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*Counsel for Gary C. Schultz,
Petitioner*

MICHAEL J. MCQUEARY,
Plaintiff,

v.

THE PENNSYLVANIA STATE UNIVERSITY,
Defendant.

COURT OF COMMON PLEAS
OF CENTRE COUNTY

NO. 2012-1804

CIVIL ACTION—LAW

**NON-PARTY GARY C. SCHULTZ'S
EMERGENCY PETITION TO INTERVENE**

Non-party Gary C. Schultz moves to intervene in this matter pursuant to

Pennsylvania Rule of Civil Procedure 2327(4) for the purpose of filing a motion for protective order (attached hereto as Exhibit A) to prevent disclosure of privileged communications. In support of this petition, Mr. Schultz submits the accompanying memorandum of law, which is incorporated by reference herein, and avers as follows:

1. On October 2, 2012, Plaintiff filed a complaint asserting whistleblower, defamation, and misrepresentation claims against defendant Pennsylvania State University ("PSU").

2. Mr. Schultz was not named as a defendant in this action.

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CENTRE COUNTY, PA
CLERK OF COURT

3. Nonetheless, several of the allegations in Plaintiff's complaint relate to Mr. Schultz's alleged conduct and statements that he allegedly made. *See* Compl. ¶¶ 15-19, 22-23, 26-27.

4. Deposition testimony sought in this case from third-party witness Cynthia Baldwin, who previously acted as Mr. Schultz's attorney in relation to matters that are the subject of Plaintiff's complaint, threatens to infringe on Mr. Schultz's attorney-client privilege.

5. Mr. Schultz is currently the subject of criminal proceedings involving allegations related to those made against PSU in this case. In the criminal case, Mr. Schultz filed motions to dismiss the charges against him and to preclude the testimony of Ms. Baldwin, on the grounds that Ms. Baldwin's testimony breached the attorney-client privilege and the charges against him were based on Ms. Baldwin's improper grand jury testimony.

6. On January 14, 2015, Judge Todd Hoover of the Court of Common Pleas of Dauphin County issued a Memorandum Opinion and Order stating that no individual attorney-client relationship existed between Mr. Schultz and Ms. Baldwin. *See Commonwealth v. Schultz*, No. CP-22-CR-3616-2013, CP-22-CR-5164-2011, slip op. at 27-28.

7. Orders rejecting claims of privilege are immediately appealable, pursuant to Pennsylvania Rule of Appellate Procedure 313. Mr. Schultz has filed an appeal of Judge Hoover's January 14, 2015 Order, challenging the conclusion that there was no attorney-client relationship between him and Ms. Baldwin. *Commonwealth v. Schultz*, 280 MDA 2015.

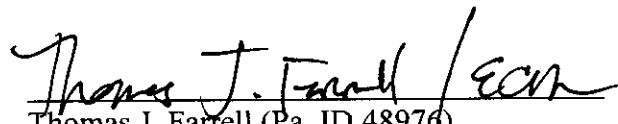
8. Plaintiff in this action now seeks to take the deposition of Ms. Baldwin. *See* June 26, 2015 Ltr. From N. Conrad to T. Farrell, attached to Schultz's Motion for Protective Order as Exhibit 1.

9. Because permitting this deposition would result in the disclosure of privileged communications, Mr. Schultz now seeks leave to intervene in this case to file the attached motion for a protective order pursuant to Rule 4012(a) of the Pennsylvania Rules of Civil Procedure limiting the scope of Ms. Baldwin's testimony and the documents produced.

WHEREFORE, the Court should enter an order in the form proposed allowing Mr. Schultz to intervene in this case and file the attached motion for protective order.

Respectfully submitted,

Dated: July 15, 2015

Handwritten signature of Thomas J. Farrell in black ink, with a stylized 'E' and 'C' at the end.

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Attorneys for Non-Party Gary C. Schultz

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MICHAEL J. MCQUEARY,

Plaintiff,

v.

THE PENNSYLVANIA STATE UNIVERSITY,

Defendant.

COURT OF COMMON PLEAS
OF CENTRE COUNTY

NO. 2012-1804

CIVIL ACTION—LAW

**GARY C. SCHULTZ'S
MEMORANDUM OF LAW IN SUPPORT OF
HIS EMERGENCY PETITION TO INTERVENE**

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2015 JUL 16 AM 10:52
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PROthonARY
CENTRE COUNTY, PA

Non-party Gary C. Schultz seeks to intervene in this case for the purpose of filing the attached motion for protective order (Ex. A) limiting the scope of the deposition of his former attorney Cynthia Baldwin and directing Ms. Baldwin not to answer certain questions on the grounds that her answers likely will disclose communications protected by the attorney-client privilege. Accordingly, this Court should grant Mr. Schultz leave to intervene in this case so that he may assert his attorney-client privilege.

