.2-434, Mr. Bakhir's false answers are acts of perjury.

8. According to Va. Code § 18.2-434, Mr. Bakhir's contradictory answers are sufficient evidence of perjury. For example on Page 21 of his deposition he claims to have no friends in the U.S., yet uses interaction with friends as a answer to other questions such as page 65 about his trip to Snowshoe, and page 117, and even names a friend on page 118 but claims not to know his last name.

9. Mr. Bakhir's attempts to invoke the Fifth have been inconsistent, answering a question about Mrs. Smith or Liam Smith in one instance then later taking the Fifth as to all questions about them.

10. Mr. Bakhir's attempt to use the Fifth Amendment is contradicted by case law: "The Fifth Amendment prohibits only compelled testimony that is incriminating. See *Brown v. Walker*, 161 U. S. 591, 598 (1896) (noting that where "the answer of the witness will not directly show his infamy, but only tend to disgrace him, he is bound to answer"). " "A claim of Fifth Amendment privilege must establish " 'reasonable ground to apprehend danger to the

witness from his being compelled to answer ... [T]he danger to be apprehended must be real and appreciable, with reference to the ordinary operation of law in the ordinary course of things,--not a danger of an imaginary and unsubstantial character, having reference to some extraordinary and barely possible contingency, so improbable that no reasonable man would suffer it to influence his conduct.' " *Id.*, at 599-600 (quoting *Queen v. Boyes*, 1 Best & S. 311, 321 (1861) (Cockburn, C. J.))." (See attached case *Hibel v Sixth Judicial District Court Of Nevada*)

"We think that a merely remote and naked possibility, out of the ordinary course of law and such as no reasonable man would be affected by, should not be suffered to obstruct the administration of justice. ... But it would be to convert a salutary protection into a means of abuse if it were to be held that a mere imaginary possibility of danger, however remote and improbable, was sufficient to justify the withholding of evidence essential to the ends of justice." (See attached case *CHARLES MASON and A. Hanson, Plffs. in Err., v. UNITED STATES*)

11. There is no reasonable chance of prosecution for adultery of Mr. Bakhir to justify his use of the Fifth Amendment.

12. Mr. Bakhir's actions are a willful attempt to obstruct discovery by the Defendant and help the Plaintiff hide relevant facts from the court.

13. The Defendant still needs accurate responses from Mr. Bakhir in order to properly prove his claims in the pending case.

WHEREFORE, for all the above stated reasons, Defendant requests the following:

1. Issue a Rule against Mr. Bakhir to appear and show cause why he should not be held in contempt of court.

2. Monetary sanctions for refusing to comply with the subpoenas, including costs for bringing this motion, costs of attorney fees spent on previous subpoenas and deposition, other damages that might be awarded via § 8.01-221, the amount to be determined by the court.

3. An order compelling Mr. Bakhir to immediately provide all documents requested in the subpoena and to supply testimony under oath answering the questions he refused to answer or answered incorrectly in his deposition, and any new questions needed.

4. Such further relief as the nature of the case or the goals of equity require.

**Respectfully submitted,
WESLEY C. SMITH
Defendant**



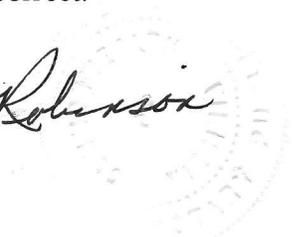
Wesley C. Smith
3215 Ridge View Ct. Ap 104
Woodbridge, VA 22192
(703) 220-2637
Defendant, pro se

**COMMONWEALTH OF VIRGINIA
COUNTY OF PRINCE WILLIAM, to wit:**

This day personally appeared before me, *Roselyn A. Robinson*, a Notary Public in and for the Commonwealth of Virginia at large, Wesley C. Smith, who being first duly sworn, states that the allegations contained in the foregoing Petition are true and correct.

Subscribed and sworn before me this 18th of September, 2004

My Commission Expires: *July 31, 2006*



CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of this pleading was served via first-class mail, this 10 day of September, 2004, to the Loretta Vardy, Esquire, 12388 Silent Wolf Drive, Manassas, Virginia 20112.


Wesley C. Smith.

VIRGINIA:

IN THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY

CHERI SMITH,

Complainant,

v.

WESLEY C. SMITH,

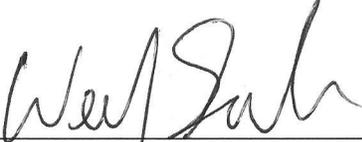
Defendant.

)
)
)
)
)
)
)
)
)
)

Chancery No. 53360

PRAECIPE

THE CLERK will kindly place the attached Motion on this Court's docket for Friday, September 17, 2004 at 10:00 a.m. for hearing or as soon thereafter as this matter may be heard.



Wesley C. Smith
3215 Ridge View Ct. Ap 104
Woodbridge, VA 22192
(703) 220-2637
Defendant, pro se

CERTIFICATE OF SERVICE

I hereby certify that on this 10 day of September, 2004, a true and accurate copy of this pleading was served via ~~facsimile~~ and first-class mail, to the Loretta Vardy, Esquire, 12388 Silent Wolf Drive, Manassas, Virginia 20112 ~~and via first class mail and electronic mail to Wesley Smith, 3215 Ridgeview Court, Apt. 104, Woodbridge, Virginia 22192~~



Wesley C. Smith