

Example of Court Protective Order for Forensic Imaging

This matter came before the court on <Attorney A>'s motion for a subpoena requiring a forensic produce from the forensic image of <Attorney B's client> computers. The court, having considered <Attorney A>'s motion, the response and reply thereto and having heard oral argument, find the following:

1. The defendants have substantial need for the material and information on <Attorney B's client> computer system and are unable without undue hardship to obtain equivalent information by any other means.
2. <Attorney B's client> computer system contains Attorney-client and accountant-client communications and Attorney work product created after <date>, which the <Attorney B's client> claim is privileged.
3. <Attorney A> is not interested in documents which may be privileged.

Based on the foregoing findings;

It is ordered that the defendants, their counsel and support staff are entitled to make a forensic image of <Attorney B>'s computers so the request for a subpoena is granted subject to the following:

- A. The defendants shall pay for the forensic image
- B. As part of making a forensic duplicate, the defendants or their counsel may produce from the forensic image the following:
 1. all the financial records or other records in <Attorney B's client> computers and the programs the <Attorney B's client> used to create and maintain financial records;
 2. all e-mails correspondence and other records;
 3. all individual hard drives and separate work stations that are or were networked into the mainframe server and still in <Attorney B's client> possession;
 4. all the back-up tapes in <Attorney B's client> possession;
 5. all programs necessary to access data on the <Attorney B's client> computers'; however, defendants shall not be responsible for site licenses and other necessary payments to program owners.

- C. The defendants are not entitled to produce from the forensic image and so far as practicable shall not produce from the forensic image emails or correspondence between <Attorney B> and it's Attorneys or accountants after <date>. Moreover, the defendants are not entitled to produce from the forensic image material prepared in anticipation of litigation after <date>.
- D. <Attorney B> may, if it wishes, identify documents or data that contain privileged information and submit a privilege log to the defendants, and such documents or data shall not be produced from the forensic image.
- E. Notwithstanding any privilege log which may or may not be prepared by <Attorney B>, the defendants shall immediately notify <Attorney B> and shall abstain from review of any data or information the encounter which they reasonably believe contains privileged or work-product information.
- F. After receiving notice of defendant's discovery of privileged or work-product information <Attorney B> may review the documents in question and determine if they are privileged. If <Attorney B> determines that the documents are not privileged, it shall notify the defendants that they may review the files, but the failure of <Attorney B> to review documents the defendants reasonable believe are privileged shall not entitle the defendants to use or disclose the documents.
- G. If <Attorney B> determines that certain documents are privileged, it may designate the documents as confidential and the defendants shall not produce the designated files from the forensic image, and will delete any copies of the files produced from the forensic image of <Attorney B>'s computer or seek further order from the court.
- H. The defendants shall not disclose, directly or indirectly, any information the <Attorney B> has designated as or the defendants reasonable believe is confidential to any person without further order from this court or agreement from <Attorney B>.