

Attachment A
NORTH CAROLINA
COUNTY OF BUCKINGHAM

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
FILE NO. 08 CV 223

ROGER K. BAIRD, JR.,
Plaintiff

v.
NANCY L. BAIRD,
Defendant

MOTION FOR NAVY RECORDS

Plaintiff hereby moves this Court pursuant to N.C.G.S. §1A and Rule 45 of the Rules of Civil Procedure for an order granting a subpoena directed to the United States Navy for the production of documents, as further explained below. The Plaintiff shows the court that:

BACKGROUND

- 1) Plaintiff is an officer in the U.S. Navy, currently stationed in Japan and the Defendant is a Navy officer, currently stationed in Florida. The parties were married to each other on April 12, 1997 and subsequently separated from each other on October 9, 2008. There are two minor children born during the parties' marriage: Ellen G. Baird, born August 2, 2001 and Lewis R. Baird, born April 19, 2003.
- 2) On November 3, 2008, Plaintiff filed his Complaint seeking, *inter alia*, child custody.

DISCOVERY REQUESTS FROM BOTH PARTIES

- 3) Both parties have asked for all documentation that the other party has related to a disciplinary hearing involving the conduct of a certain Commander John Q. Doe in December 2008. Mr. Doe is the former commander of the Navy's Far East Intelligence Group, based at Naval Air Facility Watusi in Japan. Upon information and belief, Defendant had an extramarital affair with Mr. Doe, this conduct destroyed the Baird marriage, it also destroyed Mr. Doe's career and it had an impact on the care and custody of the minor children.
- 4) Plaintiff, in discovery, has requested that Defendant admit this affair and explain the consequences that her behavior with Mr. Doe had on the family, including the effects on the minor children.
- 5) Then-Commander Doe was relieved of his duty as commander of the Group on December 23, 2008. He received nonjudicial punishment, referred to as "Admiral's Mast," as a direct result of his committing adultery with the wife of a fellow officer.

- 6) The parties both seek to obtain from each other all documentation about these proceedings in December 2008. Both parties have demanded, through their attorneys, to review this documentation.

RELEVANCE TO THE CASE

- 7) The Plaintiff, by way of discovery, has requested that Defendant both admit the affair and explain specific details from Defendant as to the nature of her relationship with Mr. Doe, its duration, its impact on the minor children, her absence from the children while she was with Mr. Doe, and other information.
- 8) The information in Mr. Doe's case file associated with the administrative action taken in December 2008, will tend to show that Mr. John P. Doe did, in fact, have an extramarital affair with the Defendant. It will also show the nature, frequency and duration of the Defendant's conduct with Mr. Doe, which directly correlates to her absences from the family, her distraction from parental duties, and her sense of priorities as to the children's care by Plaintiff, Mr. Doe's career and her own marriage. The Plaintiff is entitled to find out from the Navy's case files the details of the Defendant's actions with Mr. Doe so as to present evidence to the court on the children being left alone while Defendant was away with Mr. Doe.
- 9) The case file will show documents, e-mails, and witness statements regarding the lapses of time in which Defendant left the minor children to be with Mr. Doe, and the times when Plaintiff had to step in to care for the minor children while Defendant was absent. The court will need to inquire into the consequences and effects on the minor children when dealing with separate families as a result of Defendant's conduct.
- 10) The case file will also assist in impeaching Defendant on her sworn statements if she denies that she had an affair, is untruthful as to its nature or duration, denies that her behavior had an impact on the children or claims that her conduct never resulted in their being left alone, with no supervision.

PROCEDURES FOR OBTAINING NAVY RECORDS

- 11) The United States Navy, pursuant to its publication, SECNAVINST 5820.8A, Enclosures (3) and (4), describes the proper procedure for obtaining Navy records. The Secretary of the Navy's sole delegate for service of process is the General Counsel of the Navy, who must be served with a subpoena by certified mail or Federal Express at the following address: General Counsel of the Navy, Navy Litigation Office, 720 Kennon Street SE, Bldg 36 Room 233, Washington Navy Yard, DC 20374-

5013. The office of the General Counsel of the Navy will subsequently forward the matter to the proper determining authorities for action.

12) In addition to a subpoena requesting specified Navy records, a detailed written request must be submitted to the appropriate determining authority to assure an informed and timely evaluation of the request. The outline of information to be provided is included in Enclosure (4) of SECNAVINST 5820.8A. Additionally, counsel for the Plaintiff has prepared this detailed written request to accompany the court's subpoena to the General Counsel of the Navy and it is included with this motion.

13) The subpoena in this case should request the following:

- a) The Navy's internal investigation of the alleged inappropriate relationship between John P. Doe and Nancy L. Baird, in Japan, Okinawa, and elsewhere during and before December 2008 including witness statements, e-mails; and
- b) The Navy's record of administrative, punitive, nonjudicial or other action against Commander Doe.

WHEREFORE the Plaintiff prays that this Court:

- 1) Sign a subpoena (copy attached hereto) for production of the United States Navy's disciplinary and investigative files for Commander John P. Doe.
- 2) Grant such other relief for Plaintiff as is just and proper.

