

CHART OF PRIVILEGED EMAILS, AND ADVANTAGE TO THE DEFENSE

PRESENTED *IN CAMERA* BY PERMISSION OF THE COURT

Key to factors cited in chart (and taken from CBS Memorandum p. 26):

(1) Where legal advice of any kind is sought **(2)** from a professional legal adviser in his capacity as such **(3)** the communications relating to that purpose **(4)** made in confidence **(5)** by the client **(6)** are at his instance permanently protected **(7)** from disclosure by himself or by the legal adviser **(8)** except if the protection be waived. *Peterson v. Seagate U.S. LLC*, Civil No. 07-2502 (MJD/AJB), 2009 WL 3430150, at *3 (D. Minn. Oct. 19, 2009) (citing *Kobluk v. Univ. of Minn.*, 574 N.W.2d 436, 440 (Minn.1998)).

# ¹	Date/to/from ²	Content/Privilege	Advantage gained
1 in camera; KD 000001-3	April 28, 2008 from S. Kramer to Paul Stepnes	Not privileged. From non-lawyer to Stepnes.	This is the first document in CBS' "key documents" file, and shows that it was not "converted," but contained computer code. This email was referenced at P-Memo ³ p. 11.
2 in camera; KD 000030	March 28, 2008 from Paul Stepnes to attorney Priscilla Lord Faris	Attorney-client privileged. (1) seeking legal advice (2) from Faris who was already actively representing him; (3) the email was the communication seeking the advice; (4-7) it was made in	This one email could turn this whole case. Stepnes was arrested 5/29/08 by Sgt. Ritschel. When CBS issued its broadcast on 7/15/08, it reported on the arrest, and made the statement, "but as Esme Murphy explains, Police say the only place that man could be moving is to jail." Throughout the case, all defendants have sought a legal theory to support the claim that Stepnes was doing something criminal. The first theory - that giving the house away as a contest prize was criminal gambling, has fallen apart since the ED of the State Gambling Control Board ("ED") testified that he told Stepnes in Senator Dibble's

¹ This number is for the script-font numbers in the upper-right-hand corner that were affixed for this submission, but if the document already had other numbers, those are also listed as cross references. "KD" + number is the demarcation made by CBS attorneys, on their set of "key documents" hard copies, later produced to plaintiffs. This column is color-coded to assist the court in discerning between: **Key Documents**; **Converted Emails** (that are not in Key Documents); and **Unconverted Emails**.

² If it is a string of emails, only the date on the top-most email is cited here.

³ Plaintiffs' Amended Memorandum supporting motion for non-dispositive relief, dated 1/26/10.

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		<p>confidence and not waived (see Stepnes 9-10-09 Aff. and Faris Aff.).</p>	<p>office that his contest was not gambling (and therefore legal).</p> <p>The second theory - that the weekly prize drawing advertised on the website was criminal gambling, has also fallen apart, given that the ED has acknowledged that if there was no charge to enter – it is not gambling.</p> <p>The defense is desperately looking for a new theory to claim that Stepnes was engaged in criminal gambling.</p> <p>This email to his attorney discloses Stepnes’ idea to have a door and keys to open to win a prize.</p> <p>When police (wrongfully) entered the Irving House on 5/29/08, they seized from a drawer, a basketful of keys and other physical objects that, in combination with the email to Attorney Faris, could form the argument that Stepnes was sponsoring a criminal gambling event (consideration required to enter the house, element of chance by picking a key, and a prize = gambling).</p> <p>CBS would likely use this to argue that its broadcast is protected by the “truth” defense to defamation – that Stepnes was engaged in criminal gambling.</p>
<p>3 in camera KD 000042 KD 000046</p>	<p>12/26/07 From Paul Stepnes to Jill Clark</p>	<p>Not privileged.</p>	<p>This are the “dinner party” emails. The contents of are clearly social. They were <i>not</i> requested by any discovery request propounded by the CBS defendants. The fact these it were in “Key Documents” causes Plaintiffs to think that defendants intend to use them, somehow.</p> <p>Plaintiffs fear that there will be an attempt to smear potential trial witness Jill Clark (along with Paul Stepnes) to try to imply that the use of the word ‘work’ in KD 000042 means that Clark was involved in the “business” of running the contest, and that therefore she has been complicit in some crime. This, of course, bears no resemblance to the truth, but even the argument would be destructive to Plaintiff counsel’s reputation, and therefore Plaintiffs’ case.</p>

