

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

MICHAEL D. BLACK, MD, MBA

Plaintiff,

v.

CABLE NEWS NETWORK, INC. ("CNN"),
ELIZABETH COHEN, JOHN BONIFIELD,
DANA FORD, ANDERSON COOPER and
KELLY ROBINSON,

Defendants.

Case No. 502016CA001517XXXXMB

Division: AA

**(PUBLIC VERSION
CONTAINING REDACTIONS OF
INFORMATION DESIGNATED AS
"ATTORNEYS' EYES ONLY")**

**DEFENDANT CABLE NEWS NETWORK, INC.'S
REPLY IN SUPPORT OF ITS
AMENDED MOTION FOR PROTECTIVE ORDER
REGARDING REDACTED PORTIONS OF
THE CNN NEWS STANDARDS & PRACTICES POLICY GUIDES**

Contrary to the Plaintiff's argument, the Court's March 15, 2018 Order ("March 15 Order"), did not abrogate Florida Rule of Civil Procedure 1.280(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter of the pending action") (emphasis supplied) or Rule 1.280(c) (a party, "for good cause shown," may ask the Court to "protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense that justice requires"). Plaintiff's lengthy opposition memorandum ("Opposition Memo") to CNN's amended motion for a protective order for portions of The CNN News Standards & Practices Policy Guides (the "Guides") mischaracterizes the Court's ruling and ignores the basic relevancy requirement under the Florida Rules of Civil Procedure. An *in camera* review of the

Guides by the Special Magistrate will confirm that CNN has provided the Plaintiff with all portions of the Guides that are relevant to Plaintiff's defamation claim.¹

A. The Court's March 15 Order Does Not Preclude the Special Magistrate's Review

Plaintiff principally and erroneously argues that the Court in the March 15 Order "already ruled that CNN may not redact documents responsive to Dr. Black's discovery requests based on its own unilateral assertions of irrelevance" and that CNN has ignored that ruling in redacting the Guides Plaintiff requested after that Order. Opposition Memo at 1. That is a misstatement of the March 15 Order and the discovery documents before that Court at that time.

The March 15 Order adjudicated several different discovery issues. Plaintiff deliberately conflates those rulings. One part of the order addressed the production of a handful of documents (unrelated to the Guides) CNN had redacted for non-responsiveness. With respect to those documents, the Court ruled "that the redaction of non-privileged documents based on the objection that the redacted portions of those documents are non-responsive is overruled." March 15 Order at 5.

In separately addressing the 2016 Guide, the Court ruled in CNN's favor, not the Plaintiff's, as his opposition implies. The March 15 Order held that Plaintiff's "request d[id] not encompass the redacted portions of the Guide" and he was, therefore, not entitled to them. March 15 Order at 7. The order made no relevancy rulings concerning CNN's redactions of the 2016 Guide or any future redactions of any documents. Thus, CNN's amended motion for a protective order relating to redacting information that is not relevant from the Guides has not been foreclosed by the March

¹ CNN will submit unredacted copies of the 2013, 2014, 2015 and 2016 Guides to Special Magistrate Hazouri for *in camera* inspection at the May 3, 2018 hearing.

15 Order and CNN's motion is properly before the Special Magistrate and is fully authorized by Rule 1.280(c).

Solely for purposes of harassment, the Plaintiff—the very next day after the Court's March 15 ruling—served Request for Production No. 58 asking, not only for the entire 2016 Guide, but also for all versions of the Guide from 2013 to the present. CNN has disclosed all portions of the 2013, 2014, 2015 and 2016 Guides that are conceivably relevant to Plaintiff's defamation claim. And, CNN immediately sought protection from Plaintiff's discovery request, through the Special Magistrate, as the Court has instructed, by moving for a protective order.

B. The Parties' Protective Order Governing All Discovery Also Expressly Anticipated and Preserved this Proceeding

Plaintiff erroneously relies on the parties' protective order governing all discovery in this case to assert that CNN lacks standing to object to a harassing request for irrelevant discovery. Opposition Memo at 15-16. As Plaintiff is well aware, that order preserved all discovery objections—including, explicitly, relevancy objections: “Nothing in this Order shall be construed as requiring disclosure of documents, information, or any other materials designated ‘CONFIDENTIAL’ or ‘ATTORNEYS' EYES ONLY’ that counsel for a Party contends are protected by any privilege...or other legal objection, including but not limited to relevancy or that the designated items are otherwise beyond the scope of permissible discovery.” Amended Order on Plaintiff's Motion for Entry of a Protective Order at 15-16 (emphasis supplied).

Contrary to Plaintiff's suggestion, the Protective Order does not estop CNN from asserting its rights under the Florida Rules of Civil Procedure, and certainly does not authorize *carte blanche* discovery of irrelevant information. In fact, the Parties specifically agreed in the Protective Order to:

[N]ot use this Order to support a waiver argument in any discovery motion, or to argue that any party waived its objections to produce any particular documents or information.

Id. at 16.

