

Jill E. Clark

From: Jill E. Clark
Sent: Saturday, September 05, 2009 12:23 PM
To: Michael Sullivan; sara.lathrop@ci.minneapolis.mn.us; james.moore@ci.minneapolis.mn.us
Cc: Borger, John P.
Subject: RE: Unusual situation

(4)

Thank you for your timely response. All that I asked was that CBS answer the 5 questions, and you have done that, and I thank you. (In other words, you are correct, the rest was addressed to Ms. Lathrop at that time).

As to #1 – Plaintiffs do put defendants to the test on the notion that emails between CBS attorneys and City-defense attorneys are joint privileged. Although that privilege can sometimes apply, we hesitate to readily believe that it applies here. There are numerous areas where the interests are not aligned (for example, it is in CBS' interest if the demise of Contest #1 is deemed to be the most culpable for the damages, and this theory was questioned about heavily in the depositions of contestant-plaintiffs). Could you be so kind as to provide your further analysis on this point?

Plaintiffs' request is not unfounded and not inappropriate. We are seeking emails that articulate any version of the supposed authority for police to peruse the hard-drives or image disks. If, for example, Sara Lathrop emailed the CBS attorneys that the Sheriff's Office has told Ritschel that he would view the disks, that is a version of Ritschel's alleged-authority that Plaintiffs are entitled to have. Further, as I think you can tell, Plaintiffs are trying to be very careful not to paint the CBS-defendants and their counsel with the same brush that we paint Ritschel and his agents. That is why we asked the 5 questions, and we trust that CBS attorneys have told us the truth. But it is appropriate for us to attempt to determine, for ourselves, what CBS was told about its authority to view the Forensic Report in Ms. Lathrop's office. Plaintiffs want to know when CBS was told *anything* about its authority to view any data from those disks, and what they were told.

As a compromise (to try to resolve as many issues as possible before Plaintiff file their motion papers) would CBS be willing to disclose to Plaintiffs: a) what they were told by any agent of the City about the supposed authority to view the disks (all versions (where I was not copied)), and b) when they were told these things (versions).

Thank you in advance for your timely response,

Jill Clark, Esq.
Jill Clark, P.A.
Telephone: 763/417-9102
Fax: 763/417-9112
jill@jillclarkpa.com

Exhibit 25

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: Michael Sullivan [mailto:MSullivan@lskslaw.com]
Sent: Friday, September 04, 2009 5:02 PM
To: Jill E. Clark; sara.lathrop@ci.minneapolis.mn.us; james.moore@ci.minneapolis.mn.us
Cc: Borger, John P.
Subject: RE: Unusual situation

Jill, This email responds to your email communication of September 3 to Sara Lathrop, on which John Borger and I were copied. We do not purport to address the various matters raised in your email and instead limit our response to the portion entitled "CBS attorneys" in which you request responses to certain "questions/requests." Please do not misinterpret our silence as to your other points to signify agreement. As to your five specific "questions/requests," please be advised as follows:

1) We decline to provide you with copies of email communications between counsel for the WCCO Defendants and Sara Lathrop, counsel for the City of Minneapolis Defendants. Such communications between defense counsel are protected by the joint defense privilege and other privileges and protections. Your request is unfounded and inappropriate.

2) WCCO Defendants' attorneys did not have such knowledge in late 2008.

3) WCCO Defendants' attorneys had no role in the MPD review of the disks.

4) WCCO Defendants' attorneys will comply with all orders of the Court.

5) In connection with the disk recently produced by Ms. Lathrop by letter dated August 26, 2009, we note that before you raised your objection to the production of the disk earlier this week, our colleague Chad Bowman inserted the disk into his computer to determine whether our computer system was capable of opening materials in the format provided. That process lasted less than one minute; after determining that the disk could be "opened" by our system, he ejected the disk. Subsequent to your objection as of September 1, 2009, we have placed the disk received by LSKS in a drawer and have conducted no examination of it of any kind. The disk received by Faegre has not been inserted into any computer. Neither of our offices will insert those disks into any computer pending the Sept. 24 hearing.

