EXHIBIT A
RE: Discovery question
Brown, Mark
Sent: Wednesday, July 16, 2014 5:16 PM
To: Patrick Longan [LONGAN_P@law.mercer.edu]

Hey Pat,

They have not raised this case, which I confess I had not seen. They have not waived anything yet, so they may raise this argument.

I don't know if the payor is also a client. I suspect they will argue it is.

Assuming the payor is also a client, and disclosure might prove motive, does the lawyer still have an ethical obligation to tell his other client? And can the other client reveal the identity?

I appreciate your finding this. It is getting complicated.

Mark R. Brown
Newton D. Baker/Baker & Hostetler Chair
Capital University Law School

From: Patrick Longan [LONGAN_P@law.mercer.edu]
Sent: Wednesday, July 16, 2014 4:57 PM
To: Brown, Mark
Subject: RE: Discovery question

Mark,

I am working on this, and since our communications are protected by work product in federal court, I wanted to raise an issue with you. I was researching the privilege question, and I found a case from the 7th Circuit. You may know it - the citation is 171 F.3d 511. It appears to hold that the identity of a third-party payor may be privileged if the payor is also a client and the revelation of the payor's identity would reveal that client's motives for seeking representation. Has this argument been raised yet, or have they abandoned the privilege argument and instead decided to rely upon confidentiality? Is there any hint that the third-party payor is also a client?

Pat

Patrick E. Longan
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http://www.law.mercer.edu/facultystaff/bios/patrick-longan

From: Brown, Mark [MBrown@law.capital.edu]
Sent: Monday, July 14, 2014 9:06 AM
To: Patrick Longan
Subject: RE: Discovery question
Thanks Pat. No hurry today. I am leaving for two weeks the end of the week and would like to maybe send it over to my co-counsel by then. You back in Macon?

Mark R. Brown

Newton D. Baker/Baker & Hostetler Chair
Capital University Law School

From: Patrick Longan [LONGAN_P@law.mercer.edu]
Sent: Monday, July 14, 2014 8:58 AM
To: Brown, Mark
Subject: RE: Discovery question

Mark,

I am working on your issue this morning. I'll be back in touch later in the day.

Pat

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From: Brown, Mark [MBrown@law.capital.edu]
Sent: Friday, July 11, 2014 3:52 PM
To: Patrick Longan
Subject: RE: Discovery question

Hey Pat.

Good news here. Just got the attached order compelling Felsoci (the intervenor who does not know who is paying his lawyers) to sit for a deposition.

His lawyers will seek review in the District Court, of course, because they really don't want to disclose who is paying them.

I filed a motion to compel production of documents from Felsoci last week, including communications from his secret funding source. In regard to both the deposition and that production, they are claiming confidentiality. So that question seems to be on the forefront.

Hope Denver went well.

Best,

Mark

Mark R. Brown
Newton D. Baker/Baker & Hostetler Chair
Capital University Law School
From: Brown, Mark  
Sent: Monday, July 07, 2014 5:10 PM  
To: Patrick Longan  
Subject: RE: Discovery question

Holy cow! Say hey to the Rockies. Hope you can catch a game.

Mark R. Brown

Newton D. Baker/Baker & Hostetler Chair  
Capital University Law School

From: Patrick Longan [LONGAN_P@law.mercer.edu]  
Sent: Monday, July 07, 2014 5:07 PM  
To: Brown, Mark  
Subject: RE: Discovery question

Denver. I do bar review lectures for Kaplan. This week is Philadelphia (where I am now), Denver, Washington, D.C., and New York. Then I'm done for this summer.

Patrick E. Longan  
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From: Brown, Mark [MBrown@law.capital.edu]  
Sent: Monday, July 07, 2014 5:05 PM  
To: Patrick Longan  
Subject: RE: Discovery question

Thanks! No hurry. I am ahead of this curve believe it or not.

Where to?

