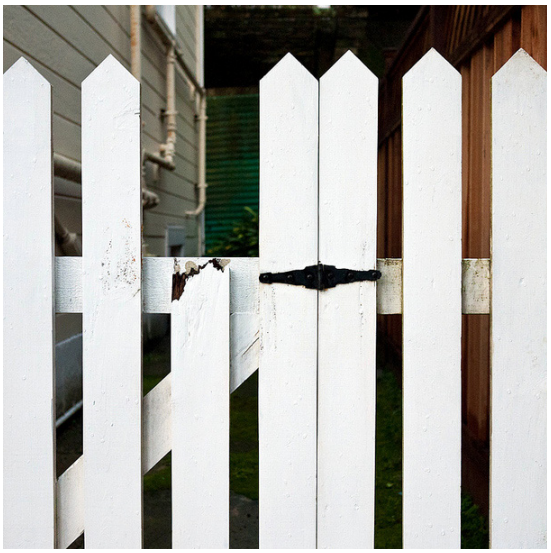
THE INTERSECTION OF THE MANDATORY INITIAL SELF DISCLOSURE RULE WITH DISCLOSURE OF INTERESTS IN TRUSTS AND/OR INHERITANCES

By Karen J. Levitt



I. INTRODUCTION

The new Mandatory Initial Self Disclosure Rules of the Circuit Court of the State of New Hampshire-Family Division Section 1.25-A, which became effective December 1, 2011, have made many areas of discovery simpler and more streamlined in divorce cases. By ordering that in most cases, parties must exchange certain financial documentation without a specific formal request, the Court has established basic minimum boundaries for the disclosure of common, yet necessary, information in family law cases. In simple cases, these mandatory disclosures may be all that is necessary for parties to fully understand the financial circumstances of the other party and allow them to reach settlement without incurring the expense of formal discovery. Even in complicated cases, the mandatory self-disclosure rule provides a basis from which additional discovery will likely arise, but again simplifies the basic exchange and saves the parties time and money. The focus of the new rules is cooperation, not conflict.

The new rules may impact discovery in the disclosure of financial information of family members or other persons who are not parties to the divorce. New Hampshire law recognizes that vested interests in a trust, inheritance, or similar instruments are marital assets subject to division in divorce, *Goodlander v. Tamposi*, 161 N.H. 490 (2011); it is essential that the Court have this information in order to properly and fairly divide these interests including any income flows from them.

II. TRUSTS AND/OR INHERITANCES: WHAT INTERESTS ARE DIVISIBLE AND SUBJECT TO DISCLOSURE?

When looking at trusts and/or inheritances, attorneys need to distinguish between interests that are vested, and those that are not vested, as only vested interests are divisible marital property in New Hampshire. *Goodlander, supra*. Marital property includes all "tangible and intangible property and assets, real or personal, belonging to either or both of the parties, whether title to the property is held in the name of either or both parties." RSA 458:16-a, I. Vested interests, for example, may include interests in and/or distributions from irrevocable trusts; however one must still look to whether the interest and/or any distribution is discretionary, as what may look like a vested interest subject to distribution may in fact be a mere expectancy and not a vested interest as outlined in *Goodlander*.

In the Matter of Goldman and Elliott, 151 N.H. 770 (2005), reinforced the definition of a vested right as a right which is "more than a mere expectation . . .; it must have become a title, legal or equitable, to the present or future enforcement of a demand, or a legal exemption from the demand of another." *Goldman* at 774, *quoting Aetna Ins. Co. v. Richardelle*, 528 S.W. 2d 280, 284 (Tex. Civ. App. 1975). The Uniform Trust Code also provides guidance on the difference between a vested interest and a mere expectancy. The language of the Uniform Trust Code can be instructive even in a divorce case, as it was in *Goodlander*. The Uniform Trust Code RSA 564-B: 8-814(b), states:

> Subject to the provisions of paragraph (a), if a distribution to or for the benefit of a beneficiary is subject to the exercise of the trustee's discretion, whether or not the terms of a trust include a standard to guide the trustee in making distribution decisions, then the beneficiary's interest is neither a property interest nor an enforceable right, but a mere expectancy.

