CIVIL JURY DIVISION GUIDELINES REGARDING PRIVILEGE LOGS AND PROCEDURES FOR *IN CAMERA* REVIEW AND INSPECTION OF DOCUMENTS, MATERIALS, AND RECORDS

In order to assist counsel for all parties seeking to withhold documents, materials, records, and other information from production on the basis of privilege or trade secret, the Court herein provides guidelines for preparing an adequate or sufficient privilege log and procedures for *in camera* review and inspection of documents, materials, records, and other information contained in the privilege log.

Privilege Logs

A party withholding information otherwise discoverable by claiming it is privileged shall make the claim expressly by preparing and filing an adequate privilege log compliant with Rule 1.280(b)(6), Florida Rules of Civil Procedure and the 2021 Florida Handbook on Civil Discovery Practice to "include at a minimum (for documents), sender, recipients, title or type, date and subject matter"[1] and the pages of each document listed on the amended privilege log shall be bates numbered. A sufficient privilege log will enable other parties and the Court to assess the applicability of the privilege or protection asserted by the discovery opponent.

The Fourth District Court of Appeal explained that a privilege log should:

> describe the document's subject matter, purpose for its production, and a specific explanation of why the document is privileged or immune from discovery. These categories, especially this last category, must be sufficiently detailed to allow the court to determine whether the discovery opponent has discharged its burden of establishing the requirements expounded upon in the foregoing discussion. Accordingly, descriptions such as 'letter re claim,' 'analysis of claim,' or 'report in anticipation of litigation'-with which we have grown all too familiar-will be insufficient. This may be burdensome, but it will provide a more accurate evaluation of a discovery opponent's claims and takes into consideration the fact that there are no presumptions operating in the discovery opponent's favor. Any failure to comply with these directions will result in a finding that the plaintiff-discovery opponents have failed to meet their burden of establish the applicability of the privilege."[2]

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[1] *Florida Handbook on Civil Discovery Practice*, p. 139 at "Privilege Logs" and nn. 458-461 (2021).
[2] *TIG Ins. Corp. of Am. v. Johnson*, 799 So.2d 339, 341 (Fla. 4th DCA 2001) (citation omitted).

In Camera Review

Following the filing of an adequate privilege log, in the event the party seeking discovery of documents, materials, records, and other information contained on the discovery opponent's privilege log determines there is a need for an *in camera* review of such documents, materials, records, and other information, then the process for such is as follows:

1. The party requesting the *in camera* review of documents asserted to be privileged must file a Notice of Request for *In Camera* Review. The notice shall identify the documents requested for review by excerpting the complete information provided in the objecting party's privilege log for each document.

2. The party requesting the *in camera* review is encouraged to spread out the requests in batches for *in camera* review and otherwise make the work for the Court more manageable to the extent possible and need not request review of all documents in a single grouping.

3. The documents appearing in the request for *in camera* review shall be provided to the Court within 7 business days of receipt of a Notice of Request for *In Camera* Review if review of 25 documents or less is requested, and within 10 days if review of more than 25 documents is requested.

4. For all documents submitted for *in camera* review pursuant to this Order, counsel for the party asserting the privileges raised shall send a cover letter to the Court's chambers, enclosing documents for *in camera* inspection in a sealed envelope marked **FOR IN CAMERA REVIEW/NOT TO BE FILED.** The cover letter will advise the documents are being provided for an *in camera* inspection pursuant to this Court's order. The documents shall be produced with bates stamps in the order set forth in the Notice of Request for *In Camera* Review. No argument or other information shall be included in the cover letter. A courtesy copy of the entire cover letter (without the enclosed records) shall be provided contemporaneously to all parties' counsel. The notice itself shall also not contain argument. This Order is not intended to foreclose any party from making argument.

5. Within 10 days of the party seeking discovery serving a "Notice of Request for *In Camera* Inspection," the party asserting the privileges raised may make a submission in the form of a memorandum addressing the documents to be reviewed under the Notice of Request for *In Camera* review and the applicability of any of the privileges raised. Any amendments to the privileges previously asserted shall also be submitted within this initial 10-day submission period. No further amendments to the privileges asserted as to the documents at issue in the Notice of Request for *In Camera* Inspection shall be made absent the filing of a Motion to Amend the Privilege Log and a showing of good cause for the amendment. Within 10 days of any submission by the party asserting the privileges raised, the party seeking discovery may make a submission to the Court also in the form of a memorandum directed to the applicability of the privileges asserted. The party asserting the privileges raised may then file a reply or rebuttal submission to the submission within 5 days of service of the discovery seeking party's submission. This shall be the extent of any submissions made on these Notices of Request for *In Camera* inspection by any of the parties.

6. The materials provided to the Court will be maintained *in camera* until the conclusion of this case and may be filed under seal for purposes of appellate review.

7. The Court will review the documents and make rulings as to the applicability of privilege. In doing so the Court will order production of any document not subject to privilege and will identify the documents to be produced by bates number.

8. Any order of this Court as to discovery of these documents is not intended to govern the determination as to whether the discovered information is admissible as evidence. The scope of discovery is not limited to admissible evidence but includes information that is "reasonably calculated to lead to the discovery of admissible evidence." Fla. R. Civ. Pro. 1.280(b). Accordingly, any statements or rulings by this Court are not intended to be a ruling on the admissibility of any information or document.