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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS 2007 JAN 31 P 4: 55

JEFF HATCH-MILLER, Chairman
WILLIAM A. MUNDELL
MIKE GLEASON
KRISTIN K. MAYES
GARY PIERCE

ARIZONA CORPORATION COMMISSION
DOCUMENT CONTROL

In the matter of:

Docket No. S-20482A-06-0631

EDWARD A. PURVIS and MAUREEN H. PURVIS, husband and wife
2131 W. Shannon
Chandler, Arizona 85224

GREGG L. WOLFE and ALLISON A. WOLFE, husband and wife
2092 W. Dublin Lane
Chandler, Arizona 85224

MOTION TO QUASH RESPONDENTS' NOTICE OF VIDEOTAPED DEPOSITION PURSUANT TO RULE 30(b)(6), ARIZONA RULES OF CIVIL PROCEDURE AND REQUEST FOR PRODUCTION

NAKAMI CHI GROUP MINISTRIES INTERNATIONAL, (a/k/a NCGMI), a Nevada corporation sole
4400 N. Scottsdale Road, Suite 9-231
Scottsdale, Arizona 85251

JAMES W. KEATON, Jr. and JENNIFER KEATON, husband and wife
11398 E. Whitehorn Drive, Apt. D
Scottsdale, Arizona 85255

Arizona Corporation Commission
DOCKETED
JAN 31 2007

ACI HOLDINGS, INC., a Nevada corporation
17650 N. 25th Avenue
Phoenix, Arizona 85023

DOCKETED BY NR

Respondents.

The Securities Division of the Arizona Corporation Commission ("Division") hereby responds to the Notice of Videotaped Deposition Pursuant to Rule 30 (b)(6), Arizona Rules of Civil Procedure ("Deposition Request") and John O'Neal's request for production of documents and other information as specified in his letter dated January 19, 2007 ("Request for Production") submitted by Respondents Ed and Maureen Purvis in connection with the above-captioned matter. In short, the

1 Deposition Request and Request for Production fall well outside acceptable discovery limits as
2 permitted for administrative proceedings under both the Arizona Revised Statutes and Arizona Rules
3 of Practice and Procedure before the Corporation Commission. Accordingly, the Division has no
4 alternative but to reject the demands included in this submission. The Division will, of course,
5 comply with appropriate discovery requests that comport with the prescribed discovery rules for
6 administrative adjudications.

7 8 DISCUSSION

9 Discovery rules in administrative actions are not subject to the whims of individual
10 litigants. To the contrary, the rules and procedures for conducting discovery in administrative
11 proceedings are explicitly provided under Arizona statute and through local administrative agency
12 rules. Only by adhering to these provisions can parties to an administrative adjudication
13 participate in an acceptable, effective and cooperative disclosure process.

14 **1. *Discovery is available for Administrative Proceedings within Arizona, but only***
15 ***within the limits as defined by statute and agency rule***

16 Courts have often had occasion to consider the limits of discovery in administrative
17 proceedings. Through these deliberations, two salient points have become evident. The first of
18 these is the fact that, because they derive from an entirely distinct process, the rules of civil
19 procedure for discovery **do not** apply in administrative proceedings.¹ See, e.g., *Pacific Gas and*
20 *Elec. Co.*, 746 F.2d 1383, 1387 (9th Cir. 1984); *Silverman v. Commodity Futures Trading Comm'n*,
21 549 F.2d. 28, 33 (7th Cir. 1977); *NLRB v. Vapor Blast Mfg. Co.*, 287 F.2d 402, 407 (7th Cir. 1961).

22
23 ¹ This principle is particularly important from a policy standpoint. Indeed, merging civil
24 discovery rules into the administrative arena would have many deleterious results, including: (1)
25 allowing respondents to access confidential investigative information far removed from the
26 witnesses and exhibits relevant to the active case against them; (2) allowing respondents to protract
the proceedings indefinitely; (3) allowing respondents to excessively consume scarce but vital
resources better expended on other matters necessary for the protection of the public; and (4)
allowing respondents to force the agency into the position of a civil litigant rather than into its
proper role as a governmental regulatory authority.