Tuttle v. New Hampshire Medical Malpractice Joint Underwriting Assoc., 159 N.H. 627, (2010) is another case which helps clarify the differ-

ence between a vested interest and a mere expectancy, albeit in a different context than divorce. *Tuttle* was an interesting case that revolved around policyholders of the Medical Malpractice Joint Underwriting Association (JUA) challenging a statute related to the JUA's right to transfer certain funds to the State General Fund. The state argued that the policyholders had no vested interest in the funds, but the Court found they did have a vested interest, not in the funds themselves, but in the disposition of the funds. The Court held:

> While a beneficial interest is defined as a right or expectancy in something (such as a trust or an estate), as opposed to legal title to that thing"... (citation omitted), such interest may, nonetheless, constitute a vested property right, subject to protection....

Tuttle, at 644-645. Although the law is clear that only vested interests are divisible marital assets, it is not always obvious what is a vested interest and what is not. The discovery of information related to interests in trusts and inheritances, especially from third parties, is frequently the subject of dispute. Not only can it create substantial conflict between the parties, but it can also affect family relationships between extended family members, and lead to unnecessary and costly discovery. The practitioner must take care to learn and identify the difference between a vested interest and an interest that is not vested, so that unnecessary time and cost is not spent on discovery of interests that are not even divisible in a divorce. For example, the mere fact that a party has a bank account with a parent, or that the parent has named the party in their will, does not make the interest a vested interest subject to division. A will without an irrevocable trust or other irrevocable component to it, can be changed and is therefore a mere expectancy. Even a joint bank account which may be for convenience purposes only for an elder, may not equate to a vested interest. See *In re Wladyslaw Wszolek Estate*, 112 N.H. 310 (1972); see also RSA 384:28.

Parties may, with limited discovery, be able to determine whether a party has an actual, vested interest in an asset, or just a mere expectancy, by providing redacted or other supportive documents. Failure to provide such documentation at the outset or to cooperate in the exchange of such documentation can unnecessarily impede discovery and ultimately settlement. It may also result in the Court having insufficient evidence at trial to determine the nature of an interest. See, e.g., the language in *Brownnell*.

III. TRUSTS AND/OR INHERITANCES AND THE MANDATORY DISCOVERY RULES

Parties often spend significant financial resources and time litigating about trusts and/or inheritances. Rule 1.25-A provides a mechanism for addressing these disputes well before formal discovery. It may save time and money if the information is produced in a way that balances 1) the need for discovery against 2) the interests of the spouse and third parties in minimizing disruption to extended family and protecting inherited wealth; and as referenced earlier (3) makes clear from the outset before unnecessary litigation ensues whether any such interests are vested or mere expectancies.

The mandatory self-disclosure rules were an effort to limit discovery disputes and ensure full disclosure of at least basic information that is commonly exchanged. Not only do attorneys need to be familiar with the new self-disclosure rules, they may also need to find creative ways to produce required discovery where there are trusts and inheritances. There are competing interests of spouses in divorce, and there may be a need to protect the privacy and confidentiality of third parties when trusts and inheritances are involved. There also may be statutory mandates outside of family law, such as the law of trusts and inheritances, that might affect the determination of whether an interest in a trust and/or inheritance is a marital interest subject to division or alimony distribution, G*oodlander, supra*. The first step in determining whether that interest is divisible is disclosure of the interest.

The scope of discovery in New Hampshire is broad. Under the Rules of the Circuit Court of the State of New Hampshire-Family Division, Section 1.25 (C),

> Unless otherwise ordered, parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of the other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not grounds for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

The mandatory self-disclosure rules are bolstered by the general rule in New Hampshire, that there should be a liberal view of discovery, and that full discovery is favored even as against third parties. *Yancey v. Yancey*, 119 N.H. 197 (1979). In reviewing information about a trust or inheritance, it is not always easy to determine whether a spouse's interest is vested or a mere expectancy, as was disputed in *Goodlander* and related cases. If trusts or other such interests exist, disclosure of the trust or related documents may be necessary to make that determination.

The mandatory self-disclosure rules are helpful in a number of different ways when trying to determine the existence and extent of a spouse's interest in trusts and/or inheritances. Section 1.25-A (B), requires parties to provide, a current financial affidavit pursuant to Family Division Rule 2.16[Section 1.25-A (B) (a), as well as three years of income tax returns with supporting documentation, for personal, business, partnership, and corporate returns, certain bank account statements[Section 1.25-A(B) (b)], and 12 months of certain statements of financial and other assets[e.g. Section 1.25-A(B)(h) and (i). From these mandatory disclosures, trusts and inheritances may be immediately implicated. Interests in these assets, if vested, clearly must be disclosed on a financial affidavit. Tax returns provided may indicate interests in trusts and inheritances or distributions. There may be financial statements that disclose whether a party is a trustee or beneficiary of a trust.

