

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

ANNE MARIE VANDENWEGHE

CIVIL ACTION

VERSUS

NO. 11-2128

**THE PARISH OF JEFFERSON &
STEVEN J. THERIOT**

**SECTION "J"
JUDGE BARBIER**

**MAG. DIV. (5)
JUDGE CHASEZ**

AMENDED PROTECTIVE ORDER

ON MOTION of Defendants, The Parish of Jefferson ("Jefferson Parish") and Steve J. Theriot (collectively "Defendants"), for entry of an Amended Protective Order by this Honorable Court to the previous Protective Order entered by this Court in the above referenced action on November 30, 2011. The Amended Protective Order is necessary to govern the production of every e-mail sent to and from avandenweghe@jeffparish.net in addition to the entire contents of the two hard drives utilized by Plaintiff while she was employed by the Jefferson Parish as an Assistant Parish Attorney. Plaintiff does not oppose this Motion and both Plaintiff and Defendants have agreed to be bound by this Amended Protective Order as evidenced by the signed agreements attached as Exhibit "A" to this Order. The original Protective Order is also attached as Exhibit "B."

Plaintiff, Anne Marie Vandenberghe, has raised a concern over the timeliness of production regarding e-mails and computer equipment that were utilized by Plaintiff during her employment at the Jefferson Parish Attorney's Office. Defendants note that Plaintiff has

requested every e-mail sent to and from avandenweghe@jeffparish.net in addition to the entire contents of the two hard drives utilized by Plaintiff while she was employed by the Jefferson Parish as an Assistant Parish Attorney.¹ Based on the fact that Plaintiff was employed as an Assistant Parish Attorney for the Parish of Jefferson for a period of more than several years, the electronic documentary response to Plaintiff's request is voluminous, and many of the emails requested may be privileged and constitute work product for the Parish of Jefferson. Consequently, in order to increase the speed of production, it is necessary to amend the protective order. However, Defendants expressly assert that by producing the requested emails and the two (2) hard drives utilized by Plaintiff during her employment as an Assistant Parish Attorney for the Parish of Jefferson, Defendants do not intend to waive, and in fact, expressly maintain and assert the attorney-client privilege and work product doctrine on behalf of the Parish of Jefferson. Due to the nature of Plaintiff's request, Defendants will mark every e-mail sent to and from avandenweghe@jeffparish.net as "LITIGATION ONLY" as well as the entire contents of the two hard drives. This Amended Protective Order will only apply to every e-mail sent to and from avandenweghe@jeffparish.net in addition to the entire contents of the two hard drives utilized by Plaintiff while employed by Jefferson Parish as an Assistant Parish Attorney.

IT IS HEREBY ORDERED, ADJUDGED, DECREED that the following amendments to the Protective Order are hereby issued:

1. The inadvertent production of either attorney-client privileged material, confidential information, or restricted information does not constitute a waiver of any privilege or right to claim the privileged or confidential status of the documents, materials, or information produced.

¹ All parties agreed for Digital Forensics Solutions, LLC to create mirror images of the original hard drives.

If a producing party subsequently discovers that it inadvertently produced privileged, confidential, or restricted material, the producing party shall make a good-faith representation that such production was inadvertent and take prompt remedial action to withdraw the disclosure. Within three (3) business days of receiving a request to do so from the producing party, the receiving party must return, sequester, or destroy the specified information and any copies it has. Thereafter, the receiving party must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the receiving party disclosed it before being notified; and may promptly present the information to the Court under seal for a determination of the claim. The producing party must preserve the information until the claim is resolved. If the parties cannot resolve the issue of inadvertent production of privileged, confidential or restricted material, the producing party may also promptly present the information to the Court under seal for a determination of the claim.

A party that discovers it has received material designated as or that appears to be subject to the attorney-client privilege and/or work product protection shall immediately disclose the materials to the producing party and inquire whether production of the materials was inadvertent. Within ten (10) calendar days of that disclosure, the producing party must notify the receiving party in writing whether the production was inadvertent. If the producing party does not respond in writing within ten (10) calendar days, the producing party waives all attorney-client privilege and/or work product protection with respect to the particular materials identified. During the ten (10) day period, counsel for the receiving

party shall retain all copies of the materials and shall not disclose, disseminate, analyze, reference or otherwise use the materials.

A party objecting to an assertion of the attorney-client privilege or work product protection, nevertheless, shall comply with this protective order herein pending resolution of the objection.