1 The second of these points is that the authority to pursue discovery during the course of an
2 administrative proceeding is not conferred as a matter of right. In fact, courts have repeatedly
3 recognized that there simply is no basic constitutional right to pretrial discovery in administrative
4 proceedings. *Silverman*, 549 F.2d. at 33 (7th Cir. 1977). The federal Administrative Procedures
5 Act echoes this point by offering no provision for pretrial discovery during the administrative
6 process. 1 Davis, *Administrative Law Treatise* (1958), § 8.15, p. 588.

7 In accordance with these findings, discovery within the confines of an administrative
8 proceeding is only authorized to the extent that it is explicitly provided for in a separate statute or
9 rule. *See, e.g.*, 73A C.J.S. *Public Administrative Law and Procedure*, § 124 (1983)(“Insofar as the
10 proceedings of a state administrative body are concerned, only the methods of discovery set forth
11 by the pertinent statute are available, and the methods not set forth therein are excluded”); *See*
12 *also* 2 Am.Jur.2d. *Administrative Law* § 327 (2d. ed. 1994)(In the context of administrative law,
13 any right to discovery is grounded in the procedural rules of the particular administrative agency).

14 Following these precepts, the state of Arizona has enacted both statutes and agency rules to
15 address the issue of discovery in the context of administrative proceedings. Indeed, both the
16 Arizona Revised Statutes and the Arizona Rules of Practice and Procedure before the Corporation
17 Commission (“Rules of Practice and Procedure”) contain explicit provisions addressing discovery
18 procedures in contested administrative adjudications. Only by observing these controlling provisions
19 can a party effectively pursue discovery in an administrative matter before the Arizona Corporation
20 Commission.

21 The statute setting forth the parameters of discovery in administrative proceedings is, not
22 surprisingly, found in the chapter on Administrative Procedure, A.R.S. § 41-1001, *et seq.* Under
23 Article 6 of this chapter, covering “Adjudicative Proceedings,” Arizona law provides as follows:

24 A.R.S. § 41-1062: Hearings; evidence; official notice; power to require testimony and
25 records; Rehearing

26 A. Unless otherwise provided by law, in contested cases the following shall apply:

...

- 1 4. The officer presiding at the hearing may cause to be issued
2 subpoenas for the attendance of witnesses and for the production of
3 books, records, documents and other evidence and shall have the
4 power to administer oaths.... *Prehearing depositions and*
5 *subpoenas for the production of documents may be ordered by the*
6 *officer presiding at the hearing, provided that the party seeking*
7 *such discovery demonstrates that the party has reasonable need of*
8 *the deposition testimony or materials being sought....*
9 *Notwithstanding the provisions of section 12-2212, no subpoenas,*
10 *depositions or other discovery shall be permitted in contested*
11 *cases except as provided by agency rule or this paragraph.*
12 (Emphasis added).

8 The plain import of this provision is that, in Arizona, the only forms of pre-trial discovery
9 permitted in administrative proceedings are (1) subpoenas, based on a showing of need and
10 authorized by the administrative hearing officer; (2) depositions, based on a showing of need and
11 authorized by authorized by the hearing officer; and (3) any other discovery provision specifically
12 authorized under the individual agency's rules of practice and procedure. The Respondents' Request
13 for Deposition, attached as Exhibit A, does not show a need for the requested deposition, nor is it
14 authorized by the assigned administrative hearing officer.