Interests that are "mere expectancies" are more difficult to address, as a spouse may not know the difference, or be aware of such interests, in preparing a financial affidavit or providing financial documents in compliance with the mandatory self-disclosure rules. However, the mandatory self-disclosure rules include a section that may be interpreted as creating a duty of inquiry. For example, Section 1.25-A (B) (1) (h) specifically requires

the provision of bank statements held in the name of another person for the benefit of either party. This implies that the parties must at least inquire of close family if there are any accounts being held for that party's benefit. Also, in Section 1.25-A (C) when documents are unavailable, a party must state in writing under oath what efforts they have made to obtain the documents. A statement of unavailability under this provision "does not limit the filing party's duty to supplement disclosures and provide the other party with documentation as it becomes available. " Rule 1.25-A(C) (1). It seems clear that there is a duty of inquiry into any documents that may be responsive to the mandatory disclosure rules, and a requirement that a party disclose the reason for unavailability as well as their efforts to obtain such documents. It is incumbent upon the attorney to inquire of their clients, what interests they may have, and to have their clients make sufficient inquiry to comply with the mandatory disclosure rules.

Once a party has discovered that there are trusts, inheritances or other relevant "third party" assets, they may soon discover that the third parties do not wish to disclose the requested information. Third parties often resist providing any information to their children and/or their attorneys in divorce actions, further complicating the issue. In divorce and other family law actions, emotions are high, and cases with trusts and inheritances may have substantial assets at stake. Third parties usually create estate plans that are intended for blood relatives, not the relatives' spouses, and divorce may thwart or affect estate plans in unintended ways. While this article is not intended to address any estate planning issues, estate planning attorneys often are involved in discovery disputes related to trusts and inheritances in divorce, and need to be aware of the mandatory self-disclosure rule, its implications, and its limitations.

Rule 1.25-A (B) (4) outlines the process for seeking a protective order for certain documents that must be disclosed. Under Rule 1.25-A (B) (4), a party can by motion seek a protective order for information disclosed in response to the mandatory disclosure rules. This gives the opportunity, even before formal discovery, to address the issue of the disclosure of trusts and inheritances, and confidentiality concerns. It also alerts the Court that trusts or inheritances may be issues in the case, and could also provide a mechanism for the Court to address how further discovery disputes related to the issues will be addressed in the future. This section does not allow for non-disclosure; rather it requires disclosure, but allows a party to seek an in-camera review of the materials should there be a need for a protective order. The documents under a request for a protective order must still be disclosed by the parties "to their attorneys, staff, experts/consultants, in court, and as otherwise necessary in connection with the pending action." Rule 1.25-A (B) (4). The Court then determines whether a protective order is necessary.

Failure to provide initial disclosures can result in sanctions under Section 1.25(A) (D). The sanctions include "prohibiting that party from: (a) introducing into evidence any document which was required under section B or C of this rule; (b) testifying or making an offer of proof regarding information or subject matter which is likely to be contained in or referred to in section documents required by section B and C; (c) filing requests for discovery as allowed under the family division rules; or (d) filing any discovery motions." Failure to provide initial disclosures, if sanctions are imposed, could severely limit a party's ability to conduct discovery and prepare their case.

The mandatory self-disclosure rule also makes clear that it is not intended to limit the scope of discovery Rule 1.25. See Section 1.25-A (E). Upon responding to mandatory self-disclosure, if interests in trusts or inheritances are implicated, further discovery pursuant to Rule 1.25 may still be had with regard to those interests. Some interests will be disclosed as part of mandatory self-disclosure, but some may not, especially interests that may be subject to interpretation as to whether they are vested or mere expectancies. In *Goodlander*, the issue was not the disclosure of interests, but the interpretation of those interests. *Goodlander* cited *In the Matter of Chamberlin and Chamberlin*, 155 N.H. 13, 16 (2007), by stating "[t] he trial court first determines, as a matter of law, what assets are marital property under RSA 458:16-a, I, and thus subject to equitable distribution, and then exercises its discretion to make an equitable distribution of those assets." *Goodlander,* at 495. Without full disclosure of trusts and inheritances, the Court cannot get to the issue of the nature and extent of those interests in the divorce action. *Goodlander* also made clear that it is not just the equitable division of assets that is at issue when looking at trusts and inheritances, but that support is also affected. Trusts and inheritances may need to be reviewed to assess income generation, an issue in the determination of whether and how much support would be ordered. *Goodlander* found that RSA 458:19 is the "standard for determining alimony" rather than the terms of the Uniform Trust Code, *Goodlander,* at 503, and went on to make a determination of the relationship between the income being generated by the trust and alimony. Thus discovery disputes concerning family wealth can arise not only as related to the division, if any, of interests in trusts and inheritances, but also as related to the income or distributions from those trusts and inheritances for purposes of alimony and even child support(although *Goodlander* only involved alimony).

