

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of Consumers
Energy Company for authority to increase its rates
for the generation and distribution of electricity and
for other relief.

MPSC Case No. 21870

**Attorney General's Response to Customer A's Motion to Quash
a Portion of a Discovery Request and Production to Prevent
the Improper Disclosure of its Confidential Information**

On September 18, 2025, Customer A, allegedly an existing electric service customer of Consumers Energy Company ("Consumers" or "the Company"), filed a motion seeking to quash certain discovery requests included in the Attorney General's Sixth Discovery Request to the Company.¹ As part of the request, the Attorney Sought information regarding large customers with agreements with the Company regarding projects to provide large scale upgrades to their services, to understand the scope of the project and the potential risk for stranded cost that may be borne by other customers of the Company.² On September 16, 2025, the Company provided a response to the Attorney General's discovery request which included among other things, objections to part of the requests and redacted copies of contracts for the projects in question as confidential documents pursuant to the protective order entered in the case.

¹ This discovery request was served on the parties to the case September 2, 2025.

² Exhibit A contains the Company's public response.

Customer A's motion seeks to retroactively quash part of the Attorney General's request and requires that persons receiving the redacted contracts, to delete or destroy them. It also seeks certain notice requirements be imposed on Consumers requiring it to provide notice to any customer that it has a contract with the Company before it responds. In support of its motion, Customer A makes arguments challenging the relevance of the Attorney General's request and its propriety under the rules for discovery, alleging violations of Consumers' Data Privacy Tariffs, raising concerns regarding possible disclosure of information under the Freedom of Information Act ("FOIA"). None of the Company's arguments justify the retroactive quashing of Attorney General's discovery request or the Company's response. Moreover, there is no basis in law or fact to support a request for the Administrative Law Judge ("ALJ") or the Michigan Public Service Commission to order State of Michigan employees to delete or destroy the discovery responses in their possession. The Attorney General provides the following response to the Motion filed by Anonymous Customer A.

I. Legal Background

Customer A presents what it describes as the standard for a motion to quash stating that discovery may be circumscribed to prevent excessive, irrelevant, or unduly burdensome requests, citing MCR 2.302(C) and *Cabrera v Ekema*, 265 Mich App 402, 407 (2005). It states the MCR 2.302(B)(1) requires a court to evaluate whether the discovery being sought is relevant and "proportional to the needs of the case, taking into account all pertinent factors, including whether the burden [] of

the proposed discovery outweighs its likely benefit.”³ Citing *Eyde v Eyde*, Customer A argues that the Michigan Court of Appeals has upheld court orders that prescribe discovery procedures in order to prevent disclosure of confidential matters of third parties (including advance notice of requests and an opportunity to review the disclosures prior to production), or discovery of documents that are not relevant to determination of issues in the case.⁴ Finally, it points to an unpublished decision noting that Michigan courts have found disclosure of trade secrets and loss of confidentiality of records of business and financial dealings can support a finding of immediate or irreparable harm.⁵ Neither the Michigan Court Rules nor the cited decisions support the Motion to Quash.

Consumers is a regulated utility under the authority of the Michigan Public Service Commission (“the Commission). It filed an application seeking cost recovery and other authorizations and is required provide evidence to support the reasonableness and prudence of its proposals. The Commission’s Rules of Practice and Procedure state in R 792.10423 that:

Discovery shall, as far as practicable, be conducted in the same manner as in the circuit courts of this state pursuant to the Michigan court rules or as otherwise provided by law. When appropriate, the presiding officer shall set time limitations for the conduct of discovery. Every party shall respond promptly and fully to requests for discovery. The parties shall not use discovery to harass or cause needless delay.

In addition, MCL 24.275 states that “[i]n a contested case the rules of evidence as applied in nonjury civil cases in circuit court shall be followed as far as practicable,

³ Motion to Quash, p. 3, quoting in part MCR 2.302(B)(1).

⁴ Id. referencing *Eyde v Eyde*, 172 Mich App 49, 50 (1988).

⁵ *Red D Freight, Inc. v Sexton*, 2017 WL 4818898, p 3 – 4, issued October 24, 2017.

but an agency may admit and give probative effect to evidence of a type commonly relied upon by reasonably prudent men in the conduct of their affairs.”

