

**NOTICE: THIS DOCUMENT
CONTAINS SENSITIVE DATA**

NO. 43,647

**IN THE MATTER OF
THE MARRIAGE OF**

**ALLISON GELBE-PINKUS
AND
MARK PINKUS**

**AND IN THE INTEREST OF
TODD PINKUS, THOMAS PINKUS
AND LUCY PINKUS, CHILDREN**

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IN THE DISTRICT COURT OF

510th JUDICIAL DISTRICT

DENTON COUNTY, TEXAS

CONFIDENTIALITY ORDER

On February 18, 2019, this Court heard Petitioner, **ALLISON GELBE-PINKUS'** *Motion for Confidentiality Order* seeking the entry of a protective order governing documents produced in this action and other documents, information, or testimony provided in connection with pretrial proceedings or trial of this action. After considering the Motion, the evidence presented, and the arguments of counsel for both parties this Court finds that a protective order in the form set forth below is necessary because discovery in this action and the trial of this action are likely to involve sensitive personal, private, and protected mental health information, the disclosure of which could cause injury to the producing party. The Court finds that good cause has been shown, and IT IS ORDERED THAT:

A. *Definitions*

The following definitions apply in this order:

1. Document

“Document,” whether used in the singular or the plural, means any kind of written, graphic, or recorded matter, however produced or reproduced, of any kind or description,

including originals, copies, and drafts, and both sides thereof.

2. Confidential Information

“Confidential information” means information that constitutes or contains a trade secret or is subject to the lawyer-client privilege, the husband-wife privilege, the clergyman privilege, the physician-patient privilege, or the confidentiality of mental health information privilege, as those terms are defined in rules 501 through 510 of the Texas Rules of Evidence, the Texas Medical Records Privacy Act, HIPAA regulations, or 42 U.S.C. 290dd-2. “Confidential information” also means any document, oral communication, information revealed during a deposition, information revealed in an interrogatory, or other information of the parties, the improper use of which is likely to cause injury to the producing party. “Confidential information” shall not include information that either (1) becomes part of the public domain through no fault of the recipient, as evidenced by a written document; (2) the receiving party can show by written document was already in its rightful and lawful possession at the time of disclosure; or (3) lawfully comes into the recipient’s possession subsequent to the time of disclosure from another source without restriction as to disclosure, provided such third party has the right to make the disclosure to the receiving party.

3. Producing Party

“Producing party” means any party to this order who responds to a discovery request or otherwise provides information to a party to this action or to the Court in connection with this action.

4. Producing Third Party

“Producing third party” means any person or entity not a party to this suit who responds to a discovery request or otherwise provides information to a party to this action or to the Court in connection with this action.

5. Requesting Party

“Requesting party” means any party to this action other than the producing party.

6. Termination of the Action

“Termination of the action” means the final termination of this action by any means including without limitation entry of a final judgment or dismissal. If an appeal is taken from any judgment or order entered in this action, the “termination of the action” shall not occur until all appellate proceedings have been finally concluded, as well as any proceeding in connection with any remand.

7. Party

“Party” means any person who is a party to this action.

8. “Qualified Persons”

“Qualified Persons” means:

- a. For Confidential Information:
 - i. Retained counsel for the parties in the above-referenced litigation and their respective staff;
 - ii. Actual or potential independent experts or consultants (and their administrative or clerical staff) engaged in connection with the above-referenced litigation (which shall not include the current employees, officers, members, or agents of parties or affiliates of parties) who, prior to any disclosure of Confidential Information to such person, have signed a document agreeing to be bound by the terms of the Confidentiality Order in the form of Exhibit “A” attached hereto (such signed document to be filed with the Clerk of this Court by the attorney retaining such person) and have been designated in writing by notice to all counsel;
 - iii. This Court and its staff and any other tribunal or dispute resolution officer duly appointed or assigned in the above-referenced litigation;
 - iv. the party, if a natural person;
 - v. if the party is an entity, such officers or employees of the party who are actively involved in the prosecution or defense of this case who, prior to any disclosure of Confidential information to such person, have been designated in writing by notice to all counsel and have signed a document agreeing to be bound by the terms of the Confidentiality Order in the form of Exhibit “A” attached hereto (such signed document to be filed with the Clerk of this Court by the attorney retaining such person);
 - vi. litigation vendors, court reporters, and other litigation support personnel;
 - vii. any person who was an author, addressee, or intended or authorized recipient of the Confidential information and who agrees to keep the information confidential, provided that such persons may see and use the Confidential information but not retain a copy; and
 - viii. Any witness during hearing or trial testimony and any financial expert witness called by a party in any deposition.

