

IN THE CIRCUIT COURT FOR THE
TWENTY-SECOND JUDICIAL CIRCUIT
CITY OF ST. LOUIS
STATE OF MISSOURI

STATE OF MISSOURI,)	
)	
Plaintiff,)	
)	Cause No. 1822-CR00642
v.)	
)	
ERIC GREITENS,)	
)	
Defendant.)	

DEFENDANT’S OPPOSITION TO ALBERT WATKINS’ MOTION TO QUASH

Albert Watkins claims the source of his “mysterious” \$100,000 cash payment is not discoverable because the source’s identity is somehow attorney-client privileged. This argument is fundamentally wrong and misapprehends the concept of the attorney-client privilege. First, the currently anonymous payor is not the client. Thus no communications with the source of funds therefore can be privileged. Second, the law is clear that the identity of the individual or entity that is paying a client’s attorney’s fees is not privileged. Third, and importantly, the source of funds and any agreement between Mr. Watkins and the payor will not lead to the discovery by the defense of any actually privileged communications. Defense counsel is not asking for nor interested in any communications between the client, which is PS, and his attorney, Mr. Watkins. Instead, defense counsel simply seeks information related to the third party anonymous source of funds.

A. This Information Is Not Privileged.

The Missouri Court of Appeals has found that where billing statements and information does not include entries which detail actual privileged communications, such “billing statements are neither privileged communications nor work product and do not fall within the attorney-client privilege.” Tipton v. Barton, 747 S.W.2d 325, 332 (Mo. App. E.D. 1988). Here, the cash payments

at issue and the identity of the payer does not in any way disclose any analysis or discussion of privileged communications. The Court in Baryo v. Philip Morris USA, Inc., 2007 WL 2084111, at *4 (W.D. Mo. July 17, 2007) cited Tipton and found similarly. There, the Court noted the Missouri Legal Ethics Counsel had issued an Informal Advisory Opinion which concluded that “[t]he Attorney’s fee information is not [even] confidential information under Rule 4-1.6.” Baryo, 2007 WL at *4 (quoting Mo. Leg. Ethics Comm., Informal Op. 980037 (2006)). Noting that the defendant did not argue “that the fee arrangement with their attorney contains any confidential communications itself,” the Court concluded such fee agreement “is not privileged and may be discovered by” the defendant. Baryo, 2007 WL at *4. See also Tornay v. United States, 840 F.2d 1424, 1426 (9th Cir. 1988) (fees are incidental to relationship and do not involve “confidential communications”); In re Grand Jury Matter, 926 F.2d 348, 352 (4th Cir. 1991) (fee arrangements not privileged where they do not reveal confidential communications); Montgomery v. Leftwich, Moore & Douglas, 161 F.R.D. 224, 227 (D.D.C. 1995) (disclosure of billing arrangement does not violate attorney-client privilege because such information ordinarily reveals no confidential, professional communication). The billing information and source of funds to Mr. Watkins is just in no way attorney-client privileged.

Put simply, “[i]t is well-established that no privilege attaches to information about what attorneys’ fees were paid, in what amount in what form, or by whom.” United States v. DNRB, Inc., 257 F. Supp. 3d 1033, 1038–39 (W.D. Mo. 2017) (citations omitted); United States v. Blackman, 72 F.3d 1418, 1424 (9th Cir. 1995); United States v. Sindel, 53 F.3d 874, 876 (8th Cir. 1995) (“Although federal common law of attorney-client privilege protects confidential disclosures made by a client to an attorney in order to obtain legal representation, it ordinarily does not apply to client identity and fee information.”). Indeed, “[t]he great weight of authority on the

subject recognizes that with rare exception, the mere fact of the existence of a relationship between an attorney and a client, and the nature of the fee arrangements between the attorney and a client are not attorney-client privileged communications.” State ex rel. Koster v. Cain, 383 S.W.3d 105, 119 (Mo. App. 2012). Here, the “nature of the fee agreements between” between Mr. Watkins and P.S. “are not attorney-client privileged communications.” Id. This conclusion is only bolstered by the now publicly-available fact that some third party—outside of the attorney-client relationship—is footing P.S.’s legal bills.

B. The Court Has Already Found This Information Is Not Privileged and That It Is Probative of Bias and Interest.

This Court in this case has already specifically ruled this information is not privileged. This Court also has also already ruled on Tuesday that Defendant’s counsel could depose Mr. Watkins, and instructed Defendant’s counsel to pick a date and time for the deposition. The Court also denied Mr. Watkins’ previous motion to quash.

Earlier in this case, when Mr. Watkins instructed P.S. not to answer questions concerning source of funds and other issues concerning his legal fees at P.S.’s own deposition, this Court explicitly found such questions must be answered. In open court on April 12, 2018, Defense counsel sought a ruling on this exact issue—the issue of the source of P.S.’s legal fees and other information around these payments. The Court finally concluded: “All right. So you’re going to be able to get into these areas.” April 12, 2018 Hearing Transcript at 67. Regarding the trust account supposedly for the benefit of his children, the Court responded: “That will be probed into.” Id. at 68. The entire discussion is contained on that transcript at pages 56-69. The Court consistently rejects Mr. Watkins argument that this information is privileged. See id.