I. MATTER BEFORE THE COURT

The matter before the Court is Mr. Schultz's Emergency Petition to Intervene.

II. QUESTION PRESENTED

Should this Court allow non-party Gary C. Schultz to intervene under Pa. R. Civ. P. 2327(4) for the purpose of filing a motion for protective order when Plaintiff is seeking deposition testimony from Mr. Schultz's former attorney relating to matters protected by the attorney-client privilege?

SUGGESTED ANSWER: Yes.

III. BACKGROUND

On October 2, 2012, Plaintiff filed a complaint asserting whistleblower, defamation, and misrepresentation claims against defendant Pennsylvania State University ("PSU"). Mr. Schultz was not named in the suit, but several of the allegations in the Complaint relate to actions allegedly taken or statements allegedly made by Mr. Schultz. *See* Compl. ¶¶ 15-19, 22-23, 26-27. Mr. Schultz is currently the subject of criminal proceedings involving allegations related to those made against PSU in this case.

Plaintiff has noticed the deposition of Cynthia Baldwin, who previously acted as Mr. Schultz's attorney in relation to matters that are the subject of Plaintiff's complaint. *See* June 26, 2015 Ltr. From N. Conrad to T. Farrell, attached to Schultz's Motion for Protective Order as Exhibit 1. Mr. Schultz now seeks to intervene in this matter for the limited purpose of preventing Ms. Baldwin from disclosing privileged communications.

IV. ARGUMENT

Pennsylvania Rule of Civil Procedure 2327(4) provides that at any time during the pendency of an action, a non-party shall be permitted to intervene if determination of the action may affect a legally enforceable interest of the non-party. *See also* 3 STANDARD PA. PRACTICE 2d § 14:364 (2009). Rule 2327(4) is satisfied where a party has "some right, whether legal or

equitable, which will be affected by the proceedings.” *Acorn Dev. Corp. v. Zoning Hr’g Bd. of Upper Merion Twp.*, 523 A.2d 436, 437-38 (Pa. Cmwlth. 1986) (quoting 8 Goodrich-Amram 2d §2327:7). Intervention is appropriate when a “cause of action of the applicant’s own . . . will be affected” by the action in which intervention is sought. 3 STANDARD PA. PRACTICE 2d § 14:363 (2009). *See also Marion Power Shovel Co. v. Fort Pitt Steel Casting Co.*, 426 A. 2d 696, 700 (Pa. Super. 1981).

Intervention is warranted in this case because the deposition of Cynthia Baldwin will very likely include testimony about matters protected by the attorney-client privilege. On June 26, 2015, counsel for PSU notified the undersigned that Plaintiff had noticed the deposition of Ms. Baldwin for July 21, 2015. *See* Ex. 2 to Schultz’s Motion for Protective Order. The allegations in Plaintiff’s complaint against PSU directly relate to the events underlying the criminal charges pending against Mr. Schultz. Compl. ¶¶ 60-63 (claiming that Mr. Schultz made intentional misrepresentations to “induce Plaintiff not to report the matter” and that those alleged misrepresentations caused Plaintiff to suffer).

Based on the averments in the complaint, Plaintiff likely intends to ask about and explore subjects that Mr. Schultz has repeatedly asserted are privileged, based on Ms. Baldwin’s role as his attorney in the investigation. In the criminal case, Mr. Schultz filed motions to dismiss the charges against him and to preclude the testimony of Ms. Baldwin, on the grounds that Ms. Baldwin’s testimony breached the attorney-client privilege and the charges against him were based on Ms. Baldwin’s improper grand jury testimony. On January 14, 2015, Judge Todd Hoover of the Court of Common Pleas of Dauphin County ruled that no individual attorney-client relationship existed between Mr. Schultz and Ms. Baldwin. *See Commonwealth v. Schultz*, No. CP-22-CR-3616-2013, CP-22-CR-5164-2011, slip op. at 27-28.

Mr. Schultz has filed an appeal from Judge Hoover's January 14, 2015 Order. *See Commonwealth v. Harris*, 32 A.3d 243, 251 (Pa. 2011) (holding that orders denying claims of privilege are immediately appealable as of right). The Superior Court has scheduled argument on this matter for August 11, 2015, and the lower court has stayed the criminal case pending the outcome of appeal. Accordingly, no final determination has been made regarding attorney-client privilege.

