

66450-3

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' MOTION FOR LEAVE OF COURT TO FILE A REPLY BRIEF
REGARDING PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION FOR
PROTECTIVE ORDER AS TO DEPOSITION OF CARTER CONRAD, JR.**

The Defendants, HOWARD K. CROMPTON and ANDREW L. SCHMIDT, by and through the undersigned counsel, and in accordance with Magistrate Jonathan Goodman's Discovery Procedures and Order Taking Under Advisement Defendants' Motion for Protective Order [DE 269], hereby requests leave of court to file a three (3) page reply brief regarding Motion for Protective Order as to Deposition of Carter Conrad, Jr., and as grounds in support thereof, state as follows:

1. Plaintiffs' counsel has lodged a personal attack on undersigned counsel's ethics by stating in the first line of Plaintiffs' Response that the Motion for Protective Order is "inaccurate and misleading". These Defendants are in need of an opportunity to

file a reply brief to address this and the following other new issues that were not discussed in the Motion for Protective Order.

2. The reply will address Plaintiffs' representation that Mr. Conrad was authorized by this Court to perform *analysis* of the data on Mr. Crompton's cell phone in order to answer Plaintiffs' counsel's question at the deposition.

3. The reply will address Plaintiffs' representation that the orders of this Court protected the "substance of phone calls and text messages" on Mr. Crompton's cell phone, but not the identity of data from May 7, 2009 and prior.

4. The reply will address Plaintiffs' representation that "the essence of the Court's order" was "limiting the analysis into the *substance* of . . . Crompton's phone calls and/or text messages." (Emphasis in original).

5. The reply will address Plaintiffs' misconception that undersigned counsel asked similar questions (to the questions in dispute) during the course of the deposition.

6. The reply will demonstrate that Plaintiffs' counsel did not accurately characterize undersigned counsel's position taken at the deposition and during the conferral process, which has led to an inaccurate description of what actually occurred.

7. The reply will address Plaintiffs' request for fees and costs, which these Defendants did not ask for as a result of the conduct of Plaintiffs' counsel at the deposition of Carter Conrad, Jr., as is fully described in the Motion for Protective Order.

8. These Defendants request a (3) page limit for the reply, to be filed on or before Friday, August 11, 2011.

WHEREFORE, the Defendants, HOWARD K. CROMPTON and ANDREW L. SCHMIDT, respectfully request that this Honorable Court permit a reply brief to Plaintiffs' Response to Defendants' Motion for Protective Order as to Deposition of Carter Conrad, Jr.

L.R. 7.1 CERTIFICATION

During today's afternoon telephone conference with Robert Peltz, Esquire, prior to the filing of Plaintiffs' Response to Motion for Protective Order, undersigned counsel asked Mr. Peltz if he would be opposed to these Defendants applying for leave of court to file a reply brief. Mr. Petz would not agree at that time, but undersigned counsel offered to wait to read the Response brief, and if he felt a reply was necessary, he would call and ask again. Immediately after receiving and reviewing Plaintiffs' Response to Defendants' Motion for Protective Order [DE 271], undersigned counsel spoke to Robert Peltz, Esquire, again, and asked him whether he would be opposed to undersigned counsel requesting leave of court to file a two (2) page reply. Mr. Peltz stated he opposed undersigned counsel's application to this Court for permission to file a two (2) page reply brief on behalf of Mr. Crompton and Mr. Schmidt.

I HEREBY CERTIFY that on August 10, 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 in the manner specified, via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

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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/ Drew M. Levin

Frederick E. Hasty III

Florida Bar No. 260606

Drew M. Levin

Florida Bar No. 0048419

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

Horace Clark, Esquire
U.S. Department of the Interior
Office of the Regional Solicitor
Southeast Region
75 Spring Street, S.W., Suite 304
Atlanta, GA 30303