- b. Such other person as the Court may designate after notice and an opportunity to be heard.

B. Designation Criteria

A party shall designate as Confidential Information only such information that the party in good faith believes in fact is confidential. Except as otherwise provided herein, information that is generally available to the public, such as public filings, catalogues, advertising materials, and the like, shall not be designated as “Confidential.” Wholesale designation is not permitted.

C. Procedure for Designating Confidential Information

To designate a document containing confidential information, IT IS ORDERED that a party shall stamp the document with the legend “CONFIDENTIAL” and shall stamp the top of the document as “NOTICE: THIS DOCUMENT CONTAINS SENSITIVE DATE.”

To designate one or more answers to interrogatories or answers to requests for admissions as containing confidential information, IT IS ORDERED that a party shall submit those answers in a separate document and stamp each page of those answers with the legend “CONFIDENTIAL.”

If a producing party elects to produce files and records for inspection and a requesting party desires to inspect these files and records, IT IS ORDERED that the producing party shall identify its files as “CONFIDENTIAL” before producing the documents.

D. Designation of Depositions as Confidential

Information disclosed at (a) the deposition of a party or one of its present or former officers, directors, employees, agents, consultants, representatives, or independent experts retained by counsel for the purpose of this litigation, or (b) the deposition of a nonparty may be designated by any party as Confidential Information by indicating on the record at the deposition that the testimony is “Confidential” and is subject to the provisions of this Order.

Any party also may designate information disclosed at a deposition as Confidential Information by notifying all parties in writing not later than 30 days of receipt of the transcript of the specific pages and lines of the transcript that should be treated as Confidential Information thereafter. Each party shall attach a copy of each such written notice to the face of the transcript and each copy thereof in that party's possession, custody, or control. All deposition transcripts shall be treated as Confidential Information for a period of 30 days after initial receipt of the transcript.

To the extent possible, counsel for the parties shall instruct the court reporter to segregate into separate transcripts information designated as Confidential Information with blank, consecutively numbered pages being provided in a non-designated main transcript. The separate transcript containing Confidential Information shall have page numbers that correspond to the blank pages in the main transcript. Counsel for a party or a nonparty witness shall have the right to exclude from depositions any person who is not authorized to receive Confidential Information pursuant to this Protective Order, but such right of exclusion shall be applicable only during periods of examination or testimony during which Confidential Information is being used or discussed.

E. Filing of Confidential Information

IT IS ORDERED that any motions, pleadings, affidavits, briefs, or other documents submitted to or filed with the Court that contain, reproduce, quote, paraphrase, or otherwise reveal any confidential information shall be filed in a sealed envelope marked on the outside with the title of the action, an identification of each document or other item within, and a statement substantially in the following form:

“CONFIDENTIAL—SUBJECT TO PROTECTIVE ORDER”

This envelope containing the above-identified papers by [**name of party**] is not

to be opened, nor are its contents to be displayed, except by court order or by agreement of the parties . . .”

The foregoing requirement shall apply to all motions, pleadings, affidavits, briefs, or other documents e-filed with the Court that contain, reproduce, quote, paraphrase, or otherwise reveal any confidential information. The e-filing party shall notify the clerk in the comments box that the document(s) being filed is “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” as set forth above.

IT IS FURTHER ORDERED that the clerk of the Court shall maintain under seal such confidential documents, information, or testimony, which shall be made available only to the Court and to counsel for the parties in this action until further order of this Court.

F. Objections to the Designation of Information as Confidential

IT IS ORDERED that any objection to the designation of an item of information as confidential shall be made in writing to counsel for the producing party or the producing third party. If the objection cannot be resolved by agreement within ten business days of the date of service of the objection, IT IS ORDERED that the objecting party may move the Court to determine the propriety of the designation. The objecting party is ORDERED to set forth in its motion the basis on which it believes that (1) the information does not contain or consist of confidential information, the disclosure of which could adversely affect the producing party, and (2) the material constitutes relevant, admissible evidence. IT IS ORDERED that the information that is the subject of the motion shall be treated in accordance with its designation status pending resolution of the motion. IT IS FURTHER ORDERED that attorney’s fees and costs may be assessed if information that was identified as confidential is later found by the Court not to be confidential.

G. Use of Confidential Information

All Confidential Information provided by any party or nonparty in the course of the above-referenced litigation shall be used solely for the purpose of preparation, trial, and appeal of the above-referenced litigation and for no other purpose and shall not be disclosed except in accordance with the terms hereof.

