

4. An opinion from the U.S. District Court for the Middle District of Florida denying a motion to compel a forensic examination of Defendants’ personal and business electronic devices because Plaintiffs did not request affirmative discovery of the relevant information and did not substantiate the need for such examination.

In *Partners Insight, LLC v. Gill*, No. 22-cv-739-SPC-KCD, 2023 WL 2864375 (M.D. Fla. Apr. 10, 2023), U.S. Magistrate Judge Kyle C. Dudek addressed whether Plaintiffs could compel forensic examination of Defendants’ personal and business devices.

In this action for alleged misappropriation of trade secrets, Plaintiffs requested that each Defendant produce any cell phones, computers, and other electronic storage devices for forensic inspection and imaging. *Id.* at *1. Defendants objected, and Plaintiffs moved to compel.

Magistrate Judge Dudek began his analysis by explaining that “parties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case” under Federal Rule of Evidence 26. He noted that discovery into electronically stored information, including forensic examinations, is subject to this general scope of discovery.

Magistrate Judge Dudek further explained that when determining whether a forensic examination is warranted, a court must weigh the utility of the proposed examination against inherent privacy concerns: “Mere speculation that electronic discovery must exist is insufficient to permit forensic examination of a party’s personal computer or cellphone.”

Magistrate Judge Dudek referred to the Middle District of Florida Discovery handbook, which provides that “[i]nspection of an opponent’s computer system is the exception, not the rule and the creation of forensic image backups of computers should only be sought in exceptional circumstances which warrant the burden and cost.” *Id.* at *2. The Discovery handbook further provided that “[a] request to image an opponent’s computer should include a proposal for the protection of privacy rights, protection of privileged information, and the need to separate out and ignore non-relevant information.” Magistrate Judge Dudek found that Plaintiffs’ motion did not include what is required under the Discovery handbook because there was no proposal for the protection of privacy rights or privileged information.

Magistrate Judge Dudek also found that Plaintiffs’ motion was premature because Plaintiffs sought to discover whether Defendants “downloaded files onto a storage device” or “sent confidential information to their personal mail accounts,” but never requested that Defendants produce such information. He explained that “[c]ourts in this circuit permit forensic examinations where clear evidence exists that the party responding to discovery defaulted on its discovery obligations” and noted that there are no “facts or information suggesting Defendants altered or tampered with” their personal electronic devices. He found that Plaintiffs’ allegations “upon information and belief” that Defendants transferred confidential files were based on “mere speculation,” which is not enough. Magistrate Judge Dudek identified other issues with Plaintiffs’ motion, including that it did not identify the expert who would conduct the forensic imaging and “put the onus on Defendants to provide a list of negative search terms.”

Magistrate Judge Dudek concluded by ordering that Plaintiffs could refile their motion to compel, if necessary, after further discovery had taken place.