C. Plaintiff Continues to Ignore the Basic Discovery Requirements of Relevancy

Plaintiff's Opposition baldly asserts that, even if the redacted portions of the Guides are "not relevant," the Court should nonetheless order CNN to produce them because they "are unquestionably responsive to Dr. Black's RFPs." Plaintiff's Memo at 11. The Court should reject Plaintiff's invitation to disregard the relevancy requirement in Rule 1.280(b)(1). For example, Plaintiff makes much of the redaction of a part of the Guides related to [REDACTED]

[REDACTED] Plaintiff claims only that he was defamed. Similarly, Plaintiff previously conceded to Judge Curley that Guide policies related to, for example, journalists' safety are not relevant to this lawsuit, yet he presses here for unredacted versions of the Guides, [REDACTED]—portions that plainly have nothing to do with Plaintiff's case.² See Hearing Transcript, Feb. 20, 2018, 92:15-93:17 (Attached as Exhibit A). As to these policy provisions, and the others that will be made available for the Special Magistrate's review, the Plaintiff cannot meet his basic burden of relevancy, and CNN's motion should be granted.

D. Plaintiff Has Already Identified the Relevant Provisions to this Lawsuit, and CNN Has Disclosed Them

Plaintiff has already identified the subject matters that he believes are relevant to his claim. In his initial Requests for Production, he specifically asked CNN to disclose the procedures and

² [REDACTED]

rules for investigating, fact-checking, or otherwise reviewing an article before publication, responding to retraction or demand letters and use of social media. The March 15 Order confirmed that CNN fully responded to those requests by providing the responsive portions of the Guide without redaction. March 15 Order at 7.

Solely for purposes of harassment, and in his continuing effort to weaponize discovery, drive up costs, and inconvenience the Defendants and the Court, Plaintiff issued a fourth round of document requests to CNN for “all versions” of the Guide in effect from 2013 to the present. In good faith, CNN has responded and produced the requested Guides, redacted consistent with the previously produced Guide, and promptly filed this motion seeking the Special Magistrate’s guidance precisely to avoid making the “unilateral” redaction determinations Plaintiff has claimed. The *in camera* review will confirm that CNN has produced all sections in the Guides from 2013 to 2016 relevant to CNN’s newsgathering and reporting about the substandard pediatric heart surgery program that the Plaintiff directed at St. Mary’s, [REDACTED]

3

CONCLUSION

WHEREFORE, CNN respectfully requests that the Court enter a Protective Order holding that Plaintiff is not entitled to the redacted parts of The CNN News Standards & Practices Policy Guides, award CNN the reasonable expenses incurred in obtaining the Protective Order, including attorneys' fees, and deny Plaintiff’s request for an award of reasonable expenses, including attorneys’ fees.

³ CNN has produced unredacted the entire section on [REDACTED] in each of the Guides, despite Plaintiff’s baseless claim to the contrary. *See* Opposition memo at 10.

DATED: May 1, 2018

BALLARD SPAHR, LLP

By: /s/ Charles D. Tobin

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("CNN"); Elizabeth Cohen; John Bonifield; Dana
Ford; and Anderson Cooper*

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 1, 2018 a true and correct copy of the foregoing was filed using the Florida Courts E-Filing Portal which will send a notice of electronic filing to the following:

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Exhibit A

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MICHAEL D. BLACK, MD, MBA,

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CABLE NEWS NETWORK, INC.
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ROBINSON,

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PROCEEDINGS BEFORE

THE HONORABLE JOSEPH CURLEY

February 20th, 2018

10:30 a.m. to 12:10 p.m.

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16 - - -

17
18 BE IT REMEMBERED, that the following
19 proceedings were taken in the above-styled cause before
20 the Honorable Joseph Curley at the Palm Beach County
21 Courthouse, 205 North Dixie Highway, City of West Palm
22 Beach, County of Palm Beach, State of Florida, on
23 Tuesday, the 20th day of February, 2018, to wit:
24
25

1 and they are confidential, but we have a very
2 robust protective order in place with an attorney's
3 eyes designation that both sides with good lawyers
4 on both sides can honor it, and that's the more
5 appropriate way to deal with that.

6 THE COURT: What about his response to that;
7 which is, you didn't ask for it?

8 MR. CLARE: Well, so in a -- in a -- I don't
9 know what I didn't ask for. This is where the
10 context of the documents, it makes sense. This is
11 standards and practices. This applies to how they
12 do their job, how they do their news, and --

13 THE COURT: Did you get a table of contents,
14 or anything that would -- an index or anything?

15 MR. CLARE: If I had that, I could certainly
16 go back and amend, but what I have is a bunch of
17 redacted pages, and it's hard for me to know. You
18 know, it goes back to my Go Fish example. I don't
19 know what is being redacted, or exactly what is
20 being redacted. And if it is a war coverage in a
21 foreign war zone, then it's going to have no
22 bearing on the case and we're not going to spend
23 anymore time on it, but when I see a block of
24 redacted text in the news publication section, I'm
25 not asking about their 401(k) plan, I'm asking

1 about things that go directly to how they report
2 and edit the news. And if I do have the table of
3 contents, and somebody can point me to it, I'll be
4 happy to go back and make the judgment. I'm not
5 trying to create make-work for them, I'm really
6 not, but I do have to satisfy myself on behalf of
7 the client that I have all the information that
8 goes to standards and practices, because this goes
9 to the heart of the case. If they do not follow
10 their own standards and practices in preparing this
11 statistical analysis, or other aspects of the
12 story, or their treatment of confidential sources,
13 or working with outsiders like Miss Robinson who
14 held herself out as working with CNN even though
15 she's not, those sorts of things violate CNN's
16 practices, that's relevant and appropriate to their
17 state of mind.

18 Thank you.

19 THE COURT: All right. Thank you very much.

20 Thank you all. Very interesting arguments.

21 My plan is to go through and try and get you
22 orders. They may come a little bit piecemeal, but
23 that might help move things along. I will look at
24 the privilege issue and the journalistic issues
25 some more. That may take me a little more time.

