

## Case Summary

### Schreiber v. Schreiber

2010 N.Y. Misc. LEXIS 3058 (N.Y. Sup. Ct. June 25, 2010)

**NY Supreme Court Establishes a Search Protocol**

During the discovery phase of a marital dispute, the New York Supreme Court established guidelines for a search protocol to assist the forensic examination of the defendant-husband's work computer.

Plaintiff-wife Sarah Schreiber moved for an order compelling the production of her husband's office computer, claiming that it contained valuable information about his income and financial assets not previously disclosed to her. The defendant responded that he had fully disclosed his financial matters and that a forensic examination of his work computer would be a groundless fishing expedition.

After noting that parties in a marital dispute are entitled to full disclosure of financial assets, the Supreme Court of New York expressed concern that unfettered access to the defendant's computer could reveal privileged and irrelevant documents. The court denied the plaintiff's motion to compel production of the computer, reasoning that she was not entitled to unrestricted access. The court emphasized that the plaintiff would be permitted to renew her motion if she provided a search protocol that would adequately protect the defendant's privileged and confidential information.

The court then indicated several areas such a search protocol must address. First, a Discovery Referee must be appointed to supervise discovery. A forensic computer expert must be hired, and he or she must sign a confidentiality agreement governing non-disclosure of the contents of the computer hard drive. The computer expert should examine a mirror image of the computer hard drive, look for evidence of wiping utilities that could be used to delete files, and recover all files and fragments available on the drive.

The plaintiff must then establish a set of keywords and a relevant time period for which to search. The court emphasized that the plaintiff should narrowly tailor the keywords and time period to the immediate discovery needs: a search for all spreadsheets accessed within the previous three years, for example, would not be permitted. The computer expert would search the recovered files, exporting the relevant documents to CD or DVD for delivery to the defendant's counsel, who would examine the files for privilege.

Finally, defendant's counsel was instructed to deliver nonprivileged documents, as well as a privilege log, to plaintiff's counsel within twenty days. Costs of the forensic analysis would be borne by the plaintiff, and the cloned hard drive would be returned to and destroyed by defendant's counsel at the termination of the litigation.

The court awaited plaintiff's renewal of the motion to compel, stressing that discovery should be limited to produce only relevant documents and to protect any privilege.