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			<p>It is clear from questioning at depositions, which have included <i>numerous</i> questions about “Jill Clark,” that the CBS attorneys are looking for information specifically about Jill Clark. This is an example of a document that would have <i>never</i> been produced in discovery, yet now the defense attorneys have it, and know what it said, even if there is a “do over.” This email was discussed at P-Memo p. 18.</p>
<p>4, 6 in camera KD 000048-0 KD 000050-1</p>	<p>5/6/08 5/28/08 5/5/08</p>	<p>Privileged is claimed, because Paul Stepnes knew that Simonson was an attorney, and knew that he was disbarred, but believed that communications were privileged. See <i>U.S. v. Evans</i>, 113 F.3d 1457, 1465 (7th Cir. 1997), and courts look to circumstantial evidence and the context; and Stepnes 9/10/09 Aff. p. 4, Par. 3c.</p> <p>The email address was for a law firm, and even though Mr. Stepnes did not ask Simons to do “legal” work, he did know that he was a lawyer, and had asked him to perform accounting work. He assumed the advice</p>	<p>The advantage that CBS would gain is apparent from the text of the emails. They are clearly some kind of “legal” advice, in the sense that they are providing commentary on the law. Simonson had been practicing as an accountant, and in that capacity had agreed to create a corporation for Stepnes, and some other things.</p> <p>In the context of this case, CBS has already shown its interest in these emails, during the deposition of one of the Plaintiffs (Pete Girard). The implication will surely be that Stepnes <i>knew</i> that conducting the conduct was illegal. CBS <i>is</i> aware that the ED of the Gambling Control Board had opined that the contest was <i>not</i> gambling. However, these emails will allow CBS to try to erode that.</p> <p>The deposition of Paul Simonson is scheduled for next week. Surely, even if they do not physically use these emails, the emails will inform CBS’ questioning of Mr. Simonson.</p>

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		<p>was privileged.</p> <p>Further, disbarred attorneys can and do work for law firms, performing research, and other activities that do not require a license. Despite the email address for Saul McGrath law firm, none of the CBS team notified Plaintiff counsel that they had located these emails.</p>	
7, 8 in camera 39/70 ⁴ 26/32	April 26, 2008 from Paul Simonson to Paul Stepnes; May 6, 2008 from Paul Stepnes to Paul Simonson	See discussion of privileged above.	Document 7 contains a link which was an article stating that a proposal to the Gambling Control Board, proffered by Ms. Dunaham (who worked for a short time with Paul Stepnes on ideas of how to hold his house contest) was declined by the Board. Simonson's comment that he knew a raffle would never work, could be used by CBS to try to imply that Stepnes' advisor had opined against the project that did launch. Even though the project that <i>did</i> launch had been deemed by the ED of the Gambling Control Board, emails like this one can be used by CBS to chip away at that basic truth, to create the impression that Stepnes was knowingly doing something wrong.
9, 10 in camera 130/278 126/263	March 18 Attorney Eve Borenstein to Paul Stepnes (2)	Attorney-client privileged. Stepnes seeking legal advice from Attorney Borenstein about setting up a 501(c)(3)	There are several ways that CBS can use these emails. First, one of the PR people originally hired by Paul Stepnes, incorrectly stated to the media that he was running a 501(c)(3). She was confused, and referring to the future corporation, which was to philanthropically give a portion of the proceeds of the for-profit venture, to charity. However, words like "wanna be" 501(c)(3) would help CBS to confuse the jury on this issue.

⁴ These numbers are Plaintiffs' internal numbering system of all documents/emails from the converted email section of the Forensic Report.

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		<p>corporate board. Case law uses the term “sought” to cover communications with potential attorneys, who do not end up representing the client.</p>	<p>Second, the legal opinion of Attorney Borenstein that Stepnes is “not the person to be walking into a law firm” with the intention of setting up a non-profit board, could be used by CBS to argue that Stepnes’ plan of setting up a future foundation to philanthropically give, was not legal. What this foundation is or isn’t is a corner-piece in this litigation, and the advantage to CBS from these emails would be significant.</p> <p>The knowledge gained from these emails can we used to depose Paul Stepnes, whether or not the physical emails are used.</p>
<p>11 in camera 48/164</p>	<p>March 28, 2008 from Paul Stepnes to Attorney Faris</p>	<p>See discussion of privilege relating to document 2 in camera.</p>	<p>This is a continuation of the discussion between Stepnes and Faris. This follow-on email from him on the same topic (holding a contest with a door and keys to open it) shows more clearly that Stepnes was seeing legal advice from his then-current attorney. This email shows that the door/key idea that Stepnes was then considering, was to be at the Mall of America. This privileged email would allow him to dispel the notion that the keys found at the House when police executed the search warrant, were being used at the house to conduct gambling there. However, to use it that way, Stepnes would have to waive the privilege – which he does not want to do.</p> <p>Interestingly, this email was not selected by CBS for its “Key Documents” file. Was it rejected by CBS because it showed more clearly that the communications were privileged? Was it not selected because it cleared Stepnes of suspicion of what was occurring at the House?</p> <p>Despite these two emails from Stepnes to his attorney (showing his thinking about potential future activities), no one from CBS ever contacted Plaintiff counsel to inform her that these law firm emails had been viewed.</p>
<p>12 in camera</p>	<p>March 7, 2008 from Attorney Ralph Mitchell to Paul Stepnes</p>	<p>Attorney-client privileged.</p> <p>Mitchell was then-currently representing Stepnes. Mitchell was</p>	<p>Even though Stepnes decided not to go forward with this particular type of contest, it could be used to argue that if Stepnes’ attorney thought he could not “sell” the idea to the U.S. bankruptcy trustee: i) that it was not legal; or ii) that it was not a good business idea (used to lower damages). (The Irving House was later removed from the bankruptcy proceedings, before the contest was launched.)</p>