This Confidentiality Order not only prohibits disclosure of Confidential Information or testimony, but also prohibits the discussion of Confidential Information with any persons not specifically authorized to receive such information under this Confidentiality Order.

Counsel for both parties shall advise their paralegals, legal assistants, and technical, secretarial and clerical staff of the requirements imposed by this Confidentiality Order.

H. Disclosure to Qualified Persons

1. To Whom. Confidential Information shall not be disclosed or made available by the receiving party to persons other than Qualified Persons except as necessary to comply with applicable law or the valid order of a court of competent jurisdiction; **provided, however**, that in the event of a disclosure compelled by law or court order, the receiving party will so notify the producing party as promptly as practicable (if at all possible, prior to making such disclosure) and shall seek a protective order or confidential treatment of such information.

2. Retention of Copies during this Litigation. Any documents produced in this litigation, regardless of classification, that are provided to Qualified Persons shall be maintained only at the office of such Qualified Person and only necessary working copies of any such documents shall be made. Copies of documents and exhibits containing Confidential Information may be prepared by independent copy services, printers, or illustrators for the purpose of this litigation.

I. Unintentional Disclosures

Documents unintentionally produced without designation as Confidential Information later may be designated and shall be treated as Confidential Information from the date written notice of the designation is provided to the receiving party.

If a receiving party learns of any unauthorized disclosure of Confidential Information, the party shall immediately upon learning of such disclosure inform the producing party of all pertinent facts relating to such disclosure and shall make all reasonable efforts to prevent disclosure by each unauthorized person who received such information.

J. Consent to Disclosure and Use in Examination

Nothing in this Confidentiality Order shall prevent disclosure beyond the terms of this order if each party designating the information as Confidential Information consents to such disclosure or if the Court, after notice to all affected parties and nonparties, orders such disclosure. Nor shall anything in this order prevent any counsel of record from utilizing Confidential Information in the examination or cross-examination of any person who is indicated on the document as being an author, source, or recipient of the Confidential Information, irrespective of which party produced such information.

K. Service of Written Objections and Notices

IT IS ORDERED that written objections and notices shall be served on the attorney for a party and filed with the Court.

L. Prior Disclosures

IT IS FURTHER ORDERED that documents that have been previously disclosed in this case without designation as Confidential may be designated as and shall be treated as Confidential from the date of written notice of the designation to the receiving party.

If a receiving party learns of any unauthorized disclosure of Confidential information, IT

IS ORDERED that the receiving party shall immediately upon learning of such disclosure inform the producing party of all pertinent facts relating to such disclosure and shall make all reasonable efforts to prevent disclosure by each unauthorized who received such information.

IT IS FURTHER ORDERED that the clerk of the Court shall designate as “Confidential” **MARK PINKUS’** *Motion for Temporary Orders* and all attachments thereto which were filed with this Court on February 13, 2019, and shall maintain under seal said confidential documents, which shall be made available only to the Court and to Qualified Persons until further order of this Court.

M. Duration

IT IS ORDERED that this order shall remain in full force and effect and survive the termination of this litigation unless modified by an order of this Court or by the written stipulation of all parties and any affected third party filed with the Court.

N. Return of Documents

IT IS ORDERED that at the termination of this litigation all hard copies and electronic copies of Confidentiality Information shall be returned to the producing party, or if medical records, to the patient, within thirty days after the date of the entry of a final decree of divorce or an appeal if an appeal is made by either party, unless such information is reasonably necessary and related to possible enforcement matter contained in the final order.

O. Waiver

Pursuant to Texas Rules of Evidence 503 and 511, neither the attorney-client privilege nor work product protection is waived by disclosure connected with this litigation.

P. Cumulative Provisions

IT IS ORDERED that the procedures established by this order are intended to be cumulative and in addition to any party’s right to seek any further or different protection from

the Court for any document or information deemed to be confidential.

This order is without prejudice to the right of any party to apply to the Court at any time, on reasonable notice to the other parties and the affected third party, to request that the Court for good cause modify the provisions of this order.

Q. Modification and Exceptions

IT IS ORDERED that the parties may, by stipulation, provide for exceptions to this Order and any party may seek an Order of this Court modifying this Protective Order.

R. Successors and Assigns

IT IS FURTHER ORDERED that this Confidentiality Order shall be binding on and inure to the benefit of all successors and assigns of the parties to the order.

SIGNED on February 18, 2019.

JUDGE