

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA

TERRY GENE BOLLEA professionally
known as HULK HOGAN,

Plaintiff,

Case No. 12012447CI-011

vs.

GAWKER MEDIA, LLC,
NICK DENTON, and
A.J. DAULERIO,

Defendants.

_____ /

**PLAINTIFF TERRY GENE BOLLEA'S MEMORANDUM OF
LAW CONCERNING THE APPLICABLE STANDARDS
GOVERNING ATTORNEYS' EYES ONLY DESIGNATIONS**

At the request of the Court on November 18, 2015, Plaintiff, Terry Bollea ("Bollea"), submits this advisory memo concerning the standard to be used when reviewing the appropriateness of designating discovery materials as Attorneys' Eyes Only, and states as follows:

The applicable standard for reviewing the appropriateness of the designation of materials as "Confidential—Attorneys' Eyes Only" is set forth in this Court's July 25, 2013 Agreed Protective Order (attached as **Exhibit A**) and Stipulated Protocol,¹ as well as Florida case law providing the Court broad discretion to impose protections and limitations on discovery. The Agreed Protective Order provides that a party may designate certain discovery materials as "Confidential," including: "other information in which the party from which the discovery is sought has a reasonable expectation of privacy or confidentiality." The Agreed Protective Order

¹ As adopted in the Court's September 23, 2015 Order on Plaintiff's Emergency Motion for Clarification.

further provides that materials may not be designated “Confidential” if: they were “in the public domain at the time of disclosure;” or they became “part of the public domain through no fault² of the other parties in this action.”

The materials Mr. Bollea designated as “Confidential—Attorneys’ Eyes Only” are materials in which Mr. Bollea has a constitutional right and reasonable expectation of privacy. Further, they are materials that were not in the public domain at the time of disclosure; and it has not been established that any of these materials have become part of the public domain through no fault of the parties in this action (and should therefore retain confidentiality until such facts are established).

Pursuant to the Florida Rules of Civil Procedure, the Court is permitted to make any order to protect a party or person from “annoyance, embarrassment, oppression or undue burden or expense.” Fla. R. Civ. Pro. 1.280(c). One method available to the Court is to permit that documents be made available to “no one [other than] persons designated by the court.” *Id.* Fla. R. Civ. Pro. 1.280(c) therefore gives the Court authority to designate documents and transcripts as “Attorneys’ Eyes Only” and to define, where necessary, who is included in that designation. “[A]s is always the case, the scope and **limitation** of discovery is within the broad discretion of the trial court.” *Friedman v. Heart Inst. of Port St. Lucie, Inc.*, 863 So. 2d 189, 194 (Fla. 2003) (emphasis added).

“In exercising its discretion to prevent injury through abuse of the action or the discovery process within the action, trial courts are guided by the principles of relevancy and practicality.” *Id.* Moreover, “[t]he right of privacy set forth in article 1, section 23 of the Florida Constitution

² In this regard, Mr. Bollea notes the Court’s October 28, 2015 Amended Order Permitting Limited Discovery On Potential Violation of Protective Order; which is currently under review by the Second District Court of Appeal.

undoubtedly express a policy that compelled disclosure through discovery be limited to that which is necessary for a court to determine contested issues.” *Ryan v. Landsource Holding Co., LLC*, 127 So.3d 764, 767 (Fla. 2d DCA 2013). When making this determination, the Court should, *in camera*, “balance (on an *ad hoc* bases) the right to privacy and the right to know.” *Friedman*, 863 So.2d at 194.

When a party challenges discovery by asserting a privacy right, the trial court **must** conduct an *in camera* review to determine whether the materials are relevant³ to the issues in the underlying action.” *Muller v. Wal-Mart Stores, Inc.*, 164 So. 3d 748 (Fla. 2d DCA [REDACTED]) (emphasis added). This *in camera* review is necessary to segregate documents that should be designated from those that should not. *Walker*, 111 So. 3d at 296. Further, the Court must “determine whether there is **good cause for disclosure**, such that the **need for the information** [to be disclosed] **outweighs the possible harm.**” *Bergmann v. Freda*, 829 So. 2d 966 (Fla. 4th DCA 2002) (emphasis added).

Respectfully submitted,

/s/ Kenneth G. Turkel

Kenneth G. Turkel, Esq.

Florida Bar No. 867233

Shane B. Vogt

Florida Bar No. 0257620

BAJO | CUVA | COHEN | TURKEL

100 North Tampa Street, Suite 1900

Tampa, Florida 33602

Tel: (813) 443-2199

Fax: (813) 443-2193

Email: kturkel@bajocuva.com

Email: svogt@bajocuva.com

-and-

³ “It is axiomatic that discovery in civil cases must be relevant to the subject matter of the case.” *Walker v. Ruot*, 111 So.3d 294, 296 (Fla. 5th DCA 2013)

Charles J. Harder, Esq.
PHV No. 102333
Douglas E. Mirell, Esq.
PHV No. 109885
Jennifer J. McGrath, Esq.
PHV No. 114890
HARDER MIRELL & ABRAMS LLP
132 South Rodeo Drive, Suite 301
Beverly Hills, CA 90212-2406
Tel: (424) 203-1600
Fax: (424) 203-1601
Email: charder@hmafirm.com
Email: dmirell@hmafirm.com
Email: jmcgrath@hmafirm.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by E-Mail via the e-portal system this 9th day of December, 2015 to the following:

Barry A. Cohen, Esquire
The Cohen Law Group
201 E. Kennedy Blvd., Suite 1950
Tampa, Florida 33602
bcohen@tampalawfirm.com
jhalle@tampalawfirm.com
mwalsh@tampalawfirm.com
Counsel for Heather Clem

Gregg D. Thomas, Esquire
Rachel E. Fugate, Esquire
Thomas & LoCicero PL
601 S. Boulevard
Tampa, Florida 33606
gthomas@tlolawfirm.com
rfugate@tlolawfirm.com
kbrown@tlolawfirm.com
abeene@tlolawfirm.com
Counsel for Gawker Defendants

David R. Houston, Esquire
Law Office of David R. Houston
432 Court Street
Reno, NV 89501
dhouston@houstonatlaw.com
krosser@houstonatlaw.com

Seth D. Berlin, Esquire
Paul J. Safier, Esquire
Alia L. Smith, Esquire
Michael D. Sullivan, Esquire
Levine Sullivan Koch & Schulz, LLP
1899 L. Street, NW, Suite 200
Washington, DC 20036
sberlin@lskslaw.com
psafier@lskslaw.com
asmith@lskslaw.com
msullivan@lskslaw.com
*Pro Hac Vice Counsel for
Gawker Defendants*

Michael Berry, Esquire
Levine Sullivan Koch & Schultz, LLP
1760 Market Street, Suite 1001
Philadelphia, PA 19103
mberry@lskslaw.com
*Pro Hac Vice Counsel for
Gawker Defendants*

Timothy J. Conner
Holland & Knight LLP
50 North Laura Street, Suite 3900
Jacksonville, FL 32202
timothy.conner@hkklaw.com

Allison M. Steele
Rahdert, Steele, Reynolds & Driscoll, P.L.
535 Central Avenue
St. Petersburg, FL 33701
amncstee@aol.com
asteelc@rahdertlaw.com
ncampbell@rahdertlaw.com
*Attorneys for Intervenor Times Publishing
Company*

/s/ Kenneth G. Turkel

Attorney