Sincerely,

Michael Sullivan
Jeanette Bead

From: Jill E. Clark [mailto:jill@jillclarkpa.com]
Sent: Thursday, September 03, 2009 10:44 AM
To: sara.lathrop@ci.minneapolis.mn.us; james.moore@ci.minneapolis.mn.us
Cc: Michael Sullivan; Borger, John P.
Subject: Unusual situation
Importance: High

Ms. Lathrop, thank you for your faxed letter of September 2, 2009. I do believe that it is incumbent upon us, as attorneys, to see how much of this we can resolve without court.

I respectfully decline to have you tell me which form of communication I can use, however.

I am glad that you told me where all of these copies are. The fact that Sgt. Ritschel has one does not give my client any comfort at all. I find it hard to believe that Ritschel (who we already know seized an attorney-client letter, then failed to inventory it (likely knowing he'd get in trouble) and then failed to return it) did not look in the readily-accessible "Jill Clark" folders.

I want to make a couple of comments about your September 2 letter, and request some additional information. This should not in any way suggest that other issues in that letter are either agreed to as articulated, or resolved.

Viewability: I thank you for clarifying the viewability of the various disks. I have now viewed the forensic report. Far from putting my mind at ease, my clients have numerous additional concerns. We will not discuss them all here.

Sheriff: If I hear what you are saying now, there never was any involvement with the Hennepin County Sheriff's Office. If that is not right, please let me know ASAP. I guess I am not clear how that "rumor" got started, and that is part of what is confusing.

Court order: You are correct that the transcript is June 2 (not June 1). You suggest in your letter that Judge Porter ordered that copies be made of the computer hard-drives. That is true. But you are not being faithful to the text. He ordered that the disks of the imaged hard-drives be delivered to him. He ****never**** gave police the authority to make copies of those disks. That was clear from the transcripts, and it was clear from Judge Porter's order that was recently received. Clearly, the MPD thought they could just sneak a little copy, and then came in through the back door to use it to defend in this civil case. That is not allowed.

See also pages 5 and 11 of the May 30, 2008 transcript. Clearly, a major concern that Stepnes had at the time was attorney-client privilege, and that was a major reason for the emergency motion. Clearly, Judge Porter was concerned and commented that the MPD had made ****no**** provision to protect the attorney-client privilege.

Damage: I anticipated that some defense attorney would try to say that they would have gotten all of the documents in this litigation, anyway. The attempt is still startling, however. Never, ever, do you get to gain an advantage from violating a court order. That should be a given. Further, if the documents were obtained in this litigation, they would not be playable for the jury with the seal of the MPD, and a big banner on the left-hand margin, which would taint the jury thinking that the documents were gathered in some police investigation. They were not – they were gathered to try to defend Ritschel in this action and they flowed into this action. Further, Plaintiffs dispute that all of the documents would have been discoverable in this action. We are quite concerned about some of the documents "gathered" in the forensic report. We will discuss that more later. But certainly, Ms. Lathrop, your clients would never have gotten 2 hard-drives in a civil case, with unmitigated perusing authority: i) without some showing; and ii) without some safeguards. Further, by perusing emails that we deem not relevant (or worse, otherwise privileged or confidential), the defendants have gained an advantage.

Request for hard-drives: I asked earlier whether CBS was going to provide Esme Murphys' hard-drive to Plaintiffs so we could peruse it and makes arguments as to why we should have certain documents. No response. I also asked you, Ms. Lathrop, whether the City was going to provide Sgt. Ritschel's hard-drive. No response. Unless you are prepared immediately to provide me with these hard-drives, I would suggest that you drop the argument that you would have gotten the documents in this civil case.

