

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION**

MARIA L. BROWN

PLAINTIFF

VS.

CIVIL ACTION NO. 3:07-CV-727-HTW-LRA

DAVID NUTT, P.A.;
DAVID NUTT & ASSOCIATES, P.C.;
NUTT & MCALISTER, PLLC;
DAVID H. NUTT, INDIVIDUALLY;
MARY E. MCALISTER, INDIVIDUALLY;
ERNIE COWARD, INDIVIDUALLY; AND
WILLIAM S. JONES, INDIVIDUALLY

DEFENDANTS

PLAINTIFF'S EMERGENCY MOTION FOR LIMITED DISCOVERY

COMES NOW Plaintiff by and through counsel, and respectfully submits her Emergency Motion for Limited Discovery. In support thereof, Plaintiff would show unto the Court the following:

1. On December 7, 2007, the Plaintiff filed her charge of discrimination with the EEOC for sexual harassment that involved Defendant Ernie Coward. See Pl. Charge of Discrimination, attached hereto as Exhibit "A."
2. On December 9, 2007, the EEOC issued the Plaintiff a Notice of Right to Sue on the charge of discrimination that had been filed.
3. On December 12, 2007, the Plaintiff filed her Complaint with this Court making allegations of sexual harassment by Defendant, Ernie Coward.
4. Plaintiff's counsel has just recently been informed that on the night of December 12, 2007, Defendant Ernie Coward has attempted to destroy relevant

evidence regarding this case that was stored on his personal cell phone and home computer.

6. It is also Plaintiff counsel's understanding that Mr. Coward's personal computer has been recently seized by the Madison County, Mississippi Police Department and is currently being searched for possible child pornography.

7. While it may be unlikely that information from Mr. Coward's personal computer will be further destroyed because it is now in police custody, the Plaintiff has serious concerns as to the further deletion of information that has been sent and/or received from Mr. Coward's personal cell phone.

8. As such, the Plaintiff is requesting the Court to allow the Plaintiff to conduct limited discovery so Plaintiff may be assured that no further deletion may occur.

9. Specifically, the Plaintiff is requesting to be allowed to subpoena Mr. Coward's personal phone records at an early stage in the litigation from AT&T/Cingular Wireless. See Proposed Subpoena, attached hereto as Exhibit "B."

10. On December 13, 2007, the Plaintiff mailed the Defendant Ernie Coward a preservation letter regarding electronic discovery. See Preservation Letter to Ernie Coward, attached hereto as Exhibit "C."

11. On December 19, 2007, Anne Sanders with Brunini , Grantham, Grower & Hewes informed Plaintiff's counsel, Nick Norris, that her firm would be representing all the Defendants in the above mentioned case.

12. "Once a party reasonably anticipates litigation, it must suspend its routine document retention/destruction policy and put in place a "litigation hold" to ensure the preservation of relevant documents." *Zubulake v. UBS Warburg*, 220 F.R.D. 212, 218

(S.D.N.Y. 2003). “Counsel must take affirmative steps to monitor compliance so that all sources of discoverable information are identified and searched.” *Zubulake v. UBS Warburg*, 229 F.R.D. 422 (S.D.N.Y. 2004). “An attorney has a duty to thoroughly investigate the existence of electronic discovery, and not merely rely upon representations of a client’s senior management.” *GTFM, Inc. v. Wal-Mart Stores, Inc.*, 2000 U.S. Dist. Lexis 3804 (S.D.N.Y. March 30, 2000).

13. As such, the Plaintiff also requests that the Court require Defendant Ernie Coward to immediately proffer his cell phone and personal computer to his attorney as soon as he receives it back to his possession so that all relevant information on that computer may be properly searched, indexed, and preserved as required by the rules regarding preservation of electronic evidence.

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully requests that the Court allow the Plaintiff to conduct limited discovery to acquire Mr. Coward’s cell phone records, and also require Mr. Coward to immediately turn over his cell phone and personal computer to his attorney so that the electronic evidence on that computer may be properly preserved.

Respectfully submitted,

BY: /s Nick Norris
NICK NORRIS MB #101574
Attorney for Plaintiff

OF COUNSEL:

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CERTIFICATE OF SERVICE

I, NICK NORRIS, attorney for Plaintiff, do hereby certify that I have this day mailed, via United States Mail, postage fully prepaid thereon, a true and correct copy of the above and foregoing document to the following:

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SO CERTIFIED, this the 19th day of December, 2007.

/s Nick Norris
NICK NORRIS