

**PRESENTED AT**

26<sup>th</sup> Annual Land Use Conference

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Austin, TX

## **Handouts for “When the FBI Comes Knocking – or No Knocking”**

Annotated forms of Fed. R. Evid. 502(d) sealed motion & sealed order

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Motion and N.D. Tex. order expanding protections under Fed. R. Evid. 502(d)

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UNITED STATES DISTRICT COURT  
\_\_\_\_\_  
DISTRICT OF TEXAS  
\_\_\_\_\_  
DIVISION

IN RE GRAND JURY PROCEEDINGS<sup>1</sup>



FILED UNDER SEAL

GRAND JURY NO. \_\_\_\_\_<sup>2</sup>

USAO # \_\_\_\_\_<sup>3</sup>

AGREED SEALED MOTION FOR A PROTECTIVE ORDER

The parties to this motion submit this Agreed Motion for a Protective Order for the purpose of producing information to the Government while ensuring both (a) the secrecy of such information that is produced to the grand jury or to the Government, and (b) that privileges and protections of certain of the information remain in place beyond the limited waiver contemplated herein.

1. **The Parties.** The “Government” collectively refers to the United States of America, by and through the Federal Bureau of Investigation (“FBI”), the U.S. Department of Justice, the U.S. Attorney’s Office for the \_\_\_\_\_ District of Texas (the “USAO”), and any other members of the investigation or prosecution team. The “ABC” refers to ABC Inc., a Texas business corporation.<sup>4</sup>

2. **Purpose of the Protective Order.** In light of the interest of the Government in determining whether there have been any violations of applicable law, and ABC’s interests in

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1 U.S. Attorney’s Office (“USAO”) may prefer style such as “IN RE JOHN DOE.” Defer to them.

2 USAO will provide.

3 USAO will provide. Not all USAOs use separate file numbers – they just rely on court’s grand jury number.

4 Substitute short-form reference to and full name of client(s).

investigating and analyzing the circumstances and individuals involved in the events at issue and in cooperating with the Government, ABC, through the \_\_\_\_\_ Law Firm, intends to provide the USAO with information, either pursuant to one or more grand jury subpoenas or voluntarily.<sup>5</sup>

3. **Protected Materials.** Some of the information produced to the Government by ABC, either voluntarily or pursuant to a subpoena, may be protected by the attorney-client privilege and/or the work product doctrine (hereinafter, the “Protected Materials”). The limited waiver requested herein will apply only to the Protected Materials.

4. **Applicable Law.** The Parties submit this motion requesting that the Court enter the requested Agreed Protective Order pursuant to its inherent authority, Rule 6 of the Federal Rules of Criminal Procedure, Rule 502 of the Federal Rules of Evidence, other applicable rules, and the judicial opinions interpreting such rules. This motion pertains to an ongoing grand jury investigation and any litigation or judicial proceedings related to it. As such, Federal Rule of Criminal Procedure 6(e)(6) requires that these matters remain sealed. However, Rule 6 also vests this Court with the authority to grant protective orders concerning matters relating to these proceedings and to allow limited disclosure of such matters where appropriate to facilitate these matters. *See* Fed. R. Crim. P. 6(e)(3)(E), 6(e)(3)(F), 6(e)(5)-(7).

5. **Protective Orders Concerning Privileges and Limited Waivers.** Federal Rule of Evidence 502(d) states that “a federal court may order that [a] privilege or protection is not waived by disclosure connected with the litigation pending before the court—in which event the disclosure is also not a waiver in any other federal or state proceeding.” Grand jury investigations

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<sup>5</sup> CAUTION: The client and lawyer may prefer the protection of a subpoena against possible liability for defamation, malicious prosecution, breach of non-disclosure agreement, or other claim. Subpoena may not provide full protection but better than getting poked in the eye with a dull still (“BTBPITWADS”). However, need for demonstration of client’s full cooperation without forcing assistant U.S. attorney to get a subpoena may be a significant countervailing consideration.

Also available as part of the eCourse

[First Friday Ethics \(July 2022\)](#)

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26<sup>th</sup> Annual Land Use Conference session

"When the FBI Comes Knocking (or No-knocking)"