

PHILIP GODLEWSKI,
Plaintiff

v.

CHRIS KELLY, TIMES SHAMROCK
COMMUNICATIONS, THE SCRANTON
TIMES-TRIBUNE, LARRY HOLEVA
Defendants.

IN THE COURT OF COMMON PLEAS
OF LACKAWANNA COUNTY

CIVIL DIVISION

JURY TRIAL DEMAND

No.: 2021-CV-2195

MAURICE B. KELLY
LACKAWANNA COUNTY
2022 AUG -5 P 3 13
CLERK OF JUDICIAL
RECORDS CIVIL DIVISION

**BRIEF IN SUPPORT OF DEFENDANTS' MOTION TO COMPEL
PLAINTIFF'S DISCOVERY RESPONSES**

Defendants, Chris Kelly, Times Shamrock Communications, The Scranton Times-Tribune and Larry Holeva (hereinafter referred to collectively as "Defendants"), by and through his attorneys, Haggerty Hinton & Cosgrove LLP, file this Brief.

I. BACKGROUND

Plaintiff, Phillip Godlewski, filed this defamation case on May 24, 2021. He alleges the Times-Tribune defamed him in an article published on February 14, 2021 and he seeks \$5 Million in damages. By virtue of him being a patriot reporter and social media influencer with over 75,000 followers, Plaintiff claims in the Complaint he is a public figure.

The article in question discusses Plaintiff's criminal history and states "Lackawanna County detectives said Godlewski had sex with the [minor] girl in cars and homes he had access to as a real estate agent." Further, the article noted he pled guilty to corruption of a minor and admitted to having a sexual relationship with a 15-year-old girl. "Godlewski, 28 at the time, was sentenced to three to 23 months, with the first three months to be served under house arrest and the balance as probation." Plaintiff now claims in this lawsuit he never had sex with the fifteen-year-old girl and Defendants defamed him by stating such.

II. STATEMENT OF THE QUESTIONS INVOLVED

A. Should Plaintiff be compelled to answer Defendants discovery?

Suggested Answer: Yes.

III. ARGUMENT

The purpose of the Pennsylvania “discovery rules is to prevent surprise and unfairness and to allow a fair trial on the merits.” Dominick v. Hanson, 2000 PA Super 158, 753 A.2d 824, 826 (Pa.Super. 2000). To that end, Pa.R.C.P. 4003.1 provides that “as a general rule, discovery is liberally allowed with respect to any matter, not privileged, which is relevant to the cause being tried.” George v. Schirra, 2002 PA Super 395, 814 A.2d 202, 204 (Pa.Super. 2002). Berg v. Nationwide Mutual Insurance Company, Inc., 2012 PA Super 88, 44 A.3d 1164, 1178 n. 8 (Pa. Super. 2012). Any limitations or restrictions upon discovery should be construed narrowly. Ferguson v. Ghigiarelli, 2012 WL 5376702, at * 4 (Lacka. Co. 2012); McAndrew v. Donegal Mutual Insurance Company, 56 Pa. D. & C. 4th 1, 7 (Lacka. Co. 2002), affirmed without opinion at 855 A.2d 144 (Pa. Super 2004). The party objecting to the production of documents generally bears the burden of establishing that the information or document sought is not discoverable and that the objections should be sustained. McAndrew v. Donegal Mut. Ins. Co., 56 Pa. D. & C.4th 1, 2002 Pa. Dist. & Cnty. Dec. LEXIS 215 (2002), affirmed without opinion by 855 A.2d 144.

In determining whether a discovery request seeks relevant information, the term “relevant” has greater breadth and flexibility than it does for purposes of admissibility at trial. George, 814 A.2d at 205-206 (holding that although the documents requested “may not ultimately be admissible at trial or may not prove germane to the matters that will be litigated, we believe the relevancy standard applicable to discovery matters has been met.”); Fitt v. General Motors Corp., 13 Pa. D. & C.4th 336, 338 (Lacka. Cty. 1992). Any doubts regarding relevancy are to be resolved in favor of allowing discovery; Davis v. Starosta, 62 Pa. D. & C.4th

76, 80 (Northampton Cty. 2002), and if there is any conceivable basis upon which a discovery request may be relevant, a motion to compel such discovery should be granted. Klovensky v. Moore, 57 Pa. D. & C.4th 370, 373 (Franklin Cty. 2002); Fitt, *supra*.