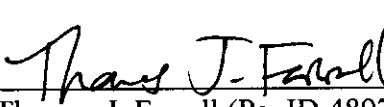
Because proceeding with Ms. Baldwin's deposition without the entry of a protective order would affect Mr. Schultz's interest in the attorney-client privilege, he should be permitted to intervene to file the attached motion for protective order.

V. CONCLUSION

For these reasons, Mr. Schultz respectfully requests that the Court grant his Emergency Petition to Intervene pursuant to Rules 2327 and 2328 and file the attached Motion for Protective Order.

Respectfully submitted,

Dated: July 15, 2015

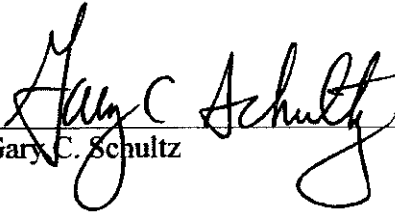
 
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Attorneys for Non-Party Gary C. Schultz

VERIFICATION

I, Gary C. Schultz, verify that the statements made in the foregoing Petition to Intervene are true and correct to the best of my knowledge, information and belief. I understand this verification is made subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.

Dated:



Gary C. Schultz

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*Counsel for Gary C. Schultz,
Petitioner*

MICHAEL J. MCQUEARY,

Plaintiff,

v.

THE PENNSYLVANIA STATE UNIVERSITY,

Defendant.

COURT OF COMMON PLEAS
OF CENTRE COUNTY

NO. 2012-1804

CIVIL ACTION—LAW

**CERTIFICATION OF COUNSEL PURSUANT TO
CENTRE COUNTY CIV. R. 208.2(d)**

I hereby certify that on July 13, I advised counsel for all parties of my intent to file a Petition to Intervene in this case to protect privileged communications made between Gary C. Schultz and Cynthia Baldwin and sought their consent to the filing of this petition. On July 13, counsel for plaintiff responded by letter that he did not believe intervention or a protective order was necessary. As of the time of filing, counsel for defendant has not responded.

CERTIFIED TO THE COURT BY:

Dated: July 15, 2015


Emily C. McNally (Pa. ID 206591)

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Attorney for Non-Party Graham B. Spanier

EXHIBIT A

MICHAEL J. MCQUEARY,

Plaintiff,

v.

THE PENNSYLVANIA STATE UNIVERSITY,

Defendant.

COURT OF COMMON PLEAS
OF CENTRE COUNTY

NO. 2012-1804

CIVIL ACTION—LAW

ORDER

AND NOW, this _____ day of _____, 2015, upon consideration of Intervenor Gary C. Schultz's Motion for Protective Order, and any response thereto, it is hereby **ORDERED** and **DECREED** that the motion is **GRANTED**. It is further **ORDERED** that non-party witness Cynthia A. Baldwin shall not disclose or testify about her communications with Mr. Schultz regarding, relating to, or in any way involving Mr. Schultz's grand jury testimony or his interview with the Pennsylvania Office of the Attorney General in advance of his grand jury testimony. It is further **ORDERED** that Mr. Schultz's present counsel is to be present at Ms. Baldwin's deposition in order to object and assert the attorney-client privilege on Mr. Schultz's behalf where appropriate and Ms. Baldwin is directed not to answer those questions and/or to cease testimony when Mr. Schultz's counsel lodges an objection on the basis of privilege.

BY THE COURT:

J.

*Counsel for Gary C. Schultz,
Petitioner*

CIVIL ACTION—LAW

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3. Plaintiff seeks to depose third-party witness Cynthia Baldwin, who previously acted as Mr. Schultz's attorney in relation to matters that are the subject of Plaintiff's complaint.

4. Deposition of Ms. Baldwin threatens to infringe on Mr. Schultz's attorney-client privilege.

5. Mr. Schultz is currently a defendant in criminal proceedings involving allegations related to those made against PSU in this case. In the criminal case, Mr. Schultz filed motions to dismiss the charges against him and to preclude the testimony of Ms. Baldwin, on the grounds that Ms. Baldwin's testimony breached the attorney-client privilege and that charges against him were based on Ms. Baldwin's improper grand jury testimony.

