

Jill E. Clark

From: Jill E. Clark
Sent: Tuesday, September 01, 2009 11:32 AM
To: Lathrop, Sara J
Cc: Michael Sullivan; Borger, John P.; Jeanette Bead; Chad Bowman
Subject: RE: Viewing the computer data

(cd)

Ms. Lathrop, I have now read your letter dated August 31, 2009, which seemed to have been authored after the MCAO received Judge Porter's order (did Dixon bring it right over to you)?

Now I am hearing that the Hennepin County Sheriff was involved with the hard-drive data. That agency never had any authority to do anything with those disks. I will be notifying civil council for Hennepin County. Please *immediately* identify the name(s) of all Hennepin County Sheriff office officials who had anything to do with this. Identify for me the name of the person that allegedly works for the Sheriff who allegedly told Ritschel that Judge Porter had given the go-ahead.

Also locate and provide information to me about all disks, who has them, whether they are hard-copy-disks or online on a system or computer. I need to identify each and every one of them, because we will be moving to have all of them returned to Mr. Stepnes.

It matters not what Sgt. Ritschel now says that he "thought." Ritschel was in court that day. Dixon received the summer 2008 email from Ms. Ryan (Clerk to Judge Porter). The Court order had already been reduced to a transcript. I gave CBS inside counsel a copy of the transcript even before we filed this case.

We are required as counsel to meet and confer and determine what we can resolve without court. If you refuse to converse with me about this (as your earlier email this morning suggested), then that will be noted to the Court.

Jill Clark, Esq.
Jill Clark, P.A.
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Fax: 763/417-9112
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This email may contain confidential or privileged communications. If you are not the proper recipient of this email, please destroy it and let us know that you have done so. If you are a client and want to discuss the risks associated with emails, or if you do not wish to have us communicate via email, please let us know.

From: Lathrop, Sara J [mailto:Sara.Lathrop@ci.minneapolis.mn.us]
Sent: Tuesday, September 01, 2009 8:53 AM
To: Jill E. Clark
Cc: Michael Sullivan; Borger, John P.; Jeanette Bead; Chad Bowman
Subject: RE: Viewing the computer data

Exhibit 21

(b)-duplicate

Jill, this email is full of mischaracterizations. You should look for a letter I sent yesterday addressing some of these issues. There was no intentional violation of any order in this lawsuit. And as you well know, the only evidence in this

case that came from those hard drives is the computer forensic report. I have repeatedly informed you that I did not view the file of emails between you and Mr. Stepnes on that report. Thus there has been no intrusion in this lawsuit of your clients' privileged information, and there is no advantage of any kind that any party has over another in this lawsuit.

I will not be turning over any attorney notes. And I won't be responding further via email. Instead of an endless back-and-forth email chain, I suggest you make any motion you think appropriate, and the parties can respond as is appropriate.

Sara J. Lathrop
Assistant Minneapolis City Attorney
333 South Seventh Street, Suite 300
Minneapolis, MN 55402
612-673-2072 (direct)
612-673-3362 (fax)
sara.lathrop@ci.minneapolis.mn.us

From: Jill E. Clark [mailto:jill@jillclarkpa.com]
Sent: Tuesday, September 01, 2009 7:19 AM
To: Lathrop, Sara J
Cc: Michael Sullivan; Borger, John P.; Jeanette Bead; Chad Bowman
Subject: Viewing the computer data

(a)-duplicate

Plaintiffs strongly dispute the way in which the MPD has handled data from Mr. Stepnes' computer. It was wrongfully seized, and we did not learn until we got the police report in discovery, that the crime lab had rooted around in Stepnes' computers locating anything that it wanted, then using some type of software that is keeping me, his attorney, from viewing the data.

Mr. Stepnes has already questioned in this case whether Judge Porter authorized the viewing of the computer hard-drive data. Now we know that he did not. (See attached order recently received.) Indeed, now we know that the police violated Judge Porter's order.

The point was that Porter ruled that he would view the emails first, to determine if any were attorney-client privileged. (This is memorialized in the transcript of June 1, 2008).