“A primary purpose of discovery is to enhance the reliability of the fact-finding process by eliminating distortions attributable to gamesmanship.” *People v Burwick*, 450 Mich 281, 298; 537 NW2d 813 (1995). Necessarily, therefore, the courts must insist that discovery be conducted in a way which “promote[s] the discovery of the true facts and circumstances of a controversy, rather than aid in their concealment.” *Hallett v Michigan Consolidated Gas Co*, 298 Mich 582, 591; 299 NW 723 (1941). Moreover, discovery is necessary to enable a party to anticipate the substance of the opposing party’s proof in order to avoid surprise at trial. *Rock Island Bank & Trust Co v Ford Motor Co*, 54 Mich App 278, 280; 220 NW2d 799 (1974).

In fact, MCR 2.302(B)(1) provides that:

Parties may obtain discovery regarding any non-privileged matter that is relevant to any party’s claims or defenses and proportional to the needs of the case, taking into account all pertinent factors, including whether the burden or expense of the proposed discovery outweighs its likely benefit, the complexity of the case, the importance of the issues at stake in the action, the amount in controversy, and the parties’ resources and access to relevant information. **Information within the scope of discovery need not be admissible in evidence to be discoverable.**

The Michigan Court Rules and Rules of Evidence applies to this case.

The Administrative Law Judge (ALJ) should liberally construe the discovery rules to allow parties the ability to acquire necessary information to prepare their cases.

The Commission has held in prior proceedings, that “it will not tolerate any

violation of the integrity of the discovery process in Commission proceedings. The proper use of discovery is vital to the efficient administration of these proceedings.” *In the matter of the application of the Detroit Edison Company for accounting and ratemaking authority relating to test generation of the Enrico Fermi 2 power plant*, MPSC Order, August 12, 1986, U-7065, p 20.

II. Factual Background

Customer A presents its motion to quash discovery and order the destruction of documents with little or no context to the projects or costs involved. Company witness Megan L. Hayward provided testimony regarding the Company’s HVD Strategic Customers New Business Program which includes the capital costs of meeting the new business needs of large C&I customers that are too energy intensive to be served by the area LVD system.⁶ She describes *typical* investments for the program, including dedicated substations and interconnections of dedicated substations to HVD system with poles, conductors, and metering to connect new C&I customers.⁷ And, that unlike many other capital programs, projects under this subprogram are based on the needs and expectations of specific customers.⁸ The Company is projecting bridge period and test year spending of \$90,045,000 and \$43,860,000, respectively for this subprogram net of expected contributions made to the Company by the customers for these projects.⁹

⁶ Hayward Direct Testimony, p. 137.

⁷ *Id.*

⁸ Hayward Direct Testimony, p. 138.

⁹ *Id.* at pp 138 and 139.

There were ten projects listed under this subprogram, but only nine of the projects have customers committed to moving forward.¹⁰ Spending on the project that will not be moving forward was approved in the Company's previous electric rate case, Case No. U-21585, and the Company claims to have incurred some expenditures under the then existing contract. Since the spending was approved, the contract for this project has been cancelled and the Company is seeking recovery of the expenditures already incurred in this case from other ratepayers, pending recovery of these costs from the contract customer per the contractual terms for termination.¹¹ *"If and when the Company recovers these costs from the customer, that money will be credited to this sub-program and netted back out of rate base."*¹²

It is against this background and pursuant to the rules of practice and procedure before the Public Service Commission, the Michigan Court Rules and consistent with the Michigan Rules of Evidence, the Attorney General submitted discovery in this case to Consumers seeking relevant information.

III. **Analysis**

As an initial matter, Customers A's claims that the Attorney General's discovery request is overbroad and requires production of highly sensitive customer information irrelevant to the stated purpose of the request is unserious and must be rejected.¹³ Given the size of the projects and related costs that ratepayers (not just the Customer) will bear for these projects and the risk to noncontractual customers

¹⁰ See, Exhibit A-109 (MLH-3) and Hayward Direct Testimony, p 140.

¹¹ See, Hayward Direct Testimony, p. 140.

¹² Hayward Direct Testimony, p. 140 (emphasis added).

¹³ Motion to Quash, p. 1.

of additional costs for failed or discontinued projects, the Attorney General's request sought information on the each project because the risk is separate, not joint among the projects. The discovery request is included in Exhibit A for this response, so the Attorney General will not quote it here. The information requested was intended to understand the full scope of the project not only to verify the reasonableness of the cost, which is relevant in this electric rate case, but to also ascertain whether there are sufficient protections so that other Company customers are not required to cover stranded costs if one of these expensive and highly individualized projects is cancelled before the Company can recover all of the costs owed by the Customer for which the project was undertaken. The discovery request was in response to the Company's testimony and exhibits in this matter, which lacked details about costs being proposed and the fact that at least one project has seemingly failed to be completed (or its not anticipated to be completed leading to the termination of its contract). Importantly, customers may still be responsible for costs for the failed project. While the Company notes that the agreement in questions provide for repayment in this situation, there is no guarantee that repayment will occur as evidenced by the witness's caveat of "if" the Company recovers the costs incurred for the discontinued project.¹⁴

Customer A argues that its data privacy rights were violated by Consumers by responding to the Attorney General's discovery request and that somehow justifies quashing (essentially striking) at least part of the request.¹⁵ The Attorney

¹⁴ Hayward Direct Testimony, p. 140.