2. No material designated as “LITIGATION ONLY” shall be disclosed by Plaintiff to anyone other than persons identified herein, and shall be handled in the manner set forth below, and in any event shall not be used for any purpose any than as specifically allowed herein unless and until such designation is removed either by agreement of counsel for all parties or, by Order of the Court.
3. “LITIGATION ONLY” material shall, in the absence of written permission from Defendants or an Order of the Court, be disclosed to only the following:
 - a) The named parties to this proceeding, and in the case of the defendants, its employees to whom the material is given for purposes of this litigation, together with any parties who both are added to this proceeding and made parties to this Amended Protective Order;
 - b) Counsel of record to any party to this proceeding together with said counsel’s non-professional employees to whom the material is shown for purposes of this litigation;
 - c) Qualified persons taking testimony involving such information and necessary stenographic and clerical personnel thereof;
 - d) Experts, consultants, and outside vendors such as copy services, litigation support services and their staffs, who are contracted and/or retained for purposes of this litigation by counsel to any of the parties subject to this Amended Protective Order;
 - e) Witnesses or potential witnesses for this litigation who agree to be bound by this Amended Protective Order, in connection with documents provided or testimony adduced in this matter; and
 - f) The Court.

4. Material designated “LITIGATION ONLY” shall not be disclosed to any persons designated in paragraph 3(d) or 3(e) unless they have first read this Order and have agreed to be bound by the terms hereof.
5. Counsel of record to any party to this proceeding who discloses material to any person designated in paragraph 8(d) as a non-professional employee of said counsel shall have the duty to reasonably ensure that such persons observe the terms of this Amended Protective Order and shall be responsible upon breach of such duty for the failure of any such person to observe the terms of this Amended Protective Order.
6. Intentional or grossly negligent disclosure of “LITIGATION ONLY” material other than in accordance with the terms of this Order may subject the disclosing person or party to such sanctions and remedies as the Court may deem appropriate.
7. All material designated “LITIGATION ONLY” and within the purview of this Order need not be filed with the Court, but if filed for any purpose, should be filed in accordance with the Eastern District’s Local Rule 5.6, “Procedure for filing Documents Under Seal,” unless the Defendants agree in writing that the material need not be filed under seal.
8. All “LITIGATION ONLY” material produced by the Defendants shall be used solely for the purposes of this proceeding, and shall not be disclosed to anyone except in accordance with the terms of this Amended Protective Order.

9. Nothing herein shall prevent disclosure beyond the terms of this Amended Protective Order if the Defendants expressly consent to such disclosure, in writing, or if the Court, after notice to all affected parties, orders such disclosure.
10. This Amended Protective Order shall continue in full force and effect unless and until it is dissolved by further Order of this Court.
11. Neither the taking of any action in accordance with the provisions of this Amended Order, nor the failure to object thereto, shall be interpreted as a waiver or any claim or defense in this proceeding. Moreover, the failure to designate information in accordance with this Amended Protective Order and the failure to object to a designation at a given time shall not preclude such acts as necessary at a later date seeking to impose such designation or challenging the propriety thereof.
12. The entry of this Amended Protective Order shall not be interpreted as a waiver of any right to object to the furnishing of information in response to discovery or to object to a requested inspection of documents or facilities, and except as expressly provided, shall not relieve any party of the obligation of producing information during the course of discovery. To the extent that privileged documents are disclosed in accordance with this Amended Protective Order, subject to the designation as "LITIGATION ONLY," the privilege shall not be deemed waived by such production, and may be raised as a defense to their subsequent disclosure to others or any proceedings related to this matter.
13. If any material designated as "LITIGATION ONLY" is sought or requested by a third party (by subpoena, discovery request, or otherwise), any Qualified Person

in possession of responsive "LITIGATION ONLY" material who receives such a request shall give appropriate written notice as soon as reasonably possible to enable the Defendants to seek appropriate relief.

14. Subject to further order of this Court, and consistent with the other provisions of this Amended Protective Order, particularly, paragraph 1 of this Amended Protective Order, any party shall have the right to freely use during these proceedings only any and all "LITIGATION ONLY" materials and shall be able to question witnesses and make arguments based on those materials and/or information derived therefrom during legal proceedings related to this matter without the necessity of first seeking permission. The admissibility during these proceedings in this matter of any "LITIGATION ONLY" material shall not be governed or affected by this designation under this Amended Protective Order.
15. This Amended Protective Order will only apply to every e-mail sent to and from avandenweghe@jeffparish.net in addition to the entire contents of the two hard drives utilized by Plaintiff while employed by the Jefferson Parish. The original Protective Order of November 30, 2011 shall continue to govern all other disclosures made in this case.

New Orleans, Louisiana, this 22nd day of February, 2012.


UNITED STATES MAGISTRATE JUDGE