Attorney-client privileged communications: One of the *reasons* for bringing the action that was assigned to Judge Porter, was to protect the attorney-client privilege. Look at the moving papers – it is all over them. See in specific pages 4-5. This was discussed at the first court hearing. Then at the second hearing (June 2), Judge Porter ordered that the image copy be given to *him* and he would review it first. I am sure he thought he had the only copy, and was therefore limiting access. Since Stepnes had achieved a court order in this regard, he relied to his detriment that Ritschel would be blocked from perusing his computers. You also need to note, that Judge Porter asked me to provide a list of attorneys, which would assist him in perusing the disks for attorney-client privilege. It is absolutely naïve and quite troubling, that the MPD focused solely on Jill Clark as Stepnes' attorney. I provided Judge Porter with a list of attorney names (in camera by permission) and it included a lot more names than Jill Clark. This is what happens when police think they can just do what they want, and think they know everything. This is a complete mess, now. And it is quite clear that Ritschel caused the problem.

Benefit to defendants: But you are also not addressing, Ms. Lathrop, the problem that the defendants have now gained an advantage from that forensic report. That has been quite clear in depositions. Names were obtained from the report, and have been used to form questions asked by Defense attorneys in this case. Mr. Sullivan asked (not verbatim) whether Pete Girard had been told about an email from Paul Simonson. Do you know who Simonson is? He is an attorney.

Further, the subpoena's sent out by Faegre, for example to Midwest Marketing, we deem to have been sent because information was gleaned from the forensic report. These are just examples, we will provide the Court with additional details.

Collect all copies: Please, Ms. Lathrop, collect all copies of the disks from anyone in the MPD (including the drive in "storage" and including any copy on any computer or system (in other words, ****no**** copies should remain) to hold in your Offices until after Judge Keyes and/or Judge Porter have ruled. Please confirm that you are going to do this and please confirm when it is done.

CBS attorneys: Plaintiffs are asking for CBS attorney to divulge the following information now, before we move the Court. This is an unusual situation, and we don't believe that we should have to serve discovery requests for this information, await a 30+-day-turnaround, then meet and confer, before we can advance to court to get information to handle an emergency

situation. Therefore, if CBS attorneys decline to provide the information, Plaintiffs will ask the Court to order disclosure of it (and that will be part of our motion filed on the 10th).

Questions/requests:

1) Provide all emails to or from Sara Lathrop on the topic of accessing the computer hard-drives in any way (such as setting up a time for Ms. Walker to view them in Ms. Lathrop's office, but including any other discussion, and including discussions in the last few days);

2) disclose whether CBS attorneys knew in late 2008 that the MPD was going to look at the disks and/or prepare a forensic report;

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Intra-MCAO emails: Ms. Lathrop, please also provide me with all emails between you and Chris Dixon, and between you and Patrick Marzitelli. If you claim some type of privilege, please specific what it is, and legal authority for that proposition. If you do not provide them, we reserve the right to request that the Court order them.

I know that we have a long weekend coming up, but in light of the developments in this matter, Mr. Stepnes does request that everyone respond ASAP.

Thank you in advance for your cooperation. I hope to be able to report to the Magistrate Judge that we have resolved as many of these issues as possible – such as providing Plaintiffs with the information they need to draft an intelligent motion. Plaintiffs still reserve the right to advance to the Federal and/or the State Court.

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Jill E. Clark

From: Jill E. Clark
Sent: Saturday, September 05, 2009 12:09 PM
To: Michael Sullivan; Borger, John P.; sara.lathrop@ci.minneapolis.mn.us
Subject: One hard-drive

We have been working to restore the hard-drives on Stepnes 2 computers that were seized by Ritschel/police, and it looks like we have one of them working.

Plaintiffs will not be producing any emails from that hard-drive until such time as the Court reviews the legal issues with regard to the unlawful use of the hard-drives seized and kept by police (in violation of the state court order), and rules.

We think that this is appropriate given the gravity of the situation, and the potential remedies available to Plaintiffs.

Jill Clark, Esq.
Jill Clark, P.A.
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[**jill@jillclarkpa.com**](mailto:jill@jillclarkpa.com)

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