Mark R. Brown

Newton D. Baker/Baker & Hostetler Chair  
Capital University Law School

From: Patrick Longan [LONGAN_P@law.mercer.edu]  
Sent: Monday, July 07, 2014 4:57 PM  
To: Brown, Mark  
Subject: RE: Discovery question

Hey Mark,

I am about to get on a plane, but I will look at this when I land.

Pat
Hi again Pat.

Here is a draft affidavit. Please add to, delete, fix, omit, etc. I am unethical, so please fix as needed!

I included the thing about documents at the end because we made a document request asking for papers indicating who is paying. Sixth Circuit has ruled that even if hands of lawyer, can be obtained under Rule 34 if belong to client.

Thanks!

Mark

Mark R. Brown

Newton D. Baker/Baker & Hostetler Chair

Capital University Law School

Hi Pat,

I am drafting a declaration for you along the lines of a lawyer must disclose who is paying him to his client. Wonder if you can take a look at this transcript as background? It is not too long. It is the client who claims not to know who hired his lawyers. This was taken before the federal district court in a hearing on our motion for preliminary injunction. The judge wound up finding that client is a "guileless dupe," likely of the Ohio Republican Party. What I am trying to determine is who actually hired the lawyers, a high-end firm here in Columbus that has devoted the time of four lawyers and lots of resources to this.

Best,

Mark

Mark R. Brown

Newton D. Baker/Baker & Hostetler Chair

Capital University Law School
From: Patrick Longan [LONGAN_P@law.mercer.edu]
Sent: Monday, July 07, 2014 6:19 AM
To: Brown, Mark
Subject: RE: Discovery question

Mark,

Thanks for the picture. Oh, to be a parent of a 14-year-old again … well, maybe not.

I'd be happy to help as an expert if you need me. No fee required for old friends like you. I'll let you reimburse anything out-of-pocket, but my time is yours. Just let me know how I can help.

Pat

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From: Brown, Mark [MBrown@law.capital.edu]
Sent: Saturday, July 05, 2014 4:33 PM
To: Patrick Longan
Subject: RE: Discovery question

PS  Forgot to add this photo from yesterday. Oh, to be 14 again. Give my best to Gretchen and the family!

Mark R. Brown

Newton D. Baker/Baker & Hostetler Chair

Capital University Law School

From: Brown, Mark
Sent: Saturday, July 05, 2014 4:24 PM
To: Patrick Longan
Subject: RE: Discovery question

Thanks! You interested in being an expert? Serious. I can pay your expenses and maybe kick in some kind of fee.

This is a pretty big deal in Ohio, as the Governor (Kasich) wants to win badly and in a landslide. He is looking at 2016 as a presidential candidate (GOP). The candidate kicked off the ballot is a Libertarian, who GOP thinks (correctly) will draw votes from Kasich. The GOP is obviously behind it all, and the federal judge and Sixth Circuit concluded it was likely. Still, I need to know exactly so I can prove my conspiracy claim.
Here is the interlocutory appeal I lost on a facial challenge to the law used to kick the Libertarian off the ballot. Libertarian Party of Ohio v. Husted, 751 F.3d 403 (6th Cir. 2014). It leaves us with our as-applied challenge, which is premised on the GOP and the Republican Governor and Republican Secretary of State acting in concert to remove the Libertarian for political reasons. Tough to prove, of course, but gotta try. I wrote a law review article several years about this theory and now is my chance to put it to use! If we can get something before November we can get him back on the ballot.

Mark R. Brown
Newton D. Baker/Baker & Hostetler Chair
Capital University Law School

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From: Patrick Longan [LONGAN_P@law.mercer.edu]  
Sent: Saturday, July 05, 2014 3:56 PM  
To: Brown, Mark  
Subject: RE: Discovery question  

Mark,

Good to hear from you, and I'm glad all is well. I am home for a couple of days before I go back on the road doing bar review lectures for Kaplan - not glamorous, but the college tuition must be paid! Save now!

