

Memo

To: Ed

From: Julia

RE: Dulberg Legal Malpractice Case; Discovery Issues and Privilege

Dated: July 2, 20220

I am concerned that there may have been some attorney client privilege waived in the Dulberg matter. Can you review this memo and the supplemental discovery and get back to me?

Paul's Case against McGuires and Gagnon:

Paul sues McGuires (Carolyn and Bill) and David Gagnon for the chainsaw accident. Gagnon held the chainsaw. It was the McGuire's property.

Paul, at the advice of Mast, settled with the McGuires in late 2013. Paul accepted it officially in Dec. 2013 and the paperwork was done in 2014.

Mast and Popovich (attorney for Paul) withdrew in March 2015.

In Dec 2016, Paul goes to binding mediation with Gagnon. Gets an award of \$660K, contributory negligence found on Paul's part to reduce the award to \$561K (or something), Paul actually gets \$300K from Gagnon's insurance carrier.

In Dec 2016, Paul's attorney in the PI case against Gagnon tells him he may have a legal malpractice case and to go see someone. Paul sees Gooch who takes the case. Gooch's retainer is Dec. 2016.

Paul's Legal Malpractice Case:

Paul sues Mast/Popovich 11/28/2017. Over two years after Mast withdrew. Also, nearly 4 years after the settlement was accepted. (settlement accepted Dec. 2013, sues in Nov 2017).

Mast/Popovich raise the SOL issue in motion practice when Gooch was the attorney in the legal Mal case.

Legal Malpractice First Amended Complaint:

To address the SOL issue and when the legal malpractice was "discovered", Paul pleads in his AMENDED COMPLAINT (drafted by Gooch) as follows:

28. Following the execution of the mediation agreement and the final award DULBERG realized for the first time in December of 2016 that the information Mast and Popovich had given Dulberg was false and misleading, and that in fact, the dismissal of the McGuires was a serious and substantial mistake.

29. It was not until the mediation in December 2016, based on the expert's opinions that Dulberg retained for the mediation, that DULBERG became reasonably aware that

MAST and POPOVICH did not properly represent him by pressuring and coercing him to accept a settlement for \$5,000.00 on an “all or nothing” basis.

30. Dulberg was advised to seek an independent opinion from a legal malpractice attorney and received that opinion on or about December 16, 2016.

Legal Malpractice Second Amended Complaint:

Further motion practice and then we come in.

I have to keep the same language because of the “discovery” issue (and we are already stuck with it).

I allege:

56. Following the execution of the mediation agreement and the final mediation award, Dulberg realized for the first time in December of 2016 that the information Mast and Popovich had given Dulberg was false and misleading, and that in fact, the dismissal of the McGuires was a serious and substantial mistake.

57. It was not until the mediation in December 2016, based on the expert’s opinions that Dulberg retained for the mediation, that Dulberg became reasonably aware that Mast and Popovich did not properly represent him by pressuring and coercing him to accept a settlement for \$5,000.00 on an “all or nothing” basis.

Interrogatory in Legal Malpractice Case:

Opposing Counsel then asks an Interrogatory as asked and answered as follows:

26. Identify and describe the false and misleading information Mast and Popovich provided to you, and explain how you realized for the first time in December of 2016 that the information was false and misleading and the dismissal of the McGuires was a serious and substantial mistake, as alleged in paragraph 56 of your second amended complaint.

ORIGINAL ANSWER:

Mast told Dulberg that Illinois law does not permit a recovery against the McGuires in the circumstances of Dulberg’s case and that Dulberg would not receive any recovery from the McGuires. Mast told Dulberg that the judge would rule in favor of the McGuires on a motion for summary judgment.

Mast further told Dulberg that Dulberg would retain his claim against Gagnon and be able to seek and receive a full recovery from Gagnon.

SUPPLEMENT TO ORIGINAL ANSWER:

On December 8, 2016, the mediator issued a net award to Dulberg of \$561,000. Dulberg discovered he could not recover the entire mediation award from Gagnon. At that time Dulberg realized that Mast's advice to settle with the McGuires for \$5,000 was incorrect, because Mast had cited Dulberg being able to recover in full from Gagnon as his reasoning.

27. Identify and describe the expert opinions provided to you in December 2016 as alleged in paragraph 57 of your second amended complaint, including the identity of the expert, the opinions, and any other information provided by the expert which caused you to learn in the summer of 2016 and become reasonably aware that Mast and Popovich did not properly represent you.

ORIGINAL ANSWER:

Dr. Landford is a chain saw expert who was retained by Dulberg. See documents produced.

SUPPLEMENT TO ORIGINAL ANSWER:

Dr. Landford is a chainsaw expert who was retained by Dulberg during the mediation which occurred in 2016. Landford's expert opinion demonstrates that contrary to Mast's advice, the McGuires were liable for Gagnon's actions with the chainsaw. The expert report came out in February of 2016 and the mediation award was issued in December of 2016.

Deposition Testimony:

In his deposition, Paul testifies that Baudin told him to seek out counsel in December 2016 and he did. The counsel he sought was Gooch.

I object at the deposition stating that communication with Gooch is privileged. Opposing Counsel states that we did not object to privilege in the interrogatory and waived privileged I state that we waived privilege as to successor counsel in the underlying case NOT the legal malpractice case.

I make a standing objection as to privilege but allow Paul to testify to what he knows, which isn't much. Just that Baudin told him he might have a case and Gooch said he did—then they filed.

Issues:

1. Did we waive privilege by not objecting to interrogatory 26 & 27?
2. To the extent that Paul testified in furtherance of his answers to 26 & 27, do we need to object to maintain privilege? (See supplemental response attached).
3. Did Paul (or Gooch for Paul) waive privilege and to what extent, by stating the First

Amended Complaint “30. Dulberg was advised to seek an independent opinion from a legal malpractice attorney and received that opinion on or about December 16, 2016”?

Options:

1. Supplement Discovery and raise the objection. See attached interrogatories.
2. Raise the objection only as to the document production request that opposing counsel sent today.