

PHILIP GODLEWSKI,  
Plaintiff

v.

CHRIS KELLY, et al.  
Defendants.

MAURILEA KELLY  
CLERK OF JUDICIAL  
RECORDS CIVIL DIVISION  
IN THE COURT OF COMMON PLEAS  
OF LACKAWANNA COUNTY

CIVIL DIVISION

JURY TRIAL DEMANDED  
No.: 2021-CV-2195

2023 APR 18 P 2:41

MAURILEA KELLY  
CLERK OF JUDICIAL  
RECORDS CIVIL DIVISION

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**RESPONSE TO PLAINTIFF'S MOTION TO COMPEL  
COMPLIANCE WITH SUBPOENAS**

Respondents, Haggerty Hinton & Cosgrove LLP and J. Timothy Hinton, Jr., Esq., file this Response to Plaintiff's Motion to Compel Compliance with Subpoenas.

**Background**

Plaintiff served Attorney Hinton and the law firm of Haggerty Hinton & Cosgrove LLP with identical subpoenas that are attached to Plaintiff's motion. The subpoenas seek eight (8) categories of documents from counsel. The Respondents are counsel for Chris Kelly, The Scranton Times, L.P. and Larry Holeva in this case. Respondents filed Objections to the subpoenas with the Court on February 22, 2023. Respondents have refused to provide documents which are protected from disclosure by Pa. R.C.P. 4003.3, the *Attorney Work Product Privilege* or *Attorney-Client Privilege*. Without waiving these objections, Respondents have produced to Plaintiff's counsel documents marked as HHCLaw 001-044, ST 0975-0978, and HHCLaw 045-052. These documents include any and all unredacted written communications from Brienna DuBorgel, a primary witness in this case. Respondents redacted some text messages sent to Brienna DuBorgel ("B.D.") to shield information pursuant to Pa. R.C.P. 4003.3 since they included counsel's mental impressions. Respondents will submit to an in-camera review by the Court of all these redactions.

## Argument

As our Supreme Court explained in *BouSamra v. Excelsa Health*, 653 Pa. 365, 210 A.3d 967, 978 (Pa. 2019), the purpose of the *attorney-client privilege* is to protect confidential communications between counsel and their clients, whereas *work product* protection is designed to protect against disclosure of the mental impressions and processes of an attorney acting on behalf of a client. *Id.* It is settled that the purpose of the *work product* doctrine is to protect from the knowledge of opposing counsel and his or her client the mental impressions and processes of an attorney acting on behalf of a client, regardless of whether the *work product* was prepared in anticipation of litigation. *BouSamra*, 210 A.3d at 976, 979 (citations omitted); see *Birth Ctr. v. St. Paul Companies, Inc.*, 1999 PA Super 49, 727 A.2d 1144, 1165 (Pa. Super. 1999) (noting that "[t]he protection against the discovery of *work product* is designed to shelter the mental processes of an attorney, providing a *privileged* area within which he can analyze and prepare his client's case."), *aff'd*, 567 Pa. 386, 787 A.2d 376 (Pa. 2001). The protection promotes our adversarial system by providing a *privileged* area within which attorneys can analyze and prepare cases "without fear that their *work product* will be used against their clients." *BouSamra*, 210 A.3d at 976-77. The work product protection belongs to the attorney, not the client. See *BouSamra*, 210 A.3d at 975. The work product doctrine is codified in Pennsylvania Rule of Civil Procedure 4003.3, which provides:

Subject to the provisions of *Rules 4003.4* and *4003.5*, a party may obtain discovery of any matter discoverable under *Rule 4003.1* even though prepared in anticipation of litigation or trial by or for another party or by or for that other party's representative, including his or her attorney, consultant, surety, indemnitor, insurer or agent. The discovery shall not include disclosure of the mental impressions of a

party's attorney or his or her conclusions, opinions, memoranda, notes or summaries, legal research or legal theories. With respect to the representative of a party other than the party's attorney, discovery shall not include disclosure of his or her mental impressions, conclusions or opinions respecting the value or merit of a claim or defense or respecting strategy or tactics.

*Pa.R.C.P. No. 4003.3 (emphasis added).* The plain language of *Rule 4003.3* provides that work product protection applies to a party's attorney and other representative or agent. With respect to the attorney, the Rule provides that "discovery shall not include disclosure of the mental impressions of a party's attorney or his or her conclusions, opinions, memoranda, notes or summaries, legal research or legal theories." *Pa.R.C.P. No. 4003.3.*

Concerning the eight (8) items requested by the subpoenas at issue here, Respondents have complied with items 1 and 2 (except for redactions to some of Attorney Hinton's text messages pursuant to Rule 4003.3). If the Court is inclined, Respondents will submit to an in-camera review of these redactions. Concerning item 3, Respondents do not possess any drafts of B.D.'s Affidavit. Items 4-5 are objected to pursuant to the work-product privilege and Rule 4003.3. Regarding item 6, Respondents have withheld counsel's notes, communications (except those to B.D.) and memorandums regarding B.D. pursuant to attorney work-product privilege and Rule 4003.3. Item 7 is objected to as a violation of attorney work-product privilege and Rule 4003.3. Regarding item 8, this information is objected to pursuant to Pa. R.C.P. 4011 since it would cause unreasonable annoyance, oppression, burden and expense. The subpoena requests that Plaintiff's counsel be permitted to examine opposing counsel's phone bills and phone records. This request is quite extraordinary and serves no legitimate purpose. B.D. executed the affidavit admitting to a sexual

relationship with Plaintiff on October 31, 2022. Counsel's phone records will not lead to the discovery of admissible evidence.

**Conclusion**

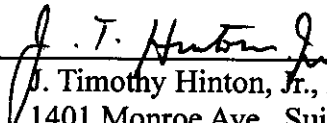
Plaintiff's Motion should be denied.

RESPECTFULLY SUBMITTED,

HAGGERTY HINTON & COSGROVE LLP

Date: 4-18-2023

By: \_\_\_\_\_

  
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Attorneys for Defendants,

*Chris Kelly, The Scranton Times, L.P. and  
Larry Holeva*

**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**  
**PA I.D. 61981**

PHILIP GODLEWSKI,  
Plaintiff

v.

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

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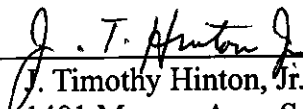
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 18<sup>th</sup> day of April 2023, I caused to be served by electronic mail, a true and correct copy of the foregoing Response to Plaintiff's Motion to Compel Compliance with Subpoenas upon the following:

Timothy M. Kolman, Esq.  
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*Attorney for Plaintiff*

RESPECTFULLY SUBMITTED,

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