Further, discovery of trusts and inheritances may be relevant in demonstrating the other spouse's "opportunity for future acquisition of capital assets and income" under RSA 458:16-a II(c). The exchange of information related to the existence of any such assets, is a precursor to the determination of whether any such assets are subject to division or have any relevance with regard to a party's opportunity for future acquisition of capital assets and income.

The mandatory self-disclosure rule is a move toward greater transparency in discovery between parties as a way to avoid or minimize discovery disputes. This is critical not just because it can limit the time and expense to parties, but because the courts have limited resources with which to address discovery disputes. The lack of resources to address discovery disputes also results in delay, which parties and children can ill afford when a divorce is pending. By carefully reviewing the mandatory disclosure rules and meeting the duty of inquiry which is implicit in those rules, parties and counsel can early on map out what needs to be disclosed and create options for how to make those disclosures. The purpose of discovery is to determine the facts of a case; full disclosure is required to do so.

Yet the mandatory self-disclosure rule is not intended to limit discovery, and must still be viewed in the context of protecting the rights of parties who are not directly related to the dispute. Not all trust and estate interests or supporting documentation will be covered under mandatory self disclosure. Requests for production of documents and interrogatories, as well as depositions, are all still viable ways to obtain discovery of trust

and estate interests, vested or otherwise. However, when doing production of document requests and interrogatories related to trusts and inheritances, claims of privilege are a real possibility. A claim of privilege needs to be more than just a "say so". New Hampshire Superior Court Rule 35(b) (1), states that:

> Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.
>
> When a party withholds materials or information otherwise discoverable under this rule by claiming that the same is privileged, the party shall promptly and expressly notify the opposing party of the privilege claim and, without revealing the contents or substance of the materials or information at issue, shall describe its general character with sufficient specificity as to enable other parties to assess the applicability of the privilege claim. Failure to comply with this requirement shall be deemed a waiver of any and all privileges.

While not a specific Family Division rule, Superior Court Rule 35(b) (1) is part of the law of the state and can be looked to in family division cases as well. The Rule is very specific regarding what is necessary when there is a claim of privilege. Sufficient information needs to be provided to affirm that there are documents responsive to the discovery request, but that they are not being provided on the grounds of privilege. There could be interests of minors implicated that might be privileged, or there could be trade or other business secrets involved that would trigger a claim of privilege. When thinking about this in the context of trusts and inheritances in divorce, with complicated estate plans such interests could certainly exist and need to be protected on privilege grounds. This does not preclude discovery despite the claim of privilege; the new mandatory disclosure rules provide for in-camera review and protective orders as referenced earlier, which would allow a court to determine if there is a clear basis or claim of privilege that is viable. This may be enough for a party to assess whether or not a challenge to a claim of privilege is appropriate and warrant the time and expense involved. It may also allow for parties to determine whether and what information actually needs to be provided, and if it can be done without privilege being compromised.

Cases that shed some light on the issue of privilege and discovery, are *Daigle v. City of Portsmouth*, 131 N.H. 319 (1988), and *Berg v. Berg*, 152 N.H. 658(2005). It is instructive that *Daigle* was not in the context of divorce, and *Berg* was a post-divorce case; however, it is important to read the new mandatory disclosure rules as part of the overall state discovery rules, as they do not operate in a vacuum. Cases such as *Daigle* and *Berg* can help practitioners think through the implications of mandatory disclosure when considering what discovery to produce, and how to respond to discovery requests including any claims of privilege. Mr. Daigle had been the defendant in a criminal case, and ultimately sued the City of Portsmouth and requested sanctions for its failure to comply with discovery and produce certain documents. The City of Portsmouth argued that certain documents were privileged. *Daigle* held that:

> Although New Hampshire allows for a limited right to withhold certain privileged material, R. Wiebusch, 4 *New Hampshire Practice, Civil Practice and Procedure* § 809, at 39 (Supp. 1987), such a privilege must be claimed at the time the information, subject to a discovery request or order, is withheld. A party cannot determine by itself that material is exempt because of a privilege and fail to inform the other party that it is withholding specific information.

