

STATE OF MAINE  
YORK, SS.

SUPERIOR COURT  
CIVIL ACTION  
DOCKET NO. CV-11-257

JDN -YOR- 3/7/13

JOSEPH N. CABATIT-ALEGRE, )  
in his capacity as Personal )  
Representative of the Estate of )  
Thomas E. Cabatit-Alegre and )  
JOSEPH N. CABATIT-ALEGRE, )

Plaintiffs, )

v. )

ORDER

STEPHEN A. CANDERS, )  
and )  
MAINE LEGAL ASSOCIATES, P.A. )

Defendants. )

I. Background

Plaintiff has brought a suit for negligent misrepresentation and breach of fiduciary duty against Defendant for his representation of Ms. Julibel Cabatit-Alegre as personal representative of the estate of Mr. Thomas E. Cabatit. Plaintiff alleges Attorney Candere owed a duty to the Estate of Thomas Cabatit and to Plaintiff as a beneficiary. Plaintiff asserts that Defendant breached those duties. Plaintiff is requesting discovery in the form of documents pertaining to Defendant's representation in the underlying probate proceeding. Plaintiff has served Defendant with a Notice of Deposition. Defendant has moved the Court to Quash Plaintiff's Notice of Deposition on the basis of attorney-client privilege, work product privilege, or other applicable privileges.

II. Discussion

A. *Privilege*

Defendant Moves to Quash Notice of Deposition on the basis of attorney-client privilege, work product privilege, or other applicable privileges. The parties dispute whether Defendant's representation of Ms. Cabatit-Alegre extended to the Estate itself or the beneficiaries of the estate and therefore whether Defendant can claim privilege as a defense to requests for documents by Plaintiff. Attorney-client privilege may be asserted by an attorney on behalf of his client. M.R. Evid. 502(c). However, the attorney does not retain this privilege separate from the client. *Id.* Attorney-client privilege attaches at the formation of the attorney-client relationship. The Law Court defined this moment as arising when

- (1) a person