6. On January 14, 2015, Judge Todd Hoover of the Court of Common Pleas of Dauphin County issued a Memorandum Opinion and Order ruling that no personal attorney-client relationship existed between Mr. Schultz and Ms. Baldwin. *See Commonwealth v. Schultz*, No. CP-22-CR-3616-2013, CP-22-CR-5164-2011, slip op. at 27-28.

7. Because orders rejecting claims of privilege are immediately appealable collateral orders, Mr. Schultz has appealed Judge Hoover's Order to the Superior Court, challenging the conclusion that there was no attorney-client relationship between him and Ms. Baldwin. *Commonwealth v. Schultz*, 280 MDA 2015. The lower court has stayed the proceedings pending outcome of that appeal.

8. Plaintiff in this action has noticed the deposition of Ms. Baldwin for July 21, 2015. *See* June 26, 2015 Ltr. From N. Conrad to T. Farrell, attached hereto as Exhibit 1.

9. Based on the allegations relating to Mr. Schultz in the complaint, Plaintiff will likely ask Ms. Baldwin questions that will call for the disclosure of communications with Mr. Schultz that Mr. Schultz maintains are privileged.

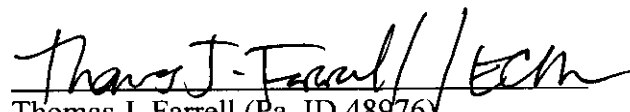
10. Discovery into privileged matters is impermissible. *See* Pa. R. Civ. P. 4003.1(a).

11. Permitting the discovery that Plaintiff seeks from Ms. Baldwin would result in the disclosure of privileged communications. Thus, Mr. Schultz requests a protective order pursuant to Rule 4012(a) of the Pennsylvania Rules of Civil Procedure directing Ms. Baldwin not to disclose or testify about her communications with Mr. Schultz regarding, relating to, or in any way involving his grand jury appearance or his interview with the Office of the Attorney General in advance of that appearance.

WHEREFORE, Mr. Schultz respectfully requests that the Court enter an order in the form proposed directing Ms. Baldwin not to disclose or testify about communications with Mr. Schultz regarding the Sandusky investigation, Mr. Schultz's grand jury testimony, or his interview with the Office of Attorney General in advance of his grand jury testimony.

Respectfully submitted,

Dated: July 15, 2015



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Counsel for Gary C. Schultz, Petitioner

MICHAEL J. MCQUEARY,
Plaintiff,

v.

THE PENNSYLVANIA STATE UNIVERSITY,
Defendant.

COURT OF COMMON PLEAS
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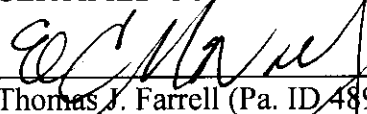
NO. 2012-1804

CIVIL ACTION—LAW

**ATTORNEY CERTIFICATION OF GOOD FAITH
PURSUANT TO CENTRE COUNTY CIV. R. *208.2(e)**

I hereby certify that on July 13, 2015, I contacted counsel for the parties and counsel for Cynthia Baldwin via e-mail to advise them of our intent to seek a protective order and to attend Ms. Baldwin's deposition to assert objections as necessary to protect Mr. Schultz's interest in preventing disclosure of privileged communications. On July 14, 2015, plaintiff's counsel responded by letter and said he saw no need for intervention or a protective order. As of the date of filing, counsel for defendant has not responded.

CERTIFIED TO THE COURT BY:



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Emily C. McNally (Pa. ID 206591)
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436 Seventh Avenue
Koppers Building, Suite 300
Pittsburgh, Pa. 15219

Attorneys for Non-Party Gary C. Schultz

Dated: July 15, 2015

*Counsel for Gary C. Schultz,
Petitioner*

COURT OF COMMON PLEAS
OF CENTRE COUNTY

NO. 2012-1804

CIVIL ACTION—LAW

Intervenor Gary C. Schultz hereby seeks a protective order pursuant to Rule 4012,
and in support thereof states as follows:

The matter before the Court is Mr. Schultz's Motion for a Protective Order.

Should this Court enter a protective order preventing the disclosure of communications by Mr. Schultz's former attorney Cynthia Baldwin which are covered by the attorney-client privilege?

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III. BACKGROUND

Plaintiff alleges a whistleblower, defamation, and misrepresentation claim against defendant PSU. Mr. Schultz is currently a defendant in criminal proceedings involving allegations related to those made against PSU in this case.