The MPD (represented at the time by Attorney Dixon on the criminal side of the MCAO – with Sgt. Ritschel attending court and therefore fully aware of the rulings) knew that it was disallowed from viewing the data until that privilege review was performed by Judge Porter. It is clear that they violated a court order in order to examine the data.

I raised this issue numerous times with Mr. Lathrop, and was, frankly, blown off. I asked for proof that Judge Porter had released the computer hard-drives to police, and was never supplied anything. When I pressed, I was told it was "verbal." I highly doubted that the Judge would issue an ex parte verbal order. Now we know that he did not.

Stepnes intends to seek sanctions for the intentional way in which the MPD violated his attorney-client privilege and browsed through the hard-drives. Now, the taint of that court order violation has flowed into this case.

Stepnes demands that all attorneys in this case immediately disclose all evidence (even attorney notes) that they have obtained from Ms. Stepnes' hard-drives. The problem is, that attorneys in this case has benefitted from the MPD's violation of Judge Porter's order. We intend to fully explore all sanctions and remedies available. Although we are not alleging that the CBS attorneys intentionally violated a court order, we nonetheless take seriously that the MPD did, and that even though all defense attorneys in this case had the June 1, 2008 transcript containing Judge Porter's order, they willingly took advantage of the computer data illegally mined by the MPD, without checking to make sure that the court order was not being violated.

The police report put everyone on notice of issue, by stating that police reviewed emails between Paul Stepnes and his attorney Jill Clark, and decided that they were not privileged. That is ****not**** the way it works. Police don't get to first review, and then decide if there is a privilege. That was a flagrant violation of the law. Further, Judge Porter had already put in place a prophylactic designed specifically to prevent police from rooting around in the hard-drive and stumbling across attorney-client privileged data.

We are considering strongly that the taint cannot be cleansed. No defendant should gain any advantage from the flagrant disregard for attorney-client privilege and no defendant should gain advantage from the violation of Judge Porter's order.

If you are thinking, while reading this email, that emails would have been discoverable anyway in this case, think again. Unless CBS is willing to provide the entire hard-drive for Esme Murphy and the City is willing to provide the entire hard-drive for Sgt. Ritschel, and let us root around in them and decide what we think is attorney-client privileged, there is no equal playing field. You all know full well that if there had been production of any hard-drive in this civil action, that provisions would have been made to protect the attorney-client privilege.

Plaintiffs are considering moving to disqualify all defense firms in this action (including the MCAO – the City-defendants would have to purchase outside counsel) because at this times it certainly seems impossible to remove the taint of those attorneys having gained information from Stepnes' computer hard-drives, in violation of a standing court order.

It seems, however, that even this would not be enough. Minneapolis police have benefitted from violating the order. Installing new attorneys would not be enough. It would never be fair for plaintiffs.

The City-defendants are on notice that we will likely be raising this issue in our motion set now for September 24, 2009 on the spoliation issue. We will ask that the Court strike the Answer of City-defendants, and that the combination of this issue plus the spoliation issue that CBS is already facing, warrants striking CBS' answer as well.

Jill Clark

Jill Clark, P.A.

(O) 763 417-9102

From home computer

Jill E. Clark

From: Jill E. Clark
Sent: Tuesday, September 01, 2009 10:25 AM
To: Lathrop, Sara J
Cc: Michael Sullivan; Borger, John P.; Jeanette Bead; Chad Bowman
Subject: RE: Viewing the computer data

(c)

None of what you say is relevant to the issues as they now stand.

You must immediately give me a copy of every single thing that you have seen on the "forensic report." Plaintiffs are not accepting that the City-defendants, who have rifled through my client's hard-drives, cannot supply a readable version of it.

If we have to move to compel a readable version of what was obtained in flagrant violation of the state court order, we will seek sanctions for that, as well.

Ms. Lathrop, I am frankly shocked at your "do what you have to do" attitude that you have brought to this issue since I first raised it. Refusing to communicate with me about it is one more lawyer of that.

Jill Clark, Esq.

Jill Clark, P.A.

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Fax: 763/417-9112

jill@jillclarkpa.com

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