¹⁵ See, Motion to Quash, pp 5 – 6.

General does not necessarily agree that such a violation occurred. Customer A also argues that “[t]he customer contracts that were produced contain precisely the kind of unredacted, customer specific information protected by the Commission’s data privacy rules and tariff.”¹⁶ However, the contracts provided by the Company redacted customer specific information, including its name and location, which Customer A subsequently acknowledged. But the redactions went further than acknowledged by Customer A, and included projected, total cost per project, load data, much of which limit the Attorney General’s ability to do a thorough analysis.¹⁷

The Company, which is a party to the contracts and more importantly a regulated utility seeking cost recovery for the projects being undertaken, has the burden of presenting sufficient evidence to support its request and demonstrate that the costs are reasonable and prudent. It reviewed the Attorney General’s request, provided its objections to certain requested information, redacting what it believed to be a violation of the data privacy tariff and provided the requested information, including the requested contracts. Quashing a discovery request or response under in this case is counterproductive to the purpose of discovery as discussed above and unduly restricts the Attorney General or any other party, the ALJ and the Commission, should the information becomes a part of the case record, from judging for themselves the veracity of the Company’s, testimony or discovery responses.

¹⁶ Id. at pp 6 -7.

¹⁷ The Attorney General is not conceding that the redactions were necessary or appropriate in all situations.

Customer A's primary objection appears to be to the disclosure of its contract with the Company for any reason. However, it is doing business with a public utility regulated by the State of Michigan, and it should understand that information regarding the Company's business dealings would be discoverable and subject to some level of review and examination. This is true with regard to Customer A's contract because the Company is a party to the agreement.

Customer A proposes an alternative of using aggregated data, claiming it would suffice instead of providing the Contracts in question.¹⁸ It argues that individual contracts are not aggregate data and do not contain general characteristics of a customer group, which it argues would be acceptable to disclose. However, aggregate data does not address the purpose of the discovery request and would in fact obscure the scope and nature of the expenditures in question. As noted above, the individual contracts cover individual projects with separate costs, schedules and obligations. In fact, the contracts vary in their terms with some potentially providing financial security in the form of letters of credit, while others do not. Providing an aggregate amount of letters of credit across the various contracts would be misleading since this mechanism does not apply to all of the contracts. Consumers' response in subparagraph (c) of AG-CE-0478 only indicates that depending on the type of contract certain minimum billing requirements for certain energy usage and/or provisions for prorated payment of investment if the customer ceases operations prior to the end of the term of the contract may apply.

¹⁸ Motion to Quash, p. 15.

It also notes that it may require additional security depending on the outcome of risk reviews it performs. However, this type of general statement does not explain the risk of any one contract. As discussed above, one of the original contracts has already been terminated. The individual contracts matter because they provide the best evidence of the costs and likely risks, and simply providing aggregated data is not sufficient. Customer A's proposed alternative to use aggregated data is not a workable proposal.

Customer A offers a hypothetical on how it may be possible to identify a contract to a specific customer although on the face of the documents the redacted information provided would make such an endeavor hard to do. It claims that somehow a competitor may be able to determine that it is undergoing an expansion and qualified for service under a particular rate, the exact amount put up for a letter of credit (although that information is redacted), the amount of energy expected to be used at a certain time of day (although that type of data was redacted) among other things. It claims that this highly sensitive data can be mined for competitive purposes.¹⁹

Customer A also listed additional general information included in the contracts that were disclosed which it claims is customer specific and sensitive.²⁰ Of course this is all claimed without any specific harm identified from the type of information left unredacted other than the speculative and hypothetical competitive

¹⁹ Motion to Quash, p. 8.

²⁰ Motion to Quash, p. 16.

disadvantage. Customer A cites to *Eyde v Eyde*²¹ as a standard for its motion to quash, arguing that the Court of Appeals upheld court orders prescribing discovery procedures in order to prevent disclosure of confidential information of third parties...or discovery of documents that not relevant to the determination of the issues of the case. In the underlying case, the trial court issued an order compelling discovery but established certain safeguards to prevent disclosure of confidential matters and prevent discovery of documents which relate *only to* the [third party] and are not relevant to the determination at issue in the case.²² Those safeguards included an in camera review of the document before disclosure and eventually the appointment of a special master.