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		clearly responding to Stepnes' seeking legal advice with regard to a "raffle." Mitchell's affidavit (filed 9/09) shows that the communications were confidential and never disclosed by him.	As with other emails, this information could be used to question Paul Stepnes, even if the physical email were not used.
13-17, 19, 21, 24-25 in camera	Emails between Attorney Mitchell and Paul Stepnes	Attorney Mitchell was representing Stepnes in an active bankruptcy case, and several other pieces of litigation, as well as advice regarding distressed properties. Advice by a lawyer representing a client in litigation is privileged. Emails clearly show "strategy" (that word is even used), as well as the Attorney providing advice on liquidation strategies and other ways to emerge from the financial distress, and the attorney seeking information.	<p>There are numerous issues in the case before this Court regarding the liens and mortgages on the Irving House. That is, CBS is, we believe, attempting to prove the "truth" of Esme Murphy's statements in the WCCO broadcast by gathering information about the foreclosure and/or financial status of Irving House.</p> <p>Indeed, CBS has already subpoena'd documents from Americana Bank, the primary mortgagor, which initiated the foreclosure proceedings on Irving House. CBS has already requested in this litigation, discovery regarding other litigation that Stepnes had any involvement in, which has been ordered, and produced. These include the bankruptcy matter that Ralph Mitchell represented Stepnes in (as shown in these emails), as well as litigation involving other distressed real estate properties that Stepnes owned (see also the Attorney Faris emails discussed below, as she was representing Stepnes in some of those matters).</p> <p>Further, in his role as attorney-advisor, Mitchell was offering possible ways out of the financial problem, all of which will provide fodder for the Stepnes deposition in this case (whether or not the physical emails are used).</p>
18 in camera	July 5 2007 from Attorney Mitchell to Paul	Attorney-client privileged.	"Deb @ Domain" is Deborah Everson, and architect that works out of the firm "Domain Architecture." Deborah Everson is a witness in this case, and the mortgage of Domain Architecture will feature prominently in this case

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	Stepnes	Mitchell is clearly gathering information from Stepnes that he needs for ongoing bankruptcy litigation.	<p>before the Court. For example: i) Deborah Everson is the "D.E." that Sgt. Ritschel claimed was his complainant, that was the key piece of evidence in his application for search warrant of Irving House; ii) Sgt. Ritschel admitted in his deposition that the Domain mortgage on Irving House was obtained by Esme Murphy at the Hennepin County Government Center and provided to Sgt. Ritschel to assist him in getting Stepnes charged with a crime. Further, Stepnes' answer to Mitchell (page 2) that he does not think that he signed a note with Domain, could be used to show that Stepnes did not understand his financial and/or legal affairs.</p> <p>Again, this information can be used in deposing Stepnes, whether or not the physical emails are used.</p>
20, 22, 23, 26 in camera	July 18, 2007, Attorney Mitchell to Stepnes	See discussion of privilege with Mitchell, above.	<p>Ben Taylor, mentioned in 20, 22 is also a Plaintiff in this case. He and his wife Judith (also a plaintiff) are private lenders, who loaned money to Stepnes for Irving House, who was to be paid back from proceeds of the Contest.</p> <p>Stepnes stated in the email on page 2, that Ben Taylor was seriously considering buying Irving House. CBS attorneys asked Judith Taylor in her deposition on February 10, 2010, whether she and her husband were considering buying Irving House. (See 2 pages from her deposition, in camera 23). This matches pretty closely with the words of Stepnes to his attorney, "he [Ben Taylor] is seriously considering buying the house..." (email 20, page 2).</p> <p>This email chain provides significant fodder for deposing both Stepnes, and Plaintiff Ben Taylor.</p> <p>Note that in email 26, Mitchell appears to be advising both of these clients.</p>
In camera 27-28	December 2007 and May 7, 2008 from Attorney Faris	<p>Attorney-client privileged.</p> <p>These emails show that</p>	<p>These are just samples of emails with Attorney Faris regarding litigation over distressed real estate.</p> <p>The litigation over other real estate was also sought in discovery by CBS,</p>

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	to Paul Stepnes	Attorney Faris was clearly representing Stepnes in ongoing litigation relating to distressed real estate.	and Stepnes has produced it. These emails show that Stepnes was actively being represented by Priscilla Faris regarding his distressed real estate, when he sent the #2 in camera (discussed above).
29 in camera	Attorney Jill Clark to Paul Stepnes	This is clearly communication about ongoing litigation, and legal advice regarding the right to appeal.	CBS appears very interested in Paul Stepnes' 2005 lawsuit against some Minneapolis Police Officers (and others), and as Plaintiffs discussed at P-Memo p. 23, "Indeed, Plaintiff counsel is of the opinion that CBS devised its "relevant timeframe" to be able to get that prior lawsuit somehow into evidence." This is just a sample of emails regarding that litigation, which include settlement advice, etc.

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