15 The Rules of Practice and Procedure, R14-3-101, *et seq.*, thus serve to augment the available
16 means of pre-trial discovery within the Corporation Commission. Under these rules, the presiding
17 administrative law judge may also direct a pre-hearing conference wherein an arrangement is made
18 for the exchange of proposed exhibits, witness lists, or prepared expert testimony. *See* A.A.C. R-14-3-
19 108(A). These rules also provide that a party may gain access to additional pre-hearing materials by
20 way of a discretionary administrative law judge order requiring that the parties interchange copies of
21 exhibits prior to hearing. *See* A.A.C. R-14-3-109(L). Indeed, Corporation Commission
22 administrative law judges often call upon these rules in ordering parties to file a list of witnesses and
23 exhibit at a time and date in advance of the hearing, thereby facilitating the hearing preparation
24 process.

25 The aforementioned provisions establish that only certain, specified methods of discovery are
26

1 sanctioned in administrative proceedings before the Arizona Corporation Commission, and that such
2 methods of discovery are often both limited and discretionary. The discovery Request filed by
3 Respondents in this instance utterly fails to acknowledge or operate within this discovery framework.

4 **2. The Arizona rules and procedures governing discovery for administrative
5 proceedings comport with the principles of due process.**

6 As previously addressed, *supra*, there is simply no constitutional right to discovery in
7 administrative proceedings. Nor does the Constitution require that a respondent in an
8 administrative proceeding be aware of all evidence, information and leads to which opposing
9 counsel might have access. *Pet v. Dep't of Health Serv.*, 207 Conn. 346, 542 A.2d 672 (1988)
10 quoting *Federal Trade Comm'n v. Anderson*, 631 F.2d 741, 748 (D.C.Cir. 1979); *Cash v. Indus.*
11 *Comm'n of Arizona*, 27 Ariz. App. 526, 556 P.2d 827 (App. 1976). Despite this, the concept of due
12 process is still germane to the procedures of governmental actions such as the administrative
13 proceeding at issue. As the Supreme Court noted in *Willner v. Comm. on Character and Fitness*,
14 373 U.S. 96, 107 (1963), a respondent must be adequately informed of the evidence against him
15 and be afforded an adequate opportunity to rebut this evidence. A denial of pre-hearing
16 depositions is not a denial of due process because respondent had ample opportunity to cross-
17 examine the witnesses at a full hearing. *Electomec Design & Dev. Co. v. NLRB*, 409 F.2d 631 (9th
18 Cir. 1969).

19 Courts have since had occasion to consider what types of procedures do in fact comply
20 with due process in the context of administrative proceedings. It is now well-settled that
21 procedures designed to ensure "rudimentary requirements of fair play" are sufficient to meet the
22 due process requirements in administrative adjudications. *Mitchell v. Delaware Alcoholic*
23 *Beverage Control Comm'n*, 193 A.2d 294, 313 (Del.Super. 1963), *rev'd on other grounds*, 196
24 A.2d 410 (Del.Super. 1963); *see also Matthews v. Eldridge*, 424 U.S. 319, 333 (1976), quoting
25 *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)("the fundamental requirement of due process is the
26 opportunity to be heard at a meaningful time and in a meaningful manner"); *Swift & Co. v. U.S.*,
308 F.2d 849, 851 (7th Cir. 1962)("due process in an administrative proceeding, of course, includes

1 a fair trial, conducted in accordance with fundamental principles of fair play and applicable
2 procedural standards established by law”); 73A C.J.S. *Public Administrative Law and Procedure*,
3 § 60 (1983); see also *Adamchek v. Board of Educ.*, 387 A.2d. 556 (Conn. 1978)(although the
4 Uniform Administrative Procedures Act does not expressly provide for pre-trial discovery, the
5 procedures required for the UAPA still exceed the minimal procedural safeguards mandated by the
6 due process clause).