As an initial matter, the Contracts disclosed in this case involve both Customer A and Consumers, which is a party to the document and has certain obligations and will incur certain costs under the contract. So, the narrow protection provided in *Eyde v Eyde* does not apply in this case. More importantly, after reaffirming Michigan's commitment to a far-reaching, open and effective discovery practice, that discovery rules should be liberally construed, and that the modern tendency is to broaden the scope of discovery when necessary to facilitate preparation, to guard against surprise and to expedite justice, the Court of Appeals held that the trial court did not abuse its discretion in ordering discovery of the withheld documents.²³ The Court of Appeals noted that the proper approach is to

²¹ *Eyde v Eyde*, 172 Mich App 49 (1988).

²² *Eyde v Eyde*, 172 Mich App at 50.

²³ *Id.* at p. 54 – 57 (emphasis added).

issue a MCR 2.302 (C) confidentiality order to protect plaintiffs interest rather than to deprive defendant of adequate discovery. A protective order has been issued in this case limiting access or use of the information unless certain procedures are followed.

The approach in *Eyde v Eyde* is contrary to the approach proposed by Customer A, which is to deny the discovery of relevant information. While Customer A may argue that it did not have the chance to seek such a protective order before the contracts were provided in response to discovery, its approach would allow a data privacy tariff alone to thwart the means and purposes for discovery without a specific showing of harm and must be rejected.

The Customer also cite *Red D Freight, Ince v Sexton* to support its claim that “Michigan courts have found disclosure of trade secrets and loss of confidentiality of records of business and financial dealing *can* support a finding of immediate and irreparable injury, loss or damage.”²⁴ The issue in the underlying case was the sufficiency of a temporary restraining order granted by the trial court pursuant to MCR 3.310(B)(2)(b) which the Court of Appeals noted must “describe the injury and state why it is irreparable and why the order was granted without notice.” The court rules provide a specific form and scope of the injunction in MCR 3.310(C)(1) – (4). The Court held that the information supplied by the plaintiff in its verified complaint was sufficient to meet the minimal requirements of the court rule.²⁵

²⁴ Motion to Quash, p. 3 (emphasis added).

²⁵ *Id.*

Customer A is not seeking a TRO in this case, so the analysis is inapplicable. It also has not provided an affidavit or other verified statement to support the claims made in its motion, so the type of relief addressed in the *Red D Freight* case is not justified. Regarding the issue of irreparable harm specifically, because the defendants did not properly preserve the issue, the Court of Appeals applied a plain error standard. According to the Court of Appeal, “[i]n order to establish irreparable injury, the moving party must demonstrate a noncompensable injury for which there is no legal measurement of damages or for which damages cannot be determined with a sufficient degree of certainty. *Thermatool Corp v Borzym*, 227 Mich. App. 366, 377; 575 N.W.2d. 334 (1998). Accordingly, “[e]conomic injuries are not irreparable because they can be remedied by damages at law.” And “[a] relative deterioration of competitive position does not itself suffice to establish irreparable injury.” *Id.*”²⁶ Customer A has not demonstrated irreparable harm justifying a specific protective order, let alone the relief requested in its Motion to Quash.

The Customer argues even if the disclosure of the individual customer contracts is not a violation of law or rules, it was unnecessarily burdensome request, which resulted in the disclosure of a great deal of customer-specific, sensitive information that is of no value in addressing the stated purpose of the question. It posits that under Michigan court rules, discovery may be circumscribed to prevent excessive, irrelevant, or unduly burdensome requests inciting to MCR

²⁶ *Id.* at *p. 5.

2.302(C) and *Cabrera v Ekema*, 265 Mich App 402, 407, 695 NW2d 78 (2005).²⁷ The discovery was submitted to Consumers which was able to respond without any claims that the request was burdensome and while the Company included a general claim that the request was irrelevant, it provided nothing substantive to support that statement.²⁸ Instead, Consumers provided the contracts redacting customer identifying information. The Customer's argument ignores the broad scope of discovery in Michigan and that the specific information sought by the Attorney General could be gleaned from the individual contracts as discussed above. The request was not burdensome or excessive.

IV. FOIA does not justify a Motion to Quash

Customer A argues that because certain parties are public entities, including the Commission, the possibility of disclosure of the contracts pursuant to the Freedom of Information Act, justifies granting its motion.²⁹ This is another argument that must be rejected.