Jack M. Wilson, Attorney for Plaintiff
9926 Greenwood Drive
Warren, NC 27604

Date: _____/09

NORTH CAROLINA
COUNTY OF BUCKINGHAM

IN THE GENERAL COURT OF JUSTICE
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FILE NO. 08 CV 223

ROGER K. BAIRD, JR.,
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v.
NANCY L. BAIRD,
Defendant

SUBPOENA FOR NAVY RECORDS

Pursuant to N.C.G.S. §1A and Rule 45 of the North Carolina Rules of Civil Procedure, the court issues this subpoena:

To: General Counsel of the Navy, Navy Litigation Office, 720 Kennon Street SE, Bldg 36 Room 233, Washington Navy Yard, DC 20374-5013	Date: April 17, 2009
Documents: 1) The Navy's internal investigation of the alleged inappropriate relationship between Commander John P. Doe, SSN 432-22-5567, and Nancy L. Baird, in Japan, Okinawa, and elsewhere during and before December 2008 including witness statements, documents and e-mails; and 2) The Navy's record of administrative, punitive, nonjudicial or other action against Commander Doe.	Time: 9:00 a.m.
Place for Production: Buckingham County Courthouse, Room 141, Warren, NC 27604 (P.O. Box 355)	

Ellen G. Lindhoffer, Judge Presiding

Date: _____/09

March 1, 2009
General Counsel of the Navy
Navy Litigation Office
720 Kennon Street SE
Bldg 36 Room 233
Washington Navy Yard, DC 20374-5013

Re: SECNAVINST 5820.8A, Enclosure (4) – Subpoena for Navy Records

To Whom It May Concern:

Pursuant to SECNAVINST 5820.8A, Enclosure (4): Contents of a Proper Request or Demand, the undersigned attorney for the Plaintiff herein provides the requisite written request for documents to be produced pursuant to a *subpoena duces tecum* (attached hereto). In making said request, we disclose the following:

1. Identification of parties, their counsel, and the nature of the litigation:

- a **Case Caption:** Roger K. Baird, Jr. vs. Nancy L. Baird
- b **Docket Number:** 08 CVD 19038
- c **Court:** District Court, Buckingham County, North Carolina
- d **Plaintiff:** Roger K. Baird, Jr.
- e **Defendant:** Nancy L. Baird
- f **Attorney for Plaintiff:** Jack M. Wilson, 9926 Greenwood Drive, Warren, NC 27604; phone number - 919-999-7766; fax number - 919-233-4455
- g **Attorney for Defendant:** Janet Kelly, 208 Green Valley Ave., Warren, NC 27604; phone number - 919-334-8211; fax number – 919-243-9967
- h **Date and Time that documents must be produced:** April 17, 2009, at 9:00 a.m.
- i **Location for Production:** Clerk of Court, ATTN: District Court Judge Ellen G. Lindhoffer, PO Box 355, Warren, NC 27604 Buckingham County Courthouse, Room 141, Warren, NC 27604

2. Identification of information or documents requested

- a Documents requested are the case files associated with the administrative action taken against Commander John P. Doe, former commander of the Far East Intelligence Group based at Naval Air Facility Watusi in Japan, in December 2008.
- b The location of the requested case files associated with the administrative action taken against Commander John P. Doe in December 2008 is at Naval Air Facility Watusi Japan.

3. Description of why the information is needed

- a **Summary and Posture of Case:** Commander Roger K. Baird, Jr., the Plaintiff, filed a lawsuit in North Carolina against the Defendant, Nancy L. Baird, for claims related to child custody, child support, and equitable distribution. The assigned judge on the case is District Court Judge Ellen G. Lindhoffer. The minor children currently reside with Plaintiff in Japan. Defendant current resides in Norman, Oklahoma. On May 13, 2009, the Warren County District Court will conduct a temporary child custody hearing.
- b **Statement of Relevance:** The information in the case files associated with the administrative action taken in May 2008 against former Commander John P. Doe, former commander of the Japan-based Carrier Air Wing 5 based at Naval Air Facility Watusi in Japan, is relevant for the foregoing reasons:
 - i. It will show that the Defendant carried on an extramarital affair with Commander Doe;

- ii. It will also show that she was absent from the children during the periods of time when she was with Commander Doe;
- iii. When she was absent, depending on the dates and times, the children were either left alone or in the care and custody of Commander Baird, who is petitioning for custody of the children.
- c **Testimony Sought:** Plaintiff seeks no factual, expert or opinion testimony from the U.S. government.

4. Additional Considerations

- a Plaintiff is willing to pay in advance all reasonable expenses and costs of searching for and producing documents associated with the administrative action taken against Commander John P. Doe in May 2008.
- b We will provide Defendant's attorney with a copy of all correspondence and documents originated by the determining authority so they may have the opportunity to submit any related litigation requests and participate in any discovery.

If the General Counsel of the Navy requires any additional information in evaluating this request, please let our office know and we shall provide same.

Sincerely,

Jack M. Wilson
Attorney at Law