Daigle, supra, at 328. *Daigle* further went on to say that one cannot unilaterally withhold privileged information. If trusts and/or inheritances are at issue in a divorce, and privilege is claimed for a document, that document must be identified and proper steps then taken to address the issue of privilege With the implementation of the mandatory disclosure rules and their suggestion of greater cooperation and transparency in discovery, the failure to identify existing documents even if privilege is claimed, could result in sanctions under Section 1.25(A) (D).

In *Berg*, the issue was the release of confidential medical records of children. Berg, *supra*, at 666, stated:

> We conclude that parents do not have the exclusive right to assert or waive the privilege on their child's behalf. The trial court has the authority and discretion to determine whether assertion or waiver of the privilege is in the child's best interests. We refrain from establishing a detailed procedure through which the privilege should be waived or asserted, and instead leave that determination to the sound discretion of the trial court. However, when a privilege issue arises, the trial court must engage in fact-finding to determine whether waiver or assertion of the privilege is in the best interests of the child, with particular emphasis on preservation of the child's ability to engage in open and productive therapeutic treatment. The attempted assertion or waiver of the child's privilege by anyone, including the child, the child's parent or guardian, the child's guardian ad litem, or the child's therapist, will not be determinative.

So too, in cases involving trusts and/or inheritances, only by following proper discovery procedures including the mandatory discovery rules will disclosure issues involving allegations of privilege be resolved.

IV. RESOLUTION OF DISCOVERY DISPUTES REGARDING TRUSTS AND/OR INHERITANCES

The best way for parties to limit discovery disputes is for counsel to be creative about ways to exchange information that balances the interests of those involved while still allowing for the discovery of relevant factual information. There are a number of ways that this can be done, but they require cooperation between counsel for the parties, as well as counsel for third parties that are implicated in the dispute. Parties can craft confidentiality or protective orders by agreement. Courts generally favor disclosure as Rule 1.25 specifically states; arguing over disclosure may be counterproductive and expensive for clients.

Confidentiality agreements can even avoid the need for protective

orders. See Sample Stipulation in Figure 1.

Other states have provided guidance on the exchange of information relating to trusts and inheritances. *Vaughan v. Vaughan*, 91-485 (1991), an unpublished Massachusetts Supreme Judicial Court single justice opinion, addressed disclosure of information regarding trusts and inheritances by way of affidavit. While not subsequently incorporated in any specific discovery rule, *Vaughan* affidavits have become standard practice, providing guidance to parties and counsel as to not only what is to be disclosed but also how it is to be disclosed. Confidentiality agreements and protective orders can be used in conjunction with such affidavits; supporting documentation such as copies of actual trusts, are also often exchanged as part of the provision of these affidavits. Massachusetts, like New Hampshire, has mandatory disclosure rules for discovery, Supplemental Rules of the Probate and Family Court, Rule 410; although those mandatory disclosure rules implicate trusts and inheritances, they, like New Hampshire, do not limit discovery and additional discovery of these interests may be necessary. However, what has been come to be known as the "*Vaughan* affidavit", along with copies of the relevant trusts or other such interests that may be referenced, are commonly exchanged to avoid extensive and unnecessary litigation, and the attendant financial and emotional cost to families. See Figure 2, a sample "*Vaughan* affidavit".

While other forms of the *Vaughan* affidavit are acceptable, the affidavit is often a satisfactory response to interrogatories and production of document requests related to trusts and inheritances and the divorcing party's interest in same. If more is required, it is usually done by cooperation of counsel. Protective orders and stipulations of confidentiality are often necessary to the disclosure of these interests, as neither the parties nor third parties wish to have such private information become a public record of any kind, and there could be sensitive information relating to trust or inherited interests in businesses or other assets that should not be public. The dissemination to parties other than in the litigation, specific family members, attorneys, and experts/consultations, can also be limited by such stipulations or agreements.