First, any claims regarding possible disclosure through FOIA are not ripe for review. In this case there is a protective order in place that restricts the public exposure of confidential information disclosed in the case, except to those parties executing a nondisclosure certificate. While it does not necessarily preclude

²⁷ Motion to Quash, p. 5 and 16. In *Cabrera v Ekema*, 265 Mich App, at 411, the Court of Appeals sided with the Plaintiff opposing a motion to compel discovery because among other things, the party seeking discovery of social security numbers to determine the amount of plaintiff's wages, was the employer responsible for reporting that information to the Social Security Administration and therefore already had the information. The Court concluded that the discovery request was made for the improper purpose of intimidating the plaintiffs to drop their lawsuit.

²⁸ See, AG-CE-0478(c).

²⁹ Motion to Quash, pp 9 – 14.

disclosure in response to a possible future FOIA request it does require notice to be provided should the Attorney General or Public Service Commission determine that it needs to disclose any confidential information due to FOIA, at which point the party providing the confidential information can take whatever actions it deems necessary in response. And to be clear, no determination has been made at this time by the Attorney General that the contracts would constitute public documents subject to FOIA. That determination based on the specifics of a FOIA request if one is received. Customer A is seeking the nuclear option for something that may never occur.

Second, public records may only be destroyed on proper legislative authority.³⁰ Any order requiring documents to be deleted or destroyed as proposed in the Motion to Quash may violate state document retention requirements and other statutes.³¹ The Commission approved protective order in the Rate Case Filing Requirements acknowledges that there are state statutes that the Attorney General and the Public Service Commission are subject to as governmental offices related to document retention requirements, and the protective order is subject to those terms.³²

V. Relief Requested

For the reasons stated above, the Attorney General respectfully requests that Customer A's motion to quash discovery and destroy documents be denied.

³⁰ Op. Atty. Gen., May 6, 1942, No. 23200, p. 601.

³¹ See e.g., Michigan Penal Code 750.491(1) – (2) and the Management and Budget Act, Act 431 of 1985, MCL 18.1285, MCL 18.287(2)(f) and (3)(c).

³² See Paragraph V Retention of Documents.

Respectfully submitted,

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Dated: September 25, 2025

Question:

159. Refer to Figure 58 on page 139 of Ms. Hayward's direct testimony on HVD Strategic Customers capex. Please:

- a. Expand this table to include the same information for each year 2021-2024 actual and forecasted for 2025, 2026, 2027. Provide it in Excel.
- b. For each customer project, provide the type of business the customer is involved in, the business location, the contract status (whether signed or not), the phase the project is currently in (scoping, conceptual design, engineering design, construction, completed), the project cost by year from inception to completion with and without any CIAC, and what facilities will be installed.
- c. For each customer project, provide a copy of the signed contract and explain what provisions have been included in the contract for reimbursement of capital expenditures and O&M expenses incurred by the Company in case the customer abandons the project before completion of construction and also subsequent to start of operations but before the Company has recovered the full investment in the project.

Response:

Objection of Counsel: Consumers Energy Company objects to this discovery request because it requests information that is not relevant and that is personally identifiable Customer Account information that cannot be disclosed under Consumers Energy's Customer Data Privacy tariff. Subject to this objection, Consumers Energy responds as follows:

- a.) For 2021-2024 actuals, see Exhibit A-130 (MPK-20), page 1, lines 3-4, Lines Strategic Customers-HVD. See Attachment 1 to this response for 2025-2027 forecasted.
- b.) See objection noted above for the type of business and business location requested. See Attachment 2 to this response for the rest of the information requested in part b.
- c.) Please see confidential attachments 3a, 3b, 4, 5, 6, 7, 8, 9, and 10 for copies of the signed contracts. It can be explained that the Company's contracts with customers depending on the type of contract have minimum billing requirements for certain energy usages and terms, and/or provisions for prorated payment of investments if the customer ceases operation prior to the end of the term of the contract. Additionally, the Company performs risk reviews on projects over \$1M and may require additional security (e.g. a letter of credit or parental guaranty) as a result of the review.

Witness: Megan L. Hayward

Date: September 16, 2025

172 Mich.App. 49
Court of Appeals of Michigan.

George F. EYDE, Plaintiff–Appellant,
v.
Kathleen Ann EYDE, Defendant–Appellee,
and
Louis Joseph Eyde, Defendant.

Docket No. 100175.

Submitted March 2, 1988.

Decided Oct. 4, 1988.

Released for Publication Nov. 23, 1988.

