

## **DIVISION CV-E 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(c)(6), Florida Rules of Civil Procedure and the 2024 Florida Handbook on Civil Discovery Practice to “include at a minimum (for documents), sender, recipients, title or type, date and subject matter”<sup>1</sup> 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.”<sup>2</sup>

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<sup>1</sup> *Florida Handbook on Civil Discovery Practice*, p. 142 at “Privilege Logs” and nn. 465-468 (2024).

<sup>2</sup> *TIG Ins. Corp. of Am. v. Johnson*, 799 So. 2d 339, 341 (Fla. 4<sup>th</sup> 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. A courtesy copy of the Notice of Request for *In Camera* Review shall be provided to the Court's Judicial Assistant by email.
2. If any of the parties determine that an evidentiary record must be developed for the Court to consider during its *in camera* review, then the parties must meet and confer to prepare an appropriate Order scheduling the evidentiary hearing to develop a relevant evidentiary record for consideration during the *in camera* review and establishing appropriate deadlines for matters to be disclosed, discovered, and completed prior to the hearing. To facilitate this meet and confer process the parties must comply with *Division CV-E Procedures for Scheduling and Hearing Motions Requiring Evidentiary Hearing* published on the Court's website<sup>3</sup> and should utilize the Court's template for *Order Scheduling Motion for Evidentiary Hearing and Pre-Evidentiary Hearing Case Management Conference, and Requiring Matters to be Completed Prior to Pre-Evidentiary Hearing Case Management Conference* published in Word format on the Court's website<sup>4</sup> to draft either an "Agreed Order" or a red-lined version of the Order in draft form for the Court to consider competing provision during a Case Management Conference if necessary.
3. 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.
4. 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.
5. 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

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<sup>3</sup> See Division CV-E website: <https://www.jud4.org/ex-parte-dates-judge-s-procedures/duval-judges>

(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.

6. Within 10 days of the party seeking discovery serving a "Notice of Request for *In Camera* Review," 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. A courtesy copy of the Notice of Request for *In Camera* Review and memorandum addressing the documents to be reviewed shall be provided to the Court's Judicial Assistant by email. Any amendments to the privileges previously asserted shall also be filed and submitted within this initial 10-day submission period. A courtesy copy of any amendments to the privileges shall be provided to the Court's Judicial Assistant by email. 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. A courtesy copy of the memorandum shall be provided to the Court's Judicial Assistant by email. 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. A courtesy copy of the reply or rebuttal submission shall be provided to the Court's Judicial Assistant by email. This shall be the extent of any submissions made on these Notices of Request for *In Camera* inspection by any of the parties.

7. 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.

8. 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.

9. 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 "need not be admissible in evidence to be discoverable." Fla. R. Civ. Pro. 1.280(c)(1). Accordingly, any statements or rulings by this Court regarding discovery objections or the applicability of privilege(s) are not intended to be a ruling on the admissibility of any information or document.

## ***In Camera* Review of Documents Produced in Response to Non-Party Subpoenas Duces Tecum**

In the event all non-privileged objections asserted by the party opposing such non-party discovery are overruled, the Court herein provides procedures for *in camera* review and inspection of documents, materials, records, and other information responsive to subpoenas duces tecum further objected to by the party opposing such discovery on the basis of Florida's Constitutional right to privacy or other privilege, confidentiality, or trade secret. These procedures should be incorporated into an Order on a motion for protective order and objections to subpoenas duces tecum.

1. **Service of the Subpoenas:** The parties shall meet and confer to coordinate revisions to the non-party subpoenas that ***are not subject*** to objections based on Florida's Constitutional right to privacy or other privilege, confidentiality, or trade secret to accurately reflect the Court's rulings on any non-privilege objections to permit the party seeking discovery to issue such subpoenas and serve the subpoenas on the non-parties at the sole expense of the party seeking such discovery. During the same meet and confer the parties must coordinate revisions to the non-party subpoenas that ***are subject*** to objections based on Florida's Constitutional right to privacy or other privilege, confidentiality, or trade secret to accurately reflect the Court's rulings on any non-privilege objections to permit the party opposing such discovery to issue such subpoenas and serve the subpoenas on the non-parties at the sole expense of the party opposing such discovery.

2. **Bates Numbered Documents:** During the same meet and confer, as it concerns non-party subpoenas that are subject to objections based on Florida's Constitutional right to privacy or other privilege, confidentiality or trade secret, the parties shall further revise the subject subpoenas duces tecum to request from each of the subpoenaed non-parties that all documents responsive to the subpoenas are bates numbered by each subpoenaed non-party prior to production using a unique prefix (which instruction must be provided within the subject non-party subpoenas to be issued by the party opposing such discovery). The party opposing such discovery shall bear the cost of bates numbering the copies of the documents responsive to the subpoenas that delivered to the party opposing such discovery and to the Court.

3. **Communications and Correspondence:** Counsel for all parties shall be copied or otherwise included on any communications with the subpoenaed non-parties or with any other third parties utilized to effectuate service of the subpoenas, and copies of any subpoena served shall be provided to counsel for all parties.