Although the *Vaughan* affidavit has not precluded litigation about the interpretation of these interests and whether vested or mere expectancies, see e.g. *Williams v. Massa*, 431 Mass 619, 728 N.E. 2d 932 (2000); *S.L. v. R.L.*, 55 Mass.App.Ct. 880, 774 N.E. 2d1179 (2002); *E.H. v. S.H.*, 59 Mass. App. Ct. 593, 797 N. E.2d 411 (2003), it addresses the disclosure of the interests so that the parties can focus on the real issue which is the division of the interests and any income or distributions from them. The acceptance of such an affidavit by the Court in *Vaughan*, at least provided some context for parties, third parties, and their counsel in addressing this complicated issue.

VI. CONCLUSION

Rule 1.25-A, gives parties and counsel the opportunity to craft discovery in a manner that can also help preserve family relationships by addressing the issue early and respectfully. By being aware of and understanding the relationship between the Rule and the disclosure of interests in trusts and/or inheritances, and the impact on other discovery requests beyond the mandatory self-disclosure requirements, counsel can advise their clients of what is required. Counsel can also offer alternatives to the traditional model of fighting over disclosure before even getting to interests, when courts are more likely than not to order disclosure.

Counsel could also consider other alternatives to litigating this issue, such as mediation, arbitration, or collaborative law. Although the mandatory self-disclosure Rule makes clear that the Rule does not apply in alternative dispute resolution "until the petition invoking court involvement has been served/delivered", and that parties involved in alternative dispute resolution "are not bound by the rule until they initiate court action", Rule 1.25-A(A), this does not preclude parties from contractually obligating themselves in those out-of-court processes to be bound by the Rule and providing for appropriate sanctions if any such contractual obligations were violated. In Collaborative Law for example, participation agreements signed by parties, counsel, and case facilitators, and to which experts and consultants must also adhere, can include a paragraph referencing the mandatory disclosure rule and providing that everyone agrees to be bound by the rule. The Uniform Collaborative Law Act, Section 12, Disclosure of Information, provides: "During the collaborative law process on the request of another party, a party shall make timely, full, candid, and informal disclosure of information related to the collaborative matter without formal discovery, and shall update promptly information that has materially changed. Parties may define the scope of disclosure, except as provided by law other than this [act]." Thus the UCLA encourages open and transparent disclosures of all relevant information, and provides a mechanism for establishing any necessary parameters, which could include contractually obligating the parties to comply with Rule 1.25-A, and the attendant confidentiality agreements or other such agreement. By contractually obligating parties to Rule 1.25-A, the parties are not forced to file with the Court in order to resolve their discovery conflicts when trusts and inheritances may be at issue, and they can continue to resolve their family law dispute out of court. Although the enforceability of such agreements should also be considered in light of existing contract law, language could be incorporated into any such agreements to address enforceability.

Clearly by enacting Rule 1.25-A, the Courts are by implication encouraging parties and counsel to think more about not just what is required to be disclosed, but what *should* be disclosed. The mandatory disclosure rules allow for the conversation about vested interests in trusts and/or inheritances to begin, hopefully leading to more orderly disclosure of these interests and without conflict. When litigating cases, or when resolving cases out of court, we should not lose sight of the purpose of discovery, which is to gather relevant facts that enable the parties to resolve their conflict in an equitable manner. Disclosure of the relevant facts relating to trusts and/or inheritances pursuant to the mandatory self disclosure rules and general discovery rules as well, with protections built in for both parties and third party interests, can only help bring matters to an equitable resolution.

ENDNOTES:

The author wishes to acknowledge the contribution of Attorney Andrea M. Wells of the Levitt Law Group in the research for and preparation of this article.

Author

Karen J. Levitt practices with Levitt Law Group in Chelmsford, Mass.

SAMPLE STIPULATION OF CONFIDENTIALITY

The parties to this action and their counsel hereby stipulate and agree as follows:

1. "Confidential Information" as used herein means any and all XXXXX OR OTHER SUCH documents supplied by the Petitioner or directly relating to XXXXX and any related documents. Such information includes, but is not limited to, the following subjects: any and all information produced in response to Schedule A of a certain subpoena duces tecum served upon XXXXX; will, trusts, estate planning documents, financial statements; income statements; tax returns;; and any other confidential, financial, proprietary or other sensitive information. Such information shall also include all documents and things, including tapes and disks, containing portions of confidential information, extracts therefrom, reports or summaries thereof including but not limited to any and all documents prepared which refer,relate, or concern in any way the information relating to XXXXX.