Plaintiff has noticed the deposition of Cynthia Baldwin, who previously acted as Mr. Schultz's attorney in relation to matters that are the subject of Plaintiff's complaint. *See* June 26, 2015 Ltr. From N. Conrad to T. Farrell, attached as Exhibit 1. Mr. Schultz now seeks a protective order to prevent Ms. Baldwin from disclosing privileged communications.

Counsel for Ms. Baldwin has indicated that "absent a Court Order granting a request for a protective order and directing Justice Baldwin not to answer questions concerning her communications with Mr. Schultz, we will not object to such questions or otherwise instruct Justice Baldwin not to answer questions." *See* March 20, 2015 Ltr. From C. DeMonaco to T. Farrell, attached as Exhibit 2.

IV. ARGUMENT

On good cause, discovery shall be prohibited or limited when "justice requires to protect a party or person from unreasonable annoyance, embarrassment, oppression, burden or expense" Pa. R. Civ. P. 4012(a). Good cause exists for entry of a protective order in this case because discovery into privileged matters is impermissible. *See* Pa. R. Civ. P. 4011(c), 4003.1(a).

On June 26, 2015, counsel for PSU notified the undersigned that Plaintiff had noticed the deposition of Ms. Baldwin for July 21, 2015. *See* Ex. 1. Plaintiff's allegations directly relate to the events underlying the criminal charges pending against Mr. Schultz. Compl. ¶¶ 60-63 (claiming that Mr. Schultz made intentional misrepresentations to "induce

Plaintiff not to report the matter” and that those alleged misrepresentations caused Plaintiff to suffer).

Based on the allegations in the complaint, Plaintiff’s counsel may elicit testimony regarding Ms. Baldwin’s discussions with Mr. Schultz related to the Sandusky investigation. At the very least, questions to Ms. Baldwin may address the reasons for PSU’s failure to renew Plaintiff’s employment contract and when and from whom she learned the information which formed the foundation for the employment decision. Ms. Baldwin’s knowledge and experience with the Sandusky investigation is likely informed by her conversations with Mr. Schultz, conversations which Mr. Schultz has consistently asserted are privileged.

In the criminal case, Mr. Schultz filed motions to dismiss the charges against him and to preclude the testimony of Ms. Baldwin, on the grounds that Ms. Baldwin’s testimony breached the attorney-client privilege and the charges against him were based on Ms. Baldwin’s improper grand jury testimony.

On January 14, 2015, Judge Todd Hoover of the Court of Common Pleas of Dauphin County issued a Memorandum Opinion and Order stating that no personal attorney-client relationship existed between Mr. Schultz and Ms. Baldwin. *See Commonwealth v. Schultz*, Nos. CP-22-CR-3616-2013, CP-22-CR-5164-2013, slip op. at 27-28. Mr. Schultz appealed this order to the Superior Court. The trial court has stayed the criminal case pending the outcome of that appeal.

“[O]nce [privileged] material has been disclosed, any privilege is effectively destroyed.” *Commonwealth v. Harris*, 32 A.3d 243, 247 (Pa. 2011). Thus, allowing disclosure of privileged material in this case is antithetical to the stay of the criminal case, which was put in place to protect against disclosure. Therefore, this Court should grant Mr. Schultz’s motion and


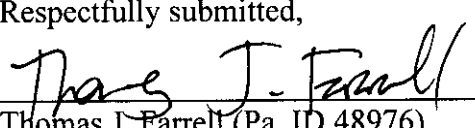
direct Ms. Baldwin not to disclose or testify about communications that Mr. Schultz maintains are within the scope of the attorney-client privilege.

V. CONCLUSION

For these reasons, Mr. Schultz respectfully requests that the Court enter a protective order pursuant to Rule 4012(a) barring Ms. Baldwin from disclosing or testifying about communications with Mr. Schultz regarding, relating to, or in any way involving Mr. Schultz's grand jury testimony or his interview with the Office of Attorney General before that testimony. Additionally, this Court should permit counsel for Mr. Schultz to be present during Ms. Baldwin's deposition to assert the privilege on his behalf.

Dated: July 15, 2015

Respectfully submitted,



Thomas J. Farrell (Pa. ID 48976)

Emily C. McNally (Pa. ID 206591)

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Attorneys for Non-Party Gary C. Schultz

EXHIBIT 1



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June 26, 2015

VIA EMAIL

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Caroline M. Roberto, Esquire
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Pittsburgh, PA 15219

**RE: Michael McQueary v. The Pennsylvania State University
Centre County Court of Common Pleas Docket No. 2012-1804
Deposition of Cynthia Baldwin**

Dear Counsel:

As you are aware, I represent the Pennsylvania State University in the above-captioned matter. This correspondence is to inform you that Plaintiff's counsel has noticed the deposition of Former General Counsel Cynthia Baldwin for July 21, 2015 at the offices of Fox Rothschild LLP, Pittsburgh, Pennsylvania. Former General Counsel Baldwin is personally represented by Robert Tintner. I understand that Attorney Tintner previously exchanged correspondence dated September 22, 2014 with Attorney Ainslie about this matter.

