

From: Burdy, Shelly L.
To: [Eilers, Blake](#); [Hanlin, Jennifer J.](#); [Eric Smith](#); dralph@timoneyknox.com
Cc: [Fred Lachat](#); [Miravich, John J.](#); [Christopher M McMonagle](#)
Subject: [External] Ralph v. Reading: AP 2020-1271-75 - Request for Reconsideration
Date: Wednesday, March 10, 2021 7:35:33 PM

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Attorney Eilers:

As you know, we represent the City of Reading as it relates to the above-referenced right-to-know requests. On February 23, 2021, you entered a Final Determination as it relates to those requests. We ask that you treat the following email as a request for reconsideration at least as it applies to the issues set forth below. We believe clarification on these issues will further resolve this matter, as opposed to requiring either party to file an appeal to the Court of Common Pleas. As stated below, the City asserts that certain documents should remain shielded from production as work product compilations.

Courts have consistently protected compilations under what has been termed the “selection and compilation” theory of the work product doctrine. For example, courts have held that, in cases that involve pre-sorted documents, a lawyer’s selection and compilation of documents is often more crucial work product deserving of protection from production than legal research the lawyer has compiled. *James Julian, Inc. v. Raytheon Co.*, 93 F.R.D. 138, 144 (D. De. 1982). The most widely cited cases regarding the doctrine are the Third Circuit’s decision in *Sporck v. Peil*, 759 F.2d 312 (3d Cir.1985), *cert. denied*, 474 U.S. 903 (1985), and the Eighth Circuit’s decision in *Shelton v. American Motors Corp.*, 805 F.2d 1323 (8th Cir.1986) (documents not required to be produced because they were compiled by counsel, which would reveal those documents to which counsel attached particular significance, causing disclosure of her legal theories and opinions). In *Sporck*, defendants produced numerous documents and defendant’s counsel selected and had defendant review certain documents in anticipation of his deposition. Although defendant’s counsel did not claim any of the documents themselves were work product; the court upheld counsel’s objections to deposition questions which sought the identification of documents the deponent reviewed to prepare for his deposition. The court held that counsel’s selection and compilation of the documents fell within the category of “highly protected opinion” work product, because the compilation of the documents would reveal counsel’s mental impressions and opinions as to how the documents related to the issues. It further held that an attorney’s legal strategy, his intended lines of proof, his evaluation of the strengths and weaknesses of his case and the inferences he draws from the facts are all opinion work product. The court stated:

Such material is accorded an almost absolute protection from discovery because any slight factual content that such items may have is generally outweighed by the adversary system’s interest in maintaining the privacy of an attorney’s thought processes and in ensuring that each side relies on its own wit in preparing their respective cases.

Id. at 316 (emphasis added).

It appears that some of the documents that have been ordered produced fall squarely within the protections of the work product doctrine and specifically the “selection and compilation” theory. For example, RDG000003-1 through RDG000003-74 and RDG000013-1 through RDG000013-46 are the two legal files compiled by in-house counsel that are being provided to outside counsel. These documents were significant enough to be compiled, separated from other documents, and sent to outside counsel, thus they include the mental impressions and opinions of in-house counsel. Likewise, RDG000008 through RDG000012-6 is a compilation of emails that in-house counsel has determined are relevant and should be provided to outside counsel, thus again using in-house counsel’s mental impression and opinion for the prosecution of the pending litigation.

Similarly, RDG000027 through RDG000029 are compilations of information and emails prepared by in-house counsel providing those documents to the two outside counsel and RDG000047 is a another compilation of emails and information being provided by in-house counsel to outside counsel. Again, in-house counsel compiled emails and information using his mental impressions and opinions to advise outside counsel regarding future strategy concerning the litigation. Although slightly different in that it is a court legal opinion, RDG000134-1 is legal research that in-house counsel is provide outside counsel by identifying what he deems to be a relevant case.

Finally, the batch of emails compiled beginning at RDG000260 through RDG000260-20 was compiled and shared as a potential exhibit to refute spurious allegations made by counsel in a frivolously filed motion to disqualify.

As the *Sporck* and *Shelton* courts recognized, compilations like those identified above contain attorney’s mental impressions and opinions and are thus protected from production under the work product doctrine.

Respectfully submitted,

John J. Miravich

Partner

Fox Rothschild LLP

Eagleview Corporate Center

747 Constitution Drive, Suite 100, PO Box 673

Exton, PA 19341

38 North 6th Street, Suite 100, P.O. Box 8467

Reading, PA 19603

(610) 458-3128 - direct

(610) 458-7337- fax

(610) 507-4028 – cell

JMiravich@foxrothschild.com

www.foxrothschild.com

From: Eilers, Blake <beilers@pa.gov>
Sent: Tuesday, February 23, 2021 8:51 AM
To: Hanlin, Jennifer J. <JHanlin@foxrothschild.com>; Eric Smith <esmith@timoneyknox.com>; dralph@timoneyknox.com
Cc: Fred Lachat <Fred.Lachat@readingpa.gov>; Miravich, John J. <JMiravich@foxrothschild.com>; Christopher M McMonagle <cmcmonagle@timoneyknox.com>
Subject: [EXT] Final Determination - Ralph v. Reading: AP 2020-1271-75

Dear Parties:

Please find attached the consolidated Final Determination in the above-referenced matters.

Sincerely,



Blake Eilers, Esq.
Appeals Officer
Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234
(717) 346-9903 | beilers@pa.gov
<http://openrecords.pa.gov> | [@OpenRecordsPA](https://twitter.com/OpenRecordsPA)

From: Hanlin, Jennifer J. <JHanlin@foxrothschild.com>
Sent: Friday, January 29, 2021 3:43 PM
To: Eilers, Blake <beilers@pa.gov>
Cc: Eric Smith <esmith@timoneyknox.com>; Fred Lachat <Fred.Lachat@readingpa.gov>; Miravich, John J. <JMiravich@foxrothschild.com>; Christopher M McMonagle <cmcmonagle@timoneyknox.com>
Subject: RE: [External] Documents Received - Ralph v. Reading, OOR Dkt. AP 2020-1271-75

Dear Attorney Eilers:

In its review of the documents in connection with this matter, the City was under the impression that Attorney Merolla had drafted the document in question. Following your email, we consulted with Attorney Merolla, and he states that he believes that Attorney Smith drafted the document. It appears that the attachment, as a standalone document is not attorney work product, as listed in the privilege log.

Thank you for following up, and have a good weekend.