

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 10-CV-22236-ASG
Magistrate Judge: Magistrate Judge Jonathan Goodman

HOWARD ADELMAN and JUDITH SCLAWY-
ADELMAN, as Co-Personal Representative of the
Estate of MICHAEL SCLAWY-ADELMAN,

Plaintiffs,

v.

BOY SCOUTS OF AMERICA, THE SOUTH
FLORIDA COUNCIL, INC.; BOY SCOUTS OF
AMERICA; PLANTATION UNITED
METHODIST CHURCH; HOWARD K.
CROMPTON, individually; and ANDREW L.
SCHMIDT, individually,

Defendants.

**DEFENDANTS, HOWARD K. CROMPTON AND ANDREW L. SCHMIDT'S,
REQUEST FOR ORAL ARGUMENT ON MOTION FOR RECONSIDERATION
AND/OR APPEAL OF COURT ORDER CONCERNING TEXT MESSAGES ON
MICHAEL SCLAWY-ADELMAN'S CELLULAR TELEPHONE [DE 196]**

The Defendants, HOWARD K. CROMPTON and ANDREW L. SCHMIDT, by and through the undersigned counsel, hereby request Oral Argument under L. R. 7.1(b)(1) of the Southern District U.S. District Court, on their Motion for Reconsideration and/or Appeal of the Order Concerning Text Messages on Michael Sclawy-Adelman's Cellular Telephone [DE 196], and as grounds in support thereof, state as follows:

1. These Defendants request oral argument to present to this Court the bases for why the 188 text messages found on Michael Sclawy-Adelman's cellular telephone

and unilaterally withheld by Carter Conrad, Jr., in violation of this Court's Order, are discoverable, relevant and/or could lead to admissible evidence at the time of trial.

2. Oral argument would be helpful to this Court as these Defendants can present evidence that the text messages at issue may be admissible at trial, and there is a need for oral arguments to make such a showing. These Defendants request one (1) hour of this Court's time for oral argument.

3. At the discovery conference hearing before this Court on January 27, 2011, Magistrate McAliley ordered that data from Michael's cellular telephone from May 8, 2009 and May 9, 2009, be produced to the parties in full by Carter Conrad, Jr., the individual who was designated to perform a forensic data extraction on Michael's cellular telephone. Counsel for these Defendants argued that a broader scope of data was discoverable and Magistrate McAliley said that there would be an option to expand the scope to *earlier data*. (See Exhibit "A").

4. The next day, January 28, 2011, Magistrate McAliley entered an Order directing the extraction of the data on Michael's cellular telephone from May 8, 2009 and May 9, 2009, the day of the hike, and the production of a written report of all of that data.

5. Carter Conrad, Jr. performed the data extraction and removed text-message language content, even though this Court's Order did not authorize Mr. Conrad to do so. When Mr. Conrad removed the language of the text messages, he did so in violation of this Court's Order.

6. Upon learning of the existence of the 188 withheld text messages, these Defendants moved this Court to compel Mr. Conrad to comply with this Court's Order

[DE 118], and to compel Mr. Conrad to produce the 188 text messages that he found during his court-ordered inspection of Michael Sclawy-Adelman's cellular telephone. [DE 177]. The *Motion to Compel [DE 177]* was based on Mr. Conrad's non-compliance with the Court's Order that he provide *all data*. Magistrate McAliley had already ordered that data was discoverable and therefore should be provided by Mr. Conrad. [DE 118; p. 2 of 4].

7. Plaintiffs responded in opposition [DE 182] to the Defendants' *Motion to Compel [DE 177]* by arguing that an *in-camera* inspection should be undertaken in order to determine the relevancy of the text messages, based on Plaintiffs' conclusion that "there is no showing that any of them have anything whatsoever to do with the Boy Scouts, hiking or *any other potential issue in this case.*" (Emphasis added) [DE 182; ¶ 7]. Plaintiffs raised these issues even though Magistrate Judge McAliley had already ordered that all data from May 8, 2009 and May 9, 2009, was completely discoverable.

8. Nonetheless, Plaintiffs' suggestion of (and acquiescence to) an *in-camera* inspection prompted these Defendants to file a Reply. [DE 185]. The Reply was intended to identify the issues in this lawsuit to aid this Court in conducting the *in-camera* inspection of the 188 text messages. The Reply also was in response to Plaintiffs' suggestion of an *in-camera* inspection.

9. The next event that occurred was Magistrate Goodman entering an Order Striking Defendants' Reply. [DE 188]. In addition to striking the Reply, this Court stated "it will not be considered." [DE 188]. Next, this Court *sua sponte* ordered an *in-camera* inspection of the 188 text messages. [DE 189].

10. Therefore, while Plaintiffs suggested an *in-camera* inspection, these Defendants were deprived an opportunity to suggest parameters for the *in-camera* inspection. Therefore, Defendants Crompton and Schmidt request the opportunity to be heard at oral arguments on what they consider topics of relevance in the text messages and to present evidence that the text messages may be admissible at trial.

WHEREFORE, the Defendants, HOWARD K. CROMPTON and ANDREW L. SCHMIDT, respectfully request oral argument on their Motion for Reconsideration and/or Appeal of the Order Concerning Text Messages on Michael Sclawy-Adelman's Cellular Telephone [DE 196].

I HEREBY CERTIFY that on May 27, 2011, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the attached Service List via transmission of Notices of Electronic Filing generated by CM/ECF.

WICKER, SMITH, O'HARA, MCCOY &
FORD, P.A.

Attorney for Howard K. Crompton and
Andrew L. Schmidt

2800 Ponce de Leon Boulevard
Suite 800

Coral Gables, FL 33134

Phone: (305) 448-3939

Fax: (305) 441-1745

By: /s/ Frederick E. Hasty III

Frederick E. Hasty III

Florida Bar No. 260606

Service List

Ira H. Leesfield, Esquire
Leesfield & Partners, P.A.
2350 South Dixie Highway
Miami, FL 33133

Robert D. Peltz, Esquire
Leesfield & Partners, P.A.
2350 South Dixie Highway
Miami, FL 33133

William S. Reese, Esquire
Lane, Reese, Summers, Ennis & Perdomo
Douglas Centre, Suite 304
2600 Douglas Road
Coral Gables, FL 33134

Greg M. Gaebe, Esquire
Gaebe, Mullen, Antonelli, Esco & DiMatteo
420 South Dixie Highway, 3rd Floor
Coral Gables, FL 33146

William L. Summers, Esquire
Lane, Reese, Summers, Ennis & Perdomo
2600 Douglas Road, Suite 304
Coral Gables, FL 33134

Ubaldo J. Perez, Jr., Esquire
Law Office of Ubaldo J. Perez, Jr., P.A.
8181 N.W. 154 Street, Suite 210
Miami Lakes, FL 33016