This Information Is Highly Relevant.

The fact that some anonymous person or entity is paying Mr. Watkins' fees for his representation of P.S. is a clear benefit to P.S. It places money in P.S.'s pocket—money that he would have otherwise had to spend on his own legal representation.¹ This is highly relevant to P.S.'s credibility as a witness. The Missouri Court of Appeals has found as much: “Evidence regarding such potential payments goes to witness credibility, to be probed on cross-examination.” State v. Ragland, 494 S.W.3d 613, 626 (Mo. App. E.D. 2016). Paying witnesses “raises serious concerns about the fairness of a trial.” United States v. Villafranca, 260 F. 3d 374, 378 (5th Cir. 2001); United States v. Goff, 847 F.2d 149, 161 (5th Cir.1988) (“[T]he trial court must give the jury careful instructions pointing out the suspect credibility of a fact witness who has been or expects to be compensated for his testimony.”); United States v. Cervantes-Pacheco, 826 F.2d 310, 315 (5th Cir. 1987) (“it is up to the jury to evaluate the credibility of the compensated witness.”).

As noted above, too, P.S. testified about a trust account set up for the benefit of his children. See April 12, 2018 Hearing at 68 (quoting P.S. as responding to a deposition question about money for his legal fees as follows: “Yeah. Legal fees, and if—who knows, if something was given or whatever, this is going into a trust for my children.”). Such a trust account, and any moneys to be received by their children, is obviously a benefit to K.S. as well, and thus this entire financial setup with Mr. Watkins becomes even more relevant. It goes directly to K.S.'s credibility just as it goes to P.S.'s.

P.S. may have been bribed for favorable testimony. That possibility simply cannot be ruled out, and keeping the source of funds anonymous keeps such a possibility on the table. Such is clearly discoverable information. Moreover, as this Court is aware, Mr. Watkins tried to represent

¹ To hear Mr. Watkins tell it: “I’m expensive. I’m not cheap.” April 23, 2018 Watkins Courthouse Transcript, *available at* <http://www.bnd.com/news/local/article209662229.html>.

Mr. Tisaby on Monday in this Court in connection with possible criminal perjury and other misconduct. Mr. Watkins stated on the courthouse steps shortly thereafter that he received the \$100,000 cash with “no note. No instructions. No conditions.” See Watkins Press Conference of April 23, 2018. This then begs the question: was the money also paid to represent Mr. Tisaby? This inquiry makes the source of funds and payment information clearly relevant, especially since Defendant has endorsed Mr. Tisaby as a witness and such a payment would go toward assessing his credibility.

Any Purported Privilege Has Already Been Waived.

P.S. holds the privilege since he is the client. Here, though, P.S. has already waived any claim to privilege he may have had, and Mr. Watkins, his attorney, has facilitated him in doing so in a series of public statements. P.S. testified in front of the House Committee about the payments and trust account set up by his lawyer. See Report Transcripts at 54. Mr. Watkins has made numerous public statements, including in a recent Monday press conference on the courthouse steps, about the payments themselves, how they were received, their nature, and much of the circumstances surrounding them. See April 23, 2018 Albert Watkins Press Conference. This has waived the privilege as to the information surrounding these payments.

“A client waives the attorney-client privilege when he voluntarily shares the communication with a third party.” Lipton Realty, Inc. v. St. Louis Hous. Auth., 705 S.W.2d 565, 570 (Mo. App. E.D. 1986). To the extent Mr. Watkins attempts to argue otherwise, the privilege “does not apply to documents received from or filed with the Internal Revenue Service or the Missouri Department of Revenue, or other documents similarly received from or sent to another third party.” Travelers Commercial Cas. Co. v. Sielfleisch Roofing, Inc., 2013 WL 1899557, at *5 (E.D. Mo. May 7, 2013). Thus any forms filed with a third party are not privileged, including of

course forms containing information about the payments at issue here. And, as above, no non-client's identity receives any sort of protection from disclosure under the law. Mr. Watkins attempts to shoehorn some privilege claim here simply fails.

Conclusion

The source of funds and these payments are not privileged and are highly relevant to this case. And, the Court has already ruled on this very issue, stating that these areas are relevant to the interests and biases of witnesses. Therefore, the defense respectfully requests the Court order the source of and circumstances surrounding Mr. Watkins mysterious \$100,000 payment be disclosed, and that they be allowed to proceed with their deposition of Mr. Watkins in accordance with the prior Order of this Court.

Dated: April 27, 2018

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing was filed via the Court's electronic filing system and was also sent via email to the St. Louis City Circuit Attorney's Office this 27th day of April, 2018.

/s/ Edward L. Dowd