Synopsis

Brother and business partner of party to divorce action filed action to prevent discovery of documents held by bank relating to brothers’ business ventures. The Ingham Circuit Court, Carolyn Stell, J., entered order compelling discovery but establishing number of safeguards designed to prevent disclosure of confidential matters and documents not relevant to determination of value of marital estate. On appeal, the Court of Appeals held that documents in question were relevant and not privileged, and any possible interest that brother not party to divorce action had in records was protected by confidentiality orders.

Affirmed.

West Headnotes (3)

- [1] **Appeal and Error** → Failure to Disclose; Sanctions
- Pretrial Procedure** → Discretion of court

Trial courts have considerable discretion in granting or denying motion to compel discovery, and ruling on that motion will be reversed on appeal only if there has been abuse of that discretion.

[17 Cases that cite this headnote](#)

- [2] **Pretrial Procedure** → Subject Matter in General

Any document which is relevant and not privileged is generally freely discoverable upon request, and there is no requirement of good cause for discovery of relevant and nonprivileged documents. [MCR 2.302\(B\)\(1\)](#).

[11 Cases that cite this headnote](#)

- [3] **Divorce** → Discovery
- Privileged Communications and Confidentiality** → Bank and customer; bank records

Records held by bank relating to business ventures by party to divorce action and his brother were discoverable, subject to safeguards designed to prevent disclosure of confidential matters and documents not relevant to determination of value of marital estate; documents at issue were relevant and not privileged, and any possible interest that brother not party to divorce action had in records was protected by confidentiality orders. [MCR 2.302\(B\)\(1\), \(C\)\(8\)](#).

[8 Cases that cite this headnote](#)

Attorneys and Law Firms

****459 *50** Dickinson, Wright, Moon, Van Dusen & Freeman by Joseph A. Fink and Kenneth T. Brooks, Lansing, for plaintiff-appellant.

Foster, Swift, Collins & Coey, P.C. by Lawrence B. Linderman and William K. Fahey, Lansing, for Kathleen Ann Eyde.

****460** Before SAWYER, P.J., and KELLY and RASHID,* JJ.

Opinion

PER CURIAM.

In the case at bar, the trial court entered an order compelling discovery of certain business documents held by Michigan National Bank. Plaintiff is the brother and business partner of defendant Louis Eyde, the latter being married to defendant Kathleen Eyde. Defendants are currently involved in a divorce action and defendant Kathleen Eyde (hereinafter “defendant”) has sought discovery of certain business documents concerning the business ventures between plaintiff and Louis Eyde. Plaintiff filed the instant action to prevent the discovery of these documents, seeking to keep confidential those documents which relate to his business ventures, including those ventures in which he is involved with Louis Eyde. The trial court entered an order compelling discovery but establishing a number of safeguards designed to prevent the disclosure of confidential matters and to prevent discovery of documents which relate only to plaintiff and are not relevant to defendant’s determination of the value of the marital estate in her divorce action against Louis Eyde. We affirm.

Plaintiff and Louis Eyde have substantial interests *51 in real estate and businesses conducted in corporate, partnership, and trust forms. The Eyde brothers also have various interests in businesses as officers, directors, shareholders, and fiduciaries. Plaintiff and Louis Eyde are involved in approximately twenty different jointly-owned business entities.

Defendant began discovery of Louis Eyde’s assets through financial institutions. In October, 1985, defendant served subpoenas duces tecum on several financial institutions seeking copies of all applications for credit, all documents indicating original evidence of debt, payment schedules, security descriptions, credit reports, appraisals, loan committee evaluations and related documents, and all financial statements filed subsequent to January 1, 1982, “by or on behalf of Louis J. Eyde, individually, jointly, or as an officer, owner, partner or other representative of any entity with which he is associated, including but not limited to [various Eyde brothers ventures].” The subpoenas also sought all “documents showing account numbers, type of accounts, current balances, the name of authorized signatories as to all accounts of whatever nature held in the sole name of Louis J. Eyde....”

On November 14, 1985, plaintiff George F. Eyde brought this suit to quash defendant’s subpoenas pending a

hearing. Plaintiff claimed that defendant’s subpoenas violated his privacy interest in his business records and interfered with his business relations with third parties.

The parties eventually consented to two orders for confidentiality entered in both plaintiff’s action and defendant’s divorce action, which were entered on June 13 and 17, 1986. These orders provided that plaintiff be given advance notice of discovery requests, that plaintiff was entitled to be *52 present at discovery proceedings and given an opportunity to review records in advance, that plaintiff might object to and withhold documents pending a court ruling regarding their discoverability, that records be reviewed only by parties or counsel, that no confidential records be disclosed without an order of the court upon prior notice to the other parties, and that all arguments regarding confidential records be held in camera.