4. **Prohibited Communications:** There shall be no communications by the parties or their counsel with the subpoenaed non-parties, directly or indirectly, that interferes with, or attempts to avoid or limit the production if, the documents required to be produced pursuant to the subpoenas as served.

5. **Continuing Meet and Confer Obligation:** The parties shall have a continuing obligation to meet and confer over coordination of service and compliance with the subpoenas with respect to any matter not addressed by these procedures, and the parties are entitled to reserve their rights to request relief from the Court in the event of any matter not resolved in the meet and confer process or any party's failure to comply with these procedures.

6. **Responses by the Subpoenaed Non-Parties:** All documents produced in response to the subpoenas by the subpoenaed non-parties shall be made returnable in exact duplicate both to the party opposing such discovery and to the Court, Division CV-E (c/o Hon. Bruce R. Anderson, Jr. and Ms. Paula Fields, Duval County Courthouse, 501 W. Adams Street, Suite 7259, Jacksonville, Florida 32202). The Party opposing such discovery shall bear the cost of obtaining the copies of the documents responsive to the subpoenas that are delivered to the party's counsel opposing such discovery, and the party seeking discovery shall bear the cost of obtaining the copies and delivering copies of the documents responsive to the subpoenas that are delivered to the Court.

7. **Responsibility of Party Opposing Discovery After Receipt of Subpoenaed Documents:** The party opposing discovery shall promptly, but no later than within five (5) business days, notify Defendant of the receipt and date thereof of any documents from a subpoenaed non-party. Within thirty (30) days of the objecting party's receipt of documents produced by any subpoenaed non-party, the objecting party shall produce to the party seeking discovery all documents and related correspondence from the subpoenaed non-parties that are not subject to any objection by the party opposing discovery based on Florida's Constitutional right to privacy or other privilege, if any, confidentiality, or trade secret.

8. **Privilege Log(s):** If necessary, within thirty (30) days of the objecting party's receipt of documents produced by any subpoenaed non-party, the party opposing such discovery shall prepare and file and serve on the party seeking discovery an adequate privilege log compliant with the guidelines regarding privilege logs set forth on page 1 *supra*, which log shall set forth each objection, if any, to production of any document (in full or in part) based on Florida's Constitutional right to privacy or other privilege, confidentiality, or trade secret (the "Privilege Log" and "Privilege Logged Documents").

9. **In Camera Review (if necessary):** The parties shall comply with the Court's specific procedures for conducting an *in camera* review set forth on pages 2 and 3 *supra*. For each Notice of Request for *In Camera* Review, the parties must comply with the briefing and submissions process and timeline set forth in paragraph 5 on pages 2 and 3 of the *In Camera* Review procedures *supra* with respect to each privilege log served by the party opposing such discovery. If the parties agree that the *in camera* review can be conducted by the court based on the briefing, submissions, and the pleadings alone, without an evidentiary hearing, the parties must prepare and file a stipulation confirming the same and email a courtesy copy of the filed stipulation to the Court's Judicial Assistant. If the parties determine that an evidentiary record must be developed for the Court to consider during its *in camera* review, then the parties must comply with the Procedures for Scheduling and Conducting an Evidentiary Hearing set forth below.

10. **Production of Privilege Logged Documents:** Within ten (10) days after the Court issues an order following its *in camera* review of the Privilege Logged Documents, the party opposing such discovery shall produce to the party seeking discovery all Privilege Logged Documents for which the Court overruled the objections made by the party opposing such discovery based on Florida’s Constitutional right to privacy or any other privilege, confidentiality, or trade secret asserted by the party opposing such discovery.

11. **Foundation and Authenticity:** Within ten (10) days after the Court’s issuance of an order following its *in camera* review of the Privilege Logged Documents as explained above, the parties shall meet and confer over whether an agreement can be reached on the foundation and authenticity of the documents produced pursuant to the subpoenas (including the produced Privilege Logged Documents) and whether depositions of the record custodians of the subpoenaed non-parties will be necessary for litigation and trial purposes.

12. **Procedures for Scheduling Evidentiary Hearing on Notice for Request for *In Camera* Review.** If any of the parties determine that an evidentiary record must be developed for the Court to consider during its *in camera* review, then the parties must meet and confer to prepare an appropriate Order scheduling the evidentiary hearing to develop a relevant evidentiary record for consideration during the *in camera* review and establishing appropriate deadlines for matters to be disclosed, discovered, and completed prior to the hearing. To facilitate this meet and confer process the parties must comply with *Division CV-E Procedures for Scheduling and Hearing Motions Requiring Evidentiary Hearing* published on the Court’s website<sup>4</sup> and should utilize the Court’s template for *Order Scheduling Motion for Evidentiary Hearing and Pre-Evidentiary Hearing Case Management Conference, and Requiring Matters to be Completed Prior to Pre-Evidentiary Hearing Case Management Conference* published in Word format on the Court’s website<sup>4</sup> to draft either an “Agreed Order” or a red-lined version of the Order in draft form for the Court to consider competing provision during a Case Management Conference if necessary.

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