

VIRGINIA:

IN THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY

CHERI SMITH,)	
)	
Plaintiff,)	
)	
v.)	Chancery No. 53360
)	
WESLEY C. SMITH,)	
)	
Defendant.)	

DEFENDANT’S STATEMENT OF FACTS FOR SAIC MOTION TO QUASH

COMES NOW the Defendant, Wesley C. Smith, who is unable to pay a court reporter to transcribe the attached recording of the hearing and requests that Judge Alston sign the following statement of facts.

1. On February 13, 2004, the Defendant, via counsel, issued a subpoena for SAIC, the Plaintiff’s and Mr. Bakhir’s employer, to produce documents relating to the divorce and custody case.

2. On February 25, 2004, the Plaintiff filed an unsigned motion to quash on the claim that it “sought to prove facts not pled in the Defendant’s Cross-Bill of complaint”.

3. The original Cross-Bill filed by the Defendant did not allege adultery by the Plaintiff.

4. On February 27, 2004 counsel for SAIC wrote a letter to the Defendant’s attorney stating that SAIC was compiling the records and indicating a willingness to provide most of the documents and to work with the Defendant in resolving issues or narrowing a few requests

5. On March 3, 2004 Judge Potter ruled to approve the motion to quash except for employment and leave information. As part of the same order Judge Potter also ruled, over the

objection of the Plaintiff, to allow the Defendant to amend his Cross-Bill to include a claim of adultery against the Plaintiff.

6. On March 17, 2004 the Defendant filed an amended Cross-Bill with a claim of adultery and specifically mentioning Igor Bakhir a co-worker of the Plaintiff at SAIC and including dates and places that adultery is believed to have occurred.

7. Neither SAIC or the Plaintiff asked for or received a protective order to prevent the records from being provided to the Defendant.

8. On September 13, 2004, the Defendant, now pro se, noting that the reason stated in the Plaintiff's motion to quash no longer applied, issued a new subpoena dues tecum on SAIC, that was similar to the first one but also requested additional items.

9. On September 23, 2004 the Defendant received a motion by SAIC counsel filed a motion to quash to be heard the very next day on September 24. The motion SAIC claimed did not understand what parts of the subpoena meant, that parts were overly broad and burdensome, and admits to not having tried to resolve these issues with the Defendant.

10. At the September 24 2004 hearing, counsel for SAIC asked to have the subpoena quashed on the grounds that it was similar to the prior subpoena quashed by Judge Potter, he did not state any additional reasons or cite any laws or court rules, nor did he dispute the Defendants statement that SAIC had previously agreed to provide many of the requested documents. Mr. Sparks also stated that the current subpoena asked for documents not requested in the first subpoena

11. At the September 24 2004 hearing, the Defendant requested the motion to quash be dismissed due to not having been provided to the Defendant in sufficient time to prepare for the hearing. The Defendant also pointed out the change in the cross-bill, its affect on the

reasoning of the previous ruling, and that he was prepared to explain why each item requested is relevant and that he was willing to work with SAIC to limit the number of documents produced and would agree to sign a confidential agreement with SAIC relating to business information or agree that SAIC could redact business information not related to the case. The Defendant also disputed some of SAIC's claims relating to when the subpoena was served and SAIC's compliance with the first subpoena. The Defendant also pointed out that some of the documents requested might contain admissions by the Plaintiff about significant points of the case thus eliminating the need to further litigate them, such as if the Plaintiff had informed SAIC of her adultery with Mr. Igor Bakhir.

12. September 24, 2004, Judge Alston ruled to quash the subpoena entirely, stating that he did not want to do something different than Judge Potter and that he did not know the what Judge Potters intentions were. Judge Alston did not cite any law, rule or precedence to support his ruling.

13. The Defendant did object to the ruling, citing rule 4:9 and 4:1 in his comments.

WHEREFORE the Defendant requests the court certify this statement of facts.

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

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

Circuit Court Judge

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing motion was served to Loretta Vardy and Ronald Fahy (GAL), and Robert Sparks, via first-class mail and/or hand delivered, this ____ day of _____, 2004.

Wesley C. Smith.