Defendant deposed Michigan National Bank and attempted to secure the Eyde brothers’ business records held by the bank on June 24, 1986. Plaintiff and plaintiff’s counsel reviewed the documents prior to the deposition. Plaintiff’s attorney objected to and withheld fifty-five documents from this deposition. Eleven of these documents were personal documents solely concerning plaintiff, while the other withheld documents were financial statements relating to business projects owned by Louis Eyde. Plaintiff’s counsel also prevented **461 any testimony by the deposed bank officer regarding Louis Eyde’s net worth. Plaintiff’s attorney continuously objected that the loan officer’s opinion would be based upon the withheld confidential business documents.

Defendant moved to compel discovery of these withheld documents on October 22, 1986. Defense counsel agreed that eleven of the documents were personal to plaintiff and need not be discovered but argued that the remaining records were relevant and not privileged because they contained financial statements relating to business projects owned by Louis Eyde. Defense counsel argued that those documents were necessary because discovered documents showed wildly different versions of Louis Eyde’s net worth: a financial statement given to a lending institution and signed by Louis Eyde gave his net worth at forty-two times the net *53 worth stated by Louis Eyde in a financial statement given to defendant. Additionally, defendant had no description of any of the real estate owned by Louis Eyde.

On December 3, 1986, the court granted defendant’s motion for discovery of the requested documents because they were relevant, reasoning that unraveling “the intricate web of complex business enterprise is not so

easy without more complex discovery.” The court did exclude the eleven documents which were held to be personal to plaintiff. On April 22, 1987, the court entered an order granting defendant discovery of the other forty-four requested documents. Defendant now appeals from this order.

On March 23, 1987, the court entered an order for a special master to be appointed for the purposes of receiving testimony and conducting hearings to determine the identity and value of the marital estate. The court extended discovery to June 30, 1987, and ordered that an evidentiary hearing be scheduled after that date.

At an April 23, 1987, hearing, the court extended the June 13 and 17, 1986, confidentiality orders to cover all financial information received. The court ordered that future hearings regarding financial information be held in camera or in an empty, locked courtroom, and that motions regarding financial information will be kept in a separate confidential file.

After obtaining the April 22, 1987, order to compel discovery, defendant again presented a subpoena to Michigan National Bank requesting the forty-four previously withheld documents. The deposition was set for April 30, 1987. Plaintiff sought an emergency appeal to this Court to stay the deposition. On May 1, 1987, this Court stayed the lower court’s discovery order pending further *54 action. On May 14, 1987, this Court granted plaintiff leave to appeal and continued the stay pending appeal.

^[1] Trial courts have considerable discretion in granting or denying a motion to compel discovery. *Davis v. O’Brien*, 152 Mich.App. 495, 505, 393 N.W.2d 914 (1986). A circuit court’s decision to grant or deny a discovery motion will be reversed on appeal only if there has been an abuse of that discretion. *Marchand v. Henry Ford Hospital*, 398 Mich. 163, 169–170, 247 N.W.2d 280 (1976); *Ravary v. Reed*, 163 Mich.App. 447, 456, 415 N.W.2d 240 (1987). In *Spalding v. Spalding*, 355 Mich. 382, 384–385, 94 N.W.2d 810 (1959)¹, the Court defined an abuse of discretion:

“the result must be so palpably and grossly violative of fact and logic that it evidences not the exercise of will but the perversity of will, not the exercise of judgment but defiance thereof, not the exercise of reason but rather of passion or bias.”

**462 Michigan has a strong historical commitment to a far-reaching, open and effective discovery practice. *Daniels v. Allen Industries, Inc.*, 391 Mich. 398, 403, 216 N.W.2d 762 (1974). Discovery rules are to be liberally

construed in order to further the ends of justice. *Id.* The modern tendency is to broaden the scope of discovery when necessary to facilitate preparation, to guard against surprise, and to expedite justice. *Fassih v. St. Mary Hospital of *55 Livonia*, 121 Mich.App. 11, 15, 328 N.W.2d 132 (1982).

^[2] The general rule is that any document which is relevant and not privileged is freely discoverable upon request. *Davis, supra*, 152 Mich.App. at 502–504, 393 N.W.2d 914. MCR 2.302(B)(1) provides:

“Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action.”

There is no requirement that there be good cause for discovery of relevant and nonprivileged documents. *Davis, supra* at 503–504, 393 N.W.2d 914.

