

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

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U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO, FLORIDA

In Re: Procedure for Assertion of
Privilege.

Case No: 6:16-mc-48-Orl-DCI

STANDING ORDER

In order to establish an orderly and efficient procedure for designating information and documents withheld from discovery on the basis of a privilege or other recognized protection (hereinafter, "privilege"), it is **ORDERED** that the parties shall follow the following procedures, unless and until superseded by another order:

In the event information, communications or documents, or portions thereof, are withheld in response to a written discovery request on the basis of privilege or subject to other protection against discovery, the party withholding the information or document shall timely serve upon opposing counsel and unrepresented parties a privilege log. Fed. R. Civ. P. 26(b)(5)(A); 45(2)(A); Middle District Discovery (2015) at (VI)(A)(1). The privilege log shall be served simultaneously with the response to written discovery requests in which the information, communications, or documents are withheld on the basis of privilege. With respect to privileges or other protections from discovery asserted during depositions, the information required in a privilege log shall be stated on the record at the time the objection to disclosure of the communication, information or document is made.

All privilege logs must contain the following information:

- a. The name and job title or capacity of the provider of the information or author of the document;

- b. The name and job title or capacity of each known or believed recipient of the information or document;
- c. The date the information was learned or the document was prepared and, if different, the date(s) on which it was sent to or shared with persons other than its provider(s) or author(s);
- d. The title and/or description of the information or document;
- e. The subject matter addressed in the information or document;
- f. The purpose(s) for which the information or document was prepared or communicated;
- g. The degree of confidentiality with which the information or document was treated at the time of its creation and transmission, and since; and
- h. The specific basis for the claim that information or document is privileged.¹

If the validity of the asserted privilege(s) is challenged, the parties should first engage in a good faith effort to resolve the dispute without court intervention. *See* Fed. R. Civ. P. 26(c)(1); Local Rule 3.01(g). Ultimately, the party asserting the privilege bears the burden of demonstrating the privilege applies. *E.g. Tyne v. Time Warner Entm't Co., L.P.*, 212 F.R.D. 596, 599 (M.D. Fla. 2002). Accordingly, if the parties are unable to resolve the dispute without court intervention, then the party asserting the privilege must file: 1) a motion for a protective order containing a memorandum of law discussing the elements of each privilege asserted within fourteen (14) days after the good faith conference; 2) the privilege log at issue; and 3) an appendix containing "affidavits, deposition testimony, other sworn statements or other evidence" upon which the party relies to support each element of each asserted privilege in dispute. *See CSX Transp., Inc. v. Admiral Ins. Co.*, Case No. 93-132-CIV-J-10, 1995 WL 855421, at *1, 5 (M.D.

¹ The Court is not requiring the responding party to disclose the contents of any privileged matter in the privilege log.

Fla. July 20, 1995); *Craig v. Rite Aid Corp.*, 2012 WL 426275, at *4-8 (M.D. Penn. Feb. 9, 2012) (addressing the burden a party claiming protection against discovery must meet with respect to the attorney-client privilege and the work product doctrine generally, as well as specifically in the context of the multifaceted corporate decision making process involving in-house counsel). The appendix shall be organized so the evidence submitted in support of the claimed privileges at issue is correlated with the information or document to which the evidence applies. The motion, privilege log, and appendix must be sufficient to establish a *prima facie* case to support the assertion of privilege for each disputed piece of information or document. No party may submit documents for the Court's *in camera* review, unless the Court issues a subsequent order requesting such submissions. *See Id.* (court not required to undertake *in camera* review of documents when proponent of work product doctrine has failed to meet its burden of presenting sufficient evidentiary support for application of the protection.).

In response to the motion for protective order, the party challenging the assertion of privilege shall state with particularity the factual and legal basis why each assertion of privilege should be overruled. If the party challenging the assertions of privilege fails to address each assertion thereof with particularity, the Court will not overrule the assertion of privilege.

The Court expects strict adherence to this order. If the party asserting privilege fails to file a motion for protective order within fourteen (14) days of the good faith conference, as set forth above, the party challenging the assertion of privilege may file a motion to compel. In the motion to compel, the party challenging the assertion of privilege shall specifically certify that the party asserting privilege failed to file a motion for protective order as required by this order, which necessitated the filing of a motion to compel. Failure to certify the same will result in the denial of a motion to compel with respect to the assertion of privilege.

DONE and **ORDERED** in Orlando, Florida on October 5, 2016.



DANIEL C. IRICK
UNITED STATES MAGISTRATE JUDGE

Copies furnished to:
Counsel of Record
Unrepresented Parties