7 Petitioners have often sought to challenge this due process standard for administrative
8 proceedings. For instance, in *Cimarusti v. Superior Court*, 79 Cal.App.4th 799, 94 Cal.Rptr.2d
9 336 (2000), a petitioner argued that his due process rights were compromised through the lower
10 court’s curtailment of his discovery requests. The court rejected this claim, reasoning that the pre-
11 hearing discovery and hearing procedures as provided under the state’s Administrative Procedures
12 Act fully satisfied the petitioner’s due process rights. Similarly, in *Silverman*, 549 F.2d 28, a
13 petitioner argued that he was denied due process in connection with the prehearing production of
14 documents by the CTFC. In noting that the petitioner received copies of all proposed exhibits, a
15 list of all proposed witnesses, the identity of the government employees who had investigated the
16 case, and copies of memoranda reflecting petitioner’s own statements to administrative
17 representatives, the court ruled that the proceedings did not involve a denial of due process.
18 Responding to a similar appeal, a Texas court found that due process in administrative proceedings
19 mandates notice, a hearing, and an impartial trier of facts, but not various methods of discovery.
20 *Huntsville Mem’l Hosp. v. Ernst*, 763 S.W.2d 856, 859 (Tex.App. 1988).

21 These cases demonstrate that, in order to comport with procedural due process in the
22 context of an administrative proceeding, an agency need only enforce the guidelines of applicable
23 administrative statutes and rules while using the discretion inherent in these guidelines to ensure a
24 level of fundamental fairness. See *Pacific Gas and Elec. Co. v. Federal Energy Regulatory*
25 *Comm’n*, 746 F.2d 1383 (9th Cir. 1984)(If an agency has adopted rules providing for discovery in
26 its proceedings, **the agency is bound by those rules** and must ensure that its procedures meet due

1 process requirements)(*emphasis added*). It follows that the Arizona statutes and agency rules
2 governing discovery procedure in administrative proceedings are more than adequate in satisfying
3 any due process concerns.

4
5 **3. *Attempts to invoke the Civil Discovery Rules in this administrative forum are misplaced and unsustainable.***

6 As previously discussed, the extent of discovery to which a party to an administrative
7 proceeding is entitled is primarily determined by the particular agency; the rules of civil procedure
8 are inapplicable. *See, e.g., Pacific Gas and Elec. Co.*, 746 F.2d at 1387; *see also LTV Steel Co. v.*
9 *Indus. Comm'n*, 748 N.E.2d 1176 (Ohio 2000) (discovery as generally provided by the rules of
10 civil procedure in court proceedings is not available in administrative proceedings). This point is
11 particularly obvious in light of the fact that the Arizona legislature and Corporation Commission
12 have enacted and adopted specific statutes and rules, respectively, to govern discovery procedure
13 in this administrative forum. *See* A.R.S. § 41-1001, *et seq.* (Rules of Practice and Procedure
14 Before the Corporation Commission).

15 Despite these explicit rules on discovery, Respondents are attempting to use the civil
16 discovery rules set forth in the Arizona Rules of Civil Procedure in this administrative proceeding.
17 The Respondents' Request for Production, attached as Exhibit B, appears to rely on Rule 14-3-
18 101(A) of the Rules of Practice and Procedure to justify their position on discovery. In pertinent
19 part, this provision states: "In all cases in which procedure is set forth *neither by law, nor by these*
20 *rules, nor by regulations or order of the Commission*, the Rules of Civil Procedure for the Superior
21 Court of Arizona as established by the Supreme Court of Arizona shall govern." (Emphasis
22 added). However, this catch-all provision provides a secondary procedural resource only *where*
23 *there is nothing in the law or rules governing a particular procedure.*² As has been pointed out at
24 great length above, however, there is already plenty of governing authority with respect to

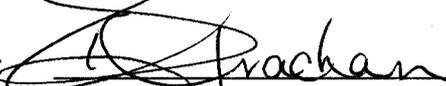
25
26 ² Note that this Commission rule references different types of *procedures* (e.g. "service," "time computation," "motion practice", etc.), and not just specific "discovery procedures."