Emery is working in a lab this summer at Furman on a grant to do something with genetic mutations of yeast that will help find a cure for leukemia. He likes the lab work and he has a girlfriend! Mitch is doing a summer abroad through Tulane and is working in Cambodia. Wild stuff.

The issue, it seems to me, is whether the information you seek - who is paying for the case -- is relevant to a claim or defense in the case (I assume you are in federal court). If it is, then even if you classify it as "confidential" it is nevertheless discoverable. All sorts of information that relates to a lawyer's representation of a client is "confidential" but nevertheless discoverable (e.g., what a lawyer learns from a third party witness would be "confidential" but you could still discover what the witness saw). His only defense to not giving up the information is privilege, and I agree with you that I do not think this is privileged (how could it be - it does not involve a communication with his client, since his client does not even know who the mysterious benefactor is).

So if you can argue the information is relevant, you should be able to get it. Under Ohio Rule of Professional Conduct 1.6(b)(6), he may disclose confidential information in response to a court order, perhaps on your motion to compel. Let me know if I can help you.

By the way, am I wrong about the relevant jurisdiction? A citation to "DR 4-101" sounds like an outdated, antiquated citation by a lawyer who does not know that the DR's have been replaced in almost every jurisdiction by rules of conduct (including Ohio).

Keep in touch-

Pat

Patrick E. Longan
W. A. Bootle Chair in Ethics and Professionalism
Hi Pat,

I wonder if I might pick your brain again? I mentioned this problem to you before. Attorney A is hired by B to represent C. A does not tell C this, and C does not know. This clearly violates A's duty to disclose to C.

I have found cases stating that B's identity is not attorney-client privileged. But Attorney A now claims that he cannot consistent with DR 4-101 disclose this "confidence or secret" of B.

Can agreeing not to disclose to one client, B here, justify not properly disclosing to another client, C here?

Can an unethical agreement like this then shield Attorney A from having to tell C? And can it shield Attorney A from having to produce this information in discovery?

Man, the world is a dirty place.

How you guys?

We are good here. Happy 4th!

Best,

Mark

Mark R. Brown

Newton D. Baker/Baker & Hostetler Chair

Capital University Law School

And a little bit of ethics too.

Hey Pat.

Hope all is well. All fine here. I wonder if you might point me in the right direction on a discovery and maybe ethics question?

Does a party have an obligation not to remain willfully blind to information the other party seeks to discover? Put another way, is there a duty on a party to affirmatively inquire of another to produce the information the other side requests?
Here is the problem. Party intervened to challenge my client's ballot access. This party says he is not paying his lawyer, and does not know who is paying his lawyer. My argument is that party can easily ask his lawyer, who has to tell him. He simply won't ask. He is remaining willfully blind in order to avoid my question. My client has a right to know the real-party-in-interest in order to pursue discovery through that party.

What do you think? Does he have an obligation to ask his lawyer? And does the lawyer have to respond to his question? I looked into the attorney-client privilege cases and apparently there is no privilege problem with disclosing a lawyer's financial arrangement and who is paying him. I also vaguely remember some discussion in my ethics class about a lawyer having a duty to disclose to his client any potential conflict, like maybe he is really working for someone else.

Best,
Mark

Mark R. Brown
Newton D. Baker/Baker & Hostetler Chair
Capital University Law School

From: Brown, Mark
Sent: Friday, February 14, 2014 4:28 PM
To: Patrick Longan
Subject: RE: Is this the Chemerinsky book you recommend?

Yes. His library ought to have a few copies on reserve if he wants to save some money. I may have a copy I can send him if he wants it. Let me check my shelf.

Mark R. Brown
Newton D. Baker/Baker & Hostetler Chair
Capital University Law School

From: Patrick Longan
Sent: Friday, February 14, 2014 3:13 PM
To: Brown, Mark
Subject: Is this the Chemerinsky book you recommend?

http://www.amazon.com/dp/0735598975/ref=rdr_ext_tmb

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This message may contain confidential and/or privileged information. If you have