Discovery may be prohibited if it is irrelevant, sought in bad faith, causes unreasonable annoyance, embarrassment, oppression, burden or expense to the responding party, or requires unreasonable investigation by the respondent. See *Pa.R.C.P. 4011*. Litigants should expect that "[a]lmost any discovery request causes some annoyance, embarrassment, oppression, burden or expense." D.S. v. DePaul Institute, 32 Pa. D. & C.4th 328, 334 (Allegheny Cty 1996).

Consequently, the proper inquiry is whether the party objecting to discovery has established unreasonable annoyance, embarrassment, oppression, burden or expense associated with the discovery request. Merrifield v. Gavern, 10 Pa. D. & C.4th 541, 542 (Lacka. Cty. 1991).

Pennsylvania law does not favor evidentiary privileges since "they are in derogation of the search for truth." Joe v. Prison Health Services, Inc., 782 A.2d 24, 31 (Pa. Cmwlth. 2001) (quoting Com. v. Stewart, 547 Pa. 277, 282, 690 A.2d 195, 197 (1997)). Except in those instances where a party objects to discovery based upon the attorney-client privilege, the party opposing discovery bears the burden of establishing that the requested material is privileged and shielded from discovery. Yadouga v. Cruciani, 66 Pa. D. & C. 4th 164, 168 & n. 1 (Lacka. Co. 2004); Taylor v. Pars Manufacturing Co., 13 Phila. Co. Rptr. 132, 135 (Phila. Co. 1985). All doubts regarding the discoverability of information should be resolved in favor of permitting discovery. McAndrew, *supra*; Fitt v. General Motors Corp., 13 Pa. D. & C. 4th 336, 338 (Lacka. Co. 1992).

Burden of proof which customarily governs discovery disputes (i.e., the objector must demonstrate non-discoverability) does not apply to attorney-client privilege issues; because of

the importance of the privilege to the administration of justice, the burden of proof is upon the party asserting that the disclosure of information would not violate the attorney-client privilege.

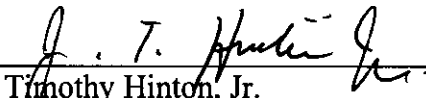
The requirements for asserting the attorney-client privilege are: (1) the asserted holder of the privilege is or sought to become a client; (2) the person to whom the communication was made is a member of the bar of a court, or his/her subordinate; (3) the communication relates to a fact of which the attorney was informed by his client, without the presence of strangers, for the purpose of securing either an opinion of law, legal services or assistance in a legal matter, and not for the purpose of committing a crime or tort; and (4) the privilege has been claimed and is not waived by the client. See, e.g., Com. v. Mrozek, 441 Pa. Super. 425, 657 A.2d 997, 998 (Pa. Super. Ct. 1995) (quoting United States v. United Shoe Machinery Corp., 89 F. Supp. 357, 358-59 (D. Mass. 1950)). Party is not permitted to use the attorney-client privilege as a sword and as a shield.

IV. CONCLUSION

Plaintiff has the burden to prove all of his objections, except for any attorney-client privilege objections, were proper. Plaintiff has not met his burden here for his objections and non-responsiveness. With regard to any privilege objections, Plaintiff should supply the Court and parties with the Privilege Log and the required information to support invocation of the attorney-client privilege. He has not done so to date. If the Court determines that Plaintiff has raised objections unsupported by applicable law and the facts of this case in an effort to subvert the proper discovery process, Defendants request that he be awarded legal fees for the time required to litigate this Motion.

Respectfully submitted,

Date: 8-5-2022



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CERTIFICATE OF COMPLIANCE

I hereby certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

/s/ J. Timothy Hinton, Jr., Esq.
J. TIMOTHY HINTON, JR., ESQUIRE
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CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of August 2022 I caused to be served by Electronic mail, a true and correct copy of the foregoing Brief in Support of Defendants' Motion to Compel Plaintiff's Discovery Responses upon the following:

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