1 discovery procedure in administrative proceedings within Arizona. Indeed, both laws **and** rules
2 explicitly outline the proper discovery procedures for administrative proceedings in this state. As
3 such, there is neither need nor justification to charge into the civil rules of procedure for guidance
4 on discovery.

5 CONCLUSION

6 The discovery rules for contested administrative proceedings in this state are expressly
7 provided by statute and agency rule, and that the principles of due process are amply preserved
8 within these rules. As a consequence, discovery requests predicated on inapplicable rules of civil
9 procedure are misplaced in this administrative forum. It follows that the Division is neither
10 inclined nor obligated to comply with Respondents' civil procedure-based Request for Deposition
11 or Request for Production. The Division will, of course, comply with future discovery requests that
12 are not objectionable and comport with applicable law. Likewise, the Division will, at the
13 appropriate time, produce a complete list of witnesses and exhibits, thereby enabling Respondents
14 both to examine the evidence against them and to formulate an adequate defense to such evidence.

15 RESPECTFULLY SUBMITTED this 31st day of January, 2007.

16 By: 

17 Rachel Frazier Strachan
18 Attorney
19 Securities Division of the Arizona
20 Corporation Commission

21 ORIGINAL AND THIRTEEN (13) COPIES of the foregoing
22 filed this 31st day of January, 2007 with

23 Docket Control
24 Arizona Corporation Commission
25 1200 West Washington
26 Phoenix, AZ 85007

27 COPY of the foregoing hand-delivered this
28 31st day of January, 2007 to:

29 Mr. Marc Stern
30 Hearing Officer

1 Arizona Corporation Commission/Hearing Division
2 1200 West Washington
3 Phoenix, AZ 85007

4 COPY of the foregoing mailed this
5 31st day of January, 2007 to:

6 John Maston O'Neal, Esq.
7 Zachary Cain, Esq.

8 QUARLES & BRADY STREICH LANG LLP
9 Renaissance One, Two North Central Avenue
10 Phoenix, AZ 85004-2391
11 Attorneys for Respondents Ed and Maureen Purvis

12 By: *Karen Hrade*

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EXHIBIT A

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

JEFF HATCH-MILLER, Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES
BARRY WONG

In the matter of:

EDWARD A. PURVIS and MAUREEN H.
PURVIS, husband and wife
1231 W. Shannon
Chandler, Arizona 85224

GREGG L. WOLFE and ALLISON A.
WOLFE, husband and wife
2092 W. Dublin Lane
Chandler, Arizona 85224

JAMES W. KEATON, Jr. and JENNIFER
KEATON, husband and wife
11398 E. Whitehorn Drive, Apt. D
Scottsdale, Arizona 85255

ACI HOLDINGS, INC., a Nevada corporation
17650 N. 25th Avenue
Phoenix, Arizona 85023,

Respondents.

Docket No. S-20482A-06-0631

**NOTICE OF VIDEOTAPED
DEPOSITION PURSUANT TO
RULE 30(b)(6), ARIZONA
RULES OF CIVIL PROCEDURE**

THE STATE OF ARIZONA TO:

**Brian C. McNeil
Executive Director
Arizona Corporation Commission
1300 W. Washington
Phoenix, Arizona 85007-2996**

1 **Exhibit A**

2

3 1. Testimony supporting the ACC's allegation that the actions taken by
4 PURVIS, WOLFE and KEATON were for their own benefit and for the benefit of the
5 marital community as referenced in ¶'s 2-10 of the ACC's Notice For Opportunity Of
6 Hearing Regarding Proposed Order To Cease And Desist, Order for Restitution, For
7 Administrative Penalties And For Other Affirmative Action.

8 2. Testimony supporting the ACC's allegation that PURVIS and WOLFE
9 transacted business under the name Nakami Chi Group Ministries International
10 ("NCGMI") referenced in ¶ 11 of the ACC's Notice For Opportunity Of Hearing
11 Regarding Proposed Order To Cease And Desist, Order for Restitution, For
12 Administrative Penalties And For Other Affirmative Action.

