

## Georgia Law Considerations for Modern Technology Issues

By: Tracy Ann Moore-Grant, attorney at law

### 1. General Overview of Modern Technology Issues

- Discovery Issues
- Authentication Issues
- Enforcement Issues

### 2. How to handle in your family law cases

- **Anti-spoilation** letters can be served with initial pleadings (example provided, compliments of Melody Swilling, note case law in letter has bad treatment)
  - If violated, violation is more flagrant to the court;
  - Puts expectations on notice
  - Spoliation of evidence may give rise to the rebuttable presumption that the evidence would have been harmful to the spoliator; however, in order for the injured party to pursue a remedy for spoliation, the spoliating party must have been under a duty to preserve the evidence at issue. West's [Ga.Code Ann. § 24-14-22](#).
- § 24-14-22. Presumption arising from failure to produce evidence
  - If a party has evidence in such party's power and within such party's reach by which he or she may repel a claim or charge against him or her but omits to produce it or if such party has more certain and satisfactory evidence in his or her power but relies on that which is of a weaker and inferior nature, a presumption arises that the charge or claim against such party is well founded; but this presumption may be rebutted.
- **Standing Orders:** Review your local Standing Order for language about harassment and stalking, violations would be a Motion for Contempt (example provided). *Triggers at time of service of Defendant.*
  - **Forsyth County Standing Order**, Paragraph 3, “Each party is hereby enjoined and restrained from doing, or attempting to do, or threatening to do, any act which may constitute....stalking the adverse party or the children or any act which constitutes a violation of other civil or criminal laws of the state.”
  - **Fulton County Standing Order**, Paragraph 4, “Each party is hereby enjoined and restrained from doing any act injuring, maltreating, vilifying, threatening, molesting, or harassing the adverse party, the children of the parties, or a family member of the adverse party.”

- **Serving Notice to Produce and Request for Production/Interrogatories**
  - Not the best way to get evidence before it is spoiled, but can help
  - People have 30 days to respond, other than properly served Notice to Produce
  - Interrogatories:
    - As for a person's cell phone number to help authenticate text messages;
    - Ask how opposing party is saved in phone (their name, nickname,...) to help authenticate text messages;
    - Ask who else uses phone to text or call;
    - Ask who cell phone provider is;
  - Notice to Produce:
    - Ask for cell phone bills with detailed call log including incoming and outgoing calls and texts;
    - Research what each cell phone company has available online. You can often include instructions on how they can download and print for no excuses;
- Subpoenas to court or deposition-can ask for laptop, phone or similar to be brought
- Emergency Motions to limit destruction of evidence

### 3. Authentication

#### **§ 24-9-901. Requirement of authentication or identification**

(a) The requirement of authentication or identification as a condition precedent to admissibility shall be satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.

(b) By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this Code section:

(1) Testimony of a witness with knowledge that a matter is what it is claimed to be;

(2) Nonexpert opinion as to the genuineness of handwriting, based upon familiarity not acquired for purposes of the litigation;

(3) Comparison by the trier of fact or by expert witnesses with specimens which have been authenticated. Such specimens shall be furnished to the opposite party no later than ten days prior to trial;

(4) Appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances;

(5) Identification of a voice, whether heard firsthand or through mechanical or electronic transmission or recording, by opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker;

(6) Telephone conversations, by evidence that a call was made to the number assigned at the time by a telephone service provider to a particular person or business, if:

(A) In the case of a person, circumstances, including self-identification, show the person answering to be the one called; or

(B) In the case of a business, the call was made to a place of business and the conversation related to business reasonably transacted over the telephone;

(7) Evidence that a document authorized by law to be recorded or filed and in fact recorded or filed in a public office or a purported public record, report, statement, or data compilation, in any form, is from the public office where items of this nature are kept;

(8) Evidence that a document or data compilation, in any form:

(A) Is in such condition as to create no suspicion concerning its authenticity;

(B) Was in a place where it, if authentic, would likely be; and

(C) Has been in existence 20 years or more at the time it is offered;

(9) Evidence describing a process or system used to **produce** a result and showing that the process or system **produces** an accurate result; or

(10) Any method of authentication or identification provided by law.

### **Authentication Cases**

- Testimony of participant to text message exchange retrieved from **cell phone** records was sufficient to authenticate contents of document compiling text messages between him and defendant, in murder prosecution. [Hodges v. State, 2017, 302 Ga. 564, 807 S.E.2d 856](#), reconsideration denied.
- **Copies**  
Under Civ. Code 1910, §§ 5828, 5829, 5837, and 5838, assigned error to refusal to admit carbon copies of letter from plaintiff to a defendant was without merit, where no **notice** to **produce** original was given by plaintiff to the defendant, and where it was not shown that original was lost. [Ward-Truitt Co. v. Nicholson, 1919, 23 Ga.App. 672, 99 S.E. 153](#).

4. Ethical Considerations

- What to do when YOUR client is the stalker
- What to do with documents and other evidence obtained illegally by your client
- You cannot keep the evidence, use the evidence, distribute the evidence-get it out of your office!
- When in doubt call bar hotline

5. Revenge Porn

- What is it?
- Standing Orders can help
- Civil statutes
- How to pursue for your client
  - Civilly: Motion attached
  - Temporary Protective Order
  - Criminally: O.C.G.A. §16-11-90 current statute
    - Proposed legislation
  - Attorney Fees: 9-15-14