2. This STIPULATION OF CONFIDENTIALITY shall apply to (a) all information, documents and things requested or provided in this action, including, without limitation: testimony adduced and documents or things marked as exhibits at depositions upon oral examination or upon written questions; answers to interrogatories, documents and things produced in response to requests for production of documents or mandatory disclosure rules, and answers to requests for admissions and (b) documents and things voluntarily transferred between counsel for the parties in connection with this action directly relating to XXXXX and any related entities.

3. "The Litigation" as used herein means this action and any other action presently pending or hereafter instituted between the parties hereto.

4. "Qualified Persons" as used herein means:

a) Counsel for the parties in the Litigation, specifically Attorney XXXXX and Attorney XXXXX and stenographic, paralegal and clerical employees performing services in connection with the Litigation;

b) Persons requested by the parties' attorneys to furnish technical or expert services in the Litigation following execution of the attached statement;

c) Persons requested by the parties' attorneys to give information, statements, depositions or testimony in the Litigation following execution of the attached statement; and;

5. Notwithstanding anything to the contrary, it is expressly agreed and acknowledged that any and all information provided by XXXXX, shall not be disclosed under any circumstances, either orally or in writing, to XXXXX.

6. Confidential Information shall be maintained in confidence and may be used only in connection with the Litigation, including negotiations during the pendency of the action, preparation for and trial thereof, and for no other purpose whatsoever. Confidential Information shall not be Xeroxed, Photostatted, copied or reproduced in any other form or manner, except for the use by the Qualified Person, and solely in connection with this Litigation.

7. Except in connection with the Litigation, including negotiations during the pendency of the action,preparation for and trial thereof, counsel for the parties and persons to whom Confidential Information may be given or disclosed in accordance with this Stipulation, or otherwise, shall not use, orally or in writing, disclose, disseminate, broadcast or publish any Confidential Information, or any information contained therein, for any purpose. "Disclosure" to any person includes oral or written disclosure, as well as visual inspection by any person.

8. Confidential Information shall be available only to Qualified Persons identified in paragraph 4 hereof solely for use in connection with the Litigation, including negotiations during the pendency of the action,preparation for and trial of the Litigation and shall not be used for any other purpose.

9. The Confidential Information may be revealed to prospective expert witnesses, whether or not such experts are expected to assist in the preparation of the Litigation or to testify at trial. In the event that Confidential Information is disclosed to a prospective expert or expert witness, such expert shall be subject to the terms of this Agreement and shall execute a document in the form attached hereto as Exhibit "A", stating that he or she or it is bound by the terms of this Agreement.

10. No copies of Confidential Information or other documents containing Confidential Information shall be made, except for use by the attorneys for the parties and their experts. No person obtaining access to Confidential Information shall make any copy thereof or reveal the contents thereof or use any information contained therein for any purpose other than in connection with the Litigation and under the procedures set forth herein. No copies of Confidential Information shall be distributed to anyone other than the attorneys for the parties and their experts, and all such copies shall be retained in the possession of the attorneys for the parties or their experts.

11. In the event that the Petitioner or any other person discloses information in discovery responses, whether by interrogatory answer, document production or deposition testimony, which contains Confidential Information, that disclosure shall not be deemed a waiver of the Petitioner's right to preserve the confidentiality of any other Confidential Information.

12. Nothing in the Stipulation shall be deemed a waiver of the right of the Parties to oppose production or disclosure of information on grounds other than confidentiality. Furthermore, nothing in this Stipulation shall prohibit the Respondent from seeking Court intervention to compel the disclosure of information sought by the Respondent.

13. Nothing in this Agreement, however, is intended to abrogate the protection from disclosure afforded by the operation of the attorney-client privilege or the work product doctrine.

14. The parties agree and acknowledge that the provisions of this Stipulation are reasonable and equitable, and that breach of any of them would cause irreparable injury to the Petitioner and XXXXX that would not be compensable solely in money damages. Accordingly, the parties agree and acknowledge that in the event of a breach of any of the provisions of this Stipulation, XXXXX, in addition to any other rights and remedies that he/she/it may have, shall be entitled to obtain a temporary restraining order and preliminary or permanent injunction restraining such breach and/or a decree for specific performance, without being required to prove damages or to furnish any bond or other security.

15. The terms of this Stipulation of Confidentiality shall survive the conclusion of the Litigation.

16. This Stipulation may be entered as an Order of the Court by consent of the parties and shall be binding on the parties as of the date signed by the parties.