13 3. Testimony supporting the ACC's allegation that WOLFE is the "subscriber"
14 for NCGMI referenced in ¶ 12 of the ACC's Notice For Opportunity Of Hearing
15 Regarding Proposed Order To Cease And Desist, Order for Restitution, For
16 Administrative Penalties And For Other Affirmative Action.

17 4. Testimony supporting the ACC's allegation that ACI Holdings, Inc. is a
18 corporation referenced in ¶ 13 of the ACC's Notice For Opportunity Of Hearing
19 Regarding Proposed Order To Cease And Desist, Order for Restitution, For
20 Administrative Penalties And For Other Affirmative Action.

21 5. Testimony supporting the ACC's allegation that KEATON is the President,
22 Treasurer and Director of ACI Holdings, Inc. and that PURVIS served as a Director
23 referenced in ¶ 14 of the ACC's Notice For Opportunity Of Hearing Regarding Proposed
24 Order To Cease And Desist, Order for Restitution, For Administrative Penalties And For
25 Other Affirmative Action.

26 6. Testimony supporting the ACC's allegation that PURVIS and WOLFE
offered and sold unregistered securities in the form of investment contracts, bridge loans
and company stock involving NCGMI and ACI Holdings, Inc. to investors, within or from
Arizona and other states referenced in ¶'s 16-19 and ¶'s 21-29 of the ACC's Notice For
Opportunity Of Hearing Regarding Proposed Order To Cease And Desist, Order for
Restitution, For Administrative Penalties And For Other Affirmative Action.

7. Testimony supporting the ACC's allegation that PURVIS and WOLFE
represented to investors that the bridge loan investment funded short-term, high interest
bridge loans to small companies and that the investments would be personally guaranteed

1 with an annual return of 24% referenced in ¶s 30-34 of the ACC's Notice For Opportunity
2 Of Hearing Regarding Proposed Order To Cease And Desist, Order for Restitution, For
3 Administrative Penalties And For Other Affirmative Action.

4 8. Testimony supporting the ACC's allegation that PURVIS and WOLFE
5 suggested to investors that they should refer to their investments as "donations" and that
6 such funds were deposited into a bank account for NCGMI as referenced in ¶s 33-34 of
7 the ACC's Notice For Opportunity Of Hearing Regarding Proposed Order To Cease And
8 Desist, Order for Restitution, For Administrative Penalties And For Other Affirmative
9 Action.

10 9. Testimony supporting the ACC's allegation that PURVIS and WOLFE
11 offered stock in ACI Holdings, Inc. including PURVIS' alleged misrepresentations to
12 investors as referenced in ¶s 35-41 of the ACC's Notice For Opportunity Of Hearing
13 Regarding Proposed Order To Cease And Desist, Order for Restitution, For
14 Administrative Penalties And For Other Affirmative Action.

15 10. Testimony supporting the ACC's allegation that PURVIS and WOLFE
16 offered or sold unregistered securities as referenced in ¶s 42-45 of the ACC's Notice For
17 Opportunity Of Hearing Regarding Proposed Order To Cease And Desist, Order for
18 Restitution, For Administrative Penalties And For Other Affirmative Action.

19 11. Testimony supporting the ACC's allegation that PURVIS and WOLFE
20 offered or sold unregistered securities while not registered as dealers or salesmen as
21 referenced in ¶s 46-48 of the ACC's Notice For Opportunity Of Hearing Regarding
22 Proposed Order To Cease And Desist, Order for Restitution, For Administrative Penalties
23 And For Other Affirmative Action.

24 12. Testimony supporting the ACC's allegation that RESPONDENTS, in
25 connection with the offer of sale of securities within or from Arizona, directly or
26 indirectly: (i) employed a device, scheme or artifice to defraud; (ii) made untrue
statements of material fact or omitted material facts; or (iii) engaged in transactions,
practices or courses of business which operated as a fraud or deceit upon offerees and
investors as referenced in ¶ 49 of the ACC's Notice For Opportunity Of Hearing
Regarding Proposed Order To Cease And Desist, Order for Restitution, For
Administrative Penalties And For Other Affirmative Action.

