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March 3, 2014

OPH/WBR No. 2013-211 -- Judy L. Rowell, Complainant v. Office of the Healthcare Advocate, Respondent

IN CAMERA REVIEW ORDER

This ruling follows the in camera inspection of documents identified by the complainant that had been produced by the respondent with information redacted, and for which the respondent asserts its attorney-client privilege ("ACP").

At this time, the only documents that remain for this tribunal to rule on are identified as follows:

- "Production 6 Redacted" – pp. 161, 162, and 163.
- "10 2 13 combined production request" – b. Second page

Contested cases filed with the Office of Public Hearings ("OPH"), under section 4-61dd, are administered, in part, pursuant to the Uniform Administrative Procedure Act, Conn. Gen. Stat. Section ("section") 4-166 et seq. ("UAPA"). "In contested cases ... agencies shall give effect to the rules of privilege recognized by law..." Subdivision (2) of section 4-178.

"Since the [ACP] has the effect of withholding relevant information from the factfinder, it applies only where necessary to achieve its purpose. Accordingly it protects only those disclosures – necessary to obtain informed legal advice – which might not have been made absent the privilege.... Not every communication between attorney and client falls within the privilege.... C. Tait & J. LaPlante, [Connecticut Evidence (2d Ed. 1988)] ... § 12.5.2." Ullman v. State, 230 Conn. 698, 713 (1994) (citations omitted).

"The party invoking the attorney-client privilege must show (a) a communication between client and counsel; (b) was intended to be and was in fact kept confidential; and (c) was made for the purpose of obtaining or providing legal advice.... The party invoking the privilege bears the burden of establishing all the elements of the privilege." Weinstein v. University of Connecticut, 2013 WL 2244310, p. 5, (Civ. No. 3:11CV1906, Ruling on Cross Motion to Compel/Motion for Protective Order, May 21, 2013) (citations omitted).

Although, "[c]ommunications between client and attorney are privileged when made in confidence for the purpose of seeking legal advice..., statements made in the presence

of a third party are usually not privileged because there is no reasonable expectation of confidentiality.” State v. Cascone, 195 Conn. 183, 186 (1985).

ORDER

“Production 6 Redacted” – p. 162 – This document does not appear to be a communication made for the purpose of seeking legal advice. In the absence of the respondent providing the undersigned evidence sufficient for this tribunal to reach a contrary conclusion, the respondent is ordered to disclose this document without redaction, on or before March 11, 2014.

“Production 6 Redacted” – p. 161 and p. 163 – The respondent is ordered to either (1) provide this tribunal with affidavits from the respective individuals involved in the email communications that their actions with respect to these specific emails comply with the “rules of privilege recognized by law” or (2) disclose to the complainant the documents without redaction, on or before March 11, 2014.

“10 2 13 combined production request” – b. Second page -- The respondent is ordered either to (1) disclose to the complainant the document without redaction, on or before March 11, 2014, or (2) provide this tribunal with affidavits from the respective individuals involved in the email communications that (a) explains the nature of the communication contained in the last email on the page, sent January 3, 2013, at 6:11 p.m. from Victoria Veltri to Office of Labor Relations Attorney Cathleen Simpson and Dave Lynn, Department of Administrative Services HR, and (b) indicates whether, with respect to this disputed email the actions of Veltri, Simpson, and Lynn, respectively, comply the applicable “rules of privilege recognized by law.”

So ordered.

Dated this 3rd day of March 2014.



Alvin R. Wilson, Jr.
Presiding Human Rights Referee

Judy Rowell – via email
Steven J. Fitzgerald, Esq. – via email
Antoria Howard, Esq. – via email
Yvonne Duncan, Esq. – via email