^[3] Louis Eyde’s business records and banking records were relevant to the subject matter involved in defendant’s divorce action. The financial status of defendant’s husband is material and relevant to the subject matter of defendant’s divorce. *Tomlinson v. Tomlinson*, 338 Mich. 274, 281, 61 N.W.2d 102 (1953). The husband’s assets in a corporation or other businesses are considered part of the marital estate. See *Villadsen v. Villadsen*, 123 Mich.App. 472, 473–476, 333 N.W.2d 311 (1983). Defendant’s discovery so far has been inadequate to determine the true value of Louis Eyde’s assets; financial statements now in defendant’s possession vary widely in their estimate of Louis Eyde’s net worth. The documents already in defendant’s possession do not include relevant financial information regarding all of Louis Eyde’s known business entities. Plaintiff’s counsel had effectively blocked any estimate of Louis Eyde’s net worth by deposed bank officials. Thus, the documents at issue are relevant and necessary to determine the extent and value of defendant and Louis Eyde’s marital estate.

Louis Eyde’s financial records held by Michigan *56 National Bank are not privileged. Documents containing records of depositor’s accounts are business records of the bank and are not private papers of the depositor. See *United States v. Miller*, 425 U.S. 435, 96 S.Ct. 1619, 48 L.Ed.2d 71 (1976). There is no legitimate expectation of privacy in such bank records which would give plaintiff standing to challenge the subpoena issued to the bank.

Miller, supra at 443, 96 S.Ct. at 1624; see also *Bush Development Corp. v. Harbour Place Associates*, 632 F.Supp. 1359, 1364 (E.D.Va., 1986).

However, despite plaintiff's lack of an expectation of privacy in bank records, the court may restrict discovery in order to prevent annoyance, embarrassment, oppression, or undue burden or expense. MCR 2.302(C). MCR 2.302(C)(8) provides that a Court may order

“that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way.”

The Supreme Court has held that such a protective order assuring the confidentiality of discovered materials adequately protected a party's right to privacy in those materials. *Tomlinson, supra* 338 Mich. at 280–281, 61 N.W.2d 102. This Court favors allowing discovery of documents and allowing the court to edit any confidential information from those documents in camera; this will preserve the one party's expectation of privacy and furnish the other party with the required information. *Fassihi, supra* 121 Mich.App. at 16, 328 N.W.2d 132.

Any possible interest that plaintiff has in Louis Eyde's business and financial records is protected by the circuit

court's three orders for confidentiality. These orders provide notice of what will be discovered, an opportunity to view in advance and withhold documents pending a court determination *57 of discoverability, that the documents will be held confidential and may not be copied without a court order, that hearings **463 dealing with financial information will be held in camera or in a locked, empty courtroom, and that all motions regarding financial information will be kept in a closed, confidential file. Additionally, the court's March 23, 1987, order to appoint a special master should minimize the inconvenience of discovery for all parties. Although plaintiff does have some interest in keeping his financial information private, defendant requires that same information to determine the extent and value of the marital estate in her divorce case. Thus, the proper approach is to issue a MCR 2.302(C) confidentiality order to protect plaintiff's interests rather than to deprive defendant of adequate discovery.

In sum, the court did not abuse its discretion in ordering discovery of the withheld documents.

Affirmed. Defendant-appellee may tax costs.

All Citations

172 Mich.App. 49, 431 N.W.2d 459

Footnotes

* James J. Rashid, 3rd Judicial Circuit Judge, sitting on Court of Appeals by assignment pursuant to Const.1963, Art. 6, Sec. 23, as amended 1968.

¹ One member of this panel, Judge Kelly, has expressed discomfiture with the fulsome language in *Spalding* and has called its definition of what constitutes an abuse of discretion “overly restrictive.” *People v. Holmes*, 132 Mich.App. 730, 750, 349 N.W.2d 230 (1984) (Kelly, J., concurring). He is not alone. See, for example, *People v. Martin*, 147 Mich.App. 297, 300–301, 382 N.W.2d 726 (1985); *Guzowski v. Detroit Racing Association, Inc.*, 130 Mich.App. 322, 329–331, 343 N.W.2d 536 (1983). See also *People v. Talley*, 410 Mich. 378, 396–397, 301 N.W.2d 809 (1981) (Levin, J., concurring): “*Spalding's* hyperbolic statement ... is simplistic and misleading....”

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The undersigned certifies that a copy of the *Attorney General's Response to Motion to Quash* was served upon the parties listed below by e-mailing the same to them at their respective e-mail addresses on the 25th day of September 2025.

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