Very truly yours,

WHITE AND WILLIAMS LLP

Nancy Conrad

NC:dlw

cc: Elliot A. Strokoff, Esquire
William T. Fleming, Esquire
Robert S. Tintner, Esquire

EXHIBIT 2



Fox Rothschild LLP
ATTORNEYS AT LAW

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Charles A. De Monaco/Robert S. Tintner
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March 20, 2015

VIA E-MAIL

Thomas J. Farrell, Esquire
Farrell & Reisinger, LLC
200 Koppers Building
436 Seventh Avenue
Pittsburgh, PA 15219-1827

Re: John Joe D. v. Gerald Sandusky, et al.
C.C.P. Philadelphia County; November Term, 2013; No. 2298

Dear Mr. Farrell:

We are in receipt of your March 19, 2015 letter.

While we certainly respect your opinion concerning your client's assertion of a personal attorney-client privilege as between Justice Cynthia A. Baldwin and Gary Schultz, we disagree with that position. We also disagree with you that the issue has not been resolved. As you are fully aware, Judge Hoover found conclusively, as a matter of fact and law, in his January 14, 2015 Memorandum Opinion and Order that there was no separate or personal attorney-client relationship as between Mr. Schultz and Justice Baldwin. While we acknowledge that Mr. Schultz has the right to appeal that portion of Judge Hoover's decision dealing with the attorney-client privilege, simply because your client has appealed Judge Hoover's decision does not render that decision less conclusive on the issue.

As we have advised you previously, Justice Baldwin is under subpoena to testify and to provide documents responsive to the notice and subpoena that was sent to her in connection with the above-referenced matter. We have confirmed with counsel for the Pennsylvania State University (the "University") that there is no carve-out or exception to the University's waiver of the attorney-client privilege with respect to all communications that occurred between agents and employees of the University, including your client, and Justice Baldwin prior to November 5, 2011. As the University was Justice Baldwin's client and the University has waived the privilege with respect to those communications, we intend to comply fully with the subpoena.

A Pennsylvania Limited Liability Partnership

California	Colorado	Connecticut	Delaware	District of Columbia
Florida	Nevada	New Jersey	New York	Pennsylvania




Fox Rothschild LLP
ATTORNEYS AT LAW

Thomas J. Farrell, Esquire
March 20, 2015
Page 2

Indeed, absent a Court Order granting a request for a protective order and directing Justice Baldwin not to answer questions concerning her communications with Mr. Schultz, we will not object to such questions or otherwise instruct Justice Baldwin not to answer questions that are posed by counsel where the University has already waived the attorney-client privilege.

Please do not hesitate to contact us if you have any questions. Thank you.

Sincerely,



Charles A. De Monaco
Robert S. Tintner

CAD/RST/ebm

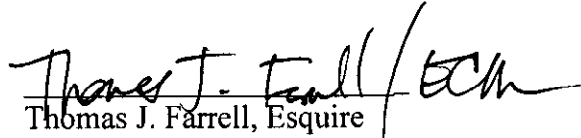
cc: Harold I. Goodman, Esquire (via e-mail)
Stephen E. Raynes, Esquire (via e-mail)
Alexander R. Bilus, Esquire (via e-mail)
Joseph F. O'Dea, Jr., Esquire (via e-mail)
Jana C. Volante, Esquire (via e-mail)

CERTIFICATE OF SERVICE

I, Thomas J. Farrell, hereby certify that on this 15th day of July, 2015, I caused the foregoing Gary C. Schultz's Emergency Petition to Intervene to be served upon counsel as follows by electronic mail and first-class mail:

Elliot A. Strokoff, Esq.
STROKOFF & COWDEN, PC
132 State Street
Harrisburg, PA 17101
Attorneys for Plaintiff

Nancy Conrad, Esq.
WHITE & WILLIAMS LLP
3701 Corporate Pkwy, Ste. 300
Center Valley, PA 18034
*Attorneys for Defendant
Pennsylvania State University*


Thomas J. Farrell, Esquire
Counsel for Non-Party Gary C. Schultz