13. Testimony supporting the ACC's request for relief as referenced on Page 9
¶s 1-5 of the ACC's Notice For Opportunity Of Hearing Regarding Proposed Order To
Cease And Desist, Order for Restitution, For Administrative Penalties And For Other

1 Affirmative Action including the identity of any offerees or investors allegedly harmed,
2 the nature of the harm suffered, and the alleged amount of restitution due.

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EXHIBIT B



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January 19, 2007

VIA HAND-DELIVERY

Rachel Strachan
Securities Division
Arizona Corporation Commission
1300 West Washington
Phoenix, Arizona 85007

RE: *In The Matter of Edward A. Purvis, et. al.*
Docket No. S-20482A-06-0631

Dear Ms. Strachan:

As you are aware, the rules of practice and procedure in an ACC securities action are governed by Arizona Administrative Code Title 14 Chapter 3 Article 1 and Title 14 Chapter 4 Article 3. If procedure is not set forth in the Arizona Administrative Code, the Arizona Rules of Civil Procedure apply. *See* AAC R14-3-101(A). Disclosure requirements and procedures are not set forth in the Arizona Administrative Code. Therefore, A.R.C.P. 26.1 governs disclosure. We may take depositions of witnesses in accordance with the Arizona Rules of Civil Procedure. *See* R14-3-109(P).

The confidentiality statute (A.R.S. §44-2042) will not apply to information that has become a matter of public record. By filing its Notice Of Opportunity For Hearing Regarding Proposed Order To Cease And Desist, the ACC has waived confidentiality with respect to any information forming the basis of the claims alleged. *See Slade v. Schneider*, 212 Ariz. 176, 129 P.3d 465 (App. 2006). The duty to disclose is not limited to the witnesses and information that the ACC intends to present at the formal hearing. *See id.*

Pursuant to Rule 26.1, Arizona Rules of Civil Procedure, we are requesting that you immediately provide the following:

- (1) The names, addresses and telephone numbers of any witnesses that you intend to present at the formal hearing, including a fair description of the substance of each witness' expected testimony.

Rachel Strachan
January 19, 2007
Page 2

- (2) The names, addresses and telephone numbers of any expert witnesses that you intend to present at the formal hearing, including: the subject matter on which the expert is expected to testify; the substance of the facts and opinions to which the expert is expected to testify; a summary for the grounds for each opinion; copies of any reports prepared by the expert; copies of all information, tangible items, documents, communications and notes relied upon by the expert in formulating his opinions; and the qualifications of the witness.
- (3) The names of all individuals who were solicited or participated in the "bridge loan program."
- (4) The names of all individuals who were solicited or purchased stock in ACI Holdings, Inc..
- (5) The names and addresses of all persons who have given statements, whether written or recorded, signed or unsigned, and the copies of those statements.
- (5) A computation and the measure of damage and the documents or testimony on which such computation and measure are based and the name, addresses and telephone numbers of all damage witnesses.
- (6) The existence, location, custodian and general description of any tangible evidence or relevant documents that you intend to use or rely upon at the formal hearing.

Rule 26.1(b) requires that disclosure be made within 40 days of the filing date of the answer. We filed and served the Answer in this matter on November 3, 2006. The 40th day expired more than a month ago. Therefore, we request that you provide disclosure immediately.

Lastly, please refer to the enclosed copy of the Rule 30(b)(6) Notice of Deposition that has been served today. We are enclosing a copy for your review so that you and your staff may take the steps necessary to comply with the Notice.

Sincerely,

QUARLES & BRADY LLP



Zachary Cain

Enclosures

ZCAIN:zc

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