EXHIBIT A

STATEMENT ACKNOWLEDGING STIPULATION OF CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

1. The undersigned hereby acknowledges receipt of a copy of the Stipulation of Confidentiality and Non-disclosure Agreement dated _____, and filed in this action, states that he/she has read and understands the terms thereof, and acknowledges that he/she is bound by the terms thereof.

2. The undersigned has had no prior relationship or dealings with, or ownership interest in, any of the parties in this case or their affiliates, except _____. (If none, state "None")

3. The undersigned is not currently employed by or provide consulting or other services to any person, corporation or other entity that is directly competitive with any of the parties in this case, except _____. (If none, state "None")

4. The undersigned promises and agrees that documents and information designated as Confidential Material under the Stipulation and Order entered in the above case will be used by me only under and in accordance with the terms of the Stipulation and Order.

5. The undersigned promises and agrees that he/she will not disclose or discuss Confidential Material with any person other than those persons specifically listed in the Stipulation and Order, and under the procedures therein specified.

6. I understand that any use or disclosure of Confidential Material, or any portions or summaries thereof, or any information obtained therefrom in any manner contrary to the provisions of the Stipulation and Order, will subject me to personal liability and the sanctions of the Court.

Date _____

_____
Signature

_____
Printed name

_____
Address

_____

COMMONWEALTH OF MASSACHUSETTS
PROBATE AND FAMILY COURT

_____, ss.

DOCKET NO. 987654321

JOHN SMITH,
Plaintiff
v.

MARY SMITH,
Defendant

AFFIDAVIT OF ELIZABETH SMITH

Now comes Elizabeth Smith, and on oath, depose and states as follows:

1. I am the mother of John Smith, Plaintiff in this action.
2. My net worth is as follows:
   a. Appraisal of Account No. 12345, Mary Smith Trust U/Agr. Dtd. January 1, 1995, Jane Doe, Trustee, as of 12/31/05:

US Govt. Obligations	$	50,000.00
Common Stock	$	500,000.00
Short Term Investments	$	14,000.00

The Estimated annual income of this account is $7,500.00.

b. Together with my husband, I own approximately 10 acres of land, in Boston Massachusetts on which stands a single family home with a gross living area of 1844 square feet. Said property is suitable for subdivision, and the market value of the property is $800,000.00. Given the subdivision potential of the property and an analysis of the entire property as restricted by a conservation easement, its value after easement is approximately $500,000.00.

c. I have an account with my husband at Generic Bank with a balance of approximately $1,900.00. I have a savings account with Generic Bank with a balance of approximately $10,000.00 and a checking account with Generic Bank with a balance of approximately $800.00.

d. Together with my children, I receive a $10,000.00 annual gift from my father.

e. These assets comprise my total net worth and add up to $_____.

3. The following is a description of my current estate plan, including my will and inter vivos trust:

a. My Will – My will, executed on March 1, 2000, is a pourover will which leaves my tangible personal property to my husband, or to my issue if he does not survive me. I leave my Boston property to my husband, and if he does not survive me, I leave that real estate to my three other children (i.e., not to the Plaintiff in this action), or to their issue if they do not survive me. I leave the residue of my estate to the trustees of the Mary Smith Trust, under agreement of trust dated January 1, 1995, as amended by instrument dated March 1, 2000.

b. Codicil - I executed a codicil to this will on February 7, 2005, wherein I appointed my daughter to serve with Jane Doe as executor.

c. My inter vivos trust- I established the Elizabeth Smith Trust under Agreement dated January 1, 1995, Jane Doe, Trustee. This trust was amended and restated by instrument dated March 1, 2000. During my lifetime, I will receive all income earned by the trust and principal upon my request. Upon my death, my trust provides for the establishment of up to four trust shares in order to maximize applicable tax laws and benefits, and their provisions are intended to primarily benefit by husband during his lifetime, with mandatory income payments and discretionary principal payments to him. On his death my husband has a special power to appoint, shares for our living children and issue of deceased children. These shares will then be held in trust during their lifetimes, with discretionary payments of income and principal to those children and / or their respective issue. Those children also have a special power to appoint their share to their spouse, their issue, or my issue, and if they do not appoint, those shares will go to their respective issue, and if none, to my issue.

Signed under the pains and penalties of perjury this ___ day of _____, _____.

_____
Name

Then personally appeared the above named _____ and acknowledged the foregoing instrument to be her free act and deed for the purposes therein set forth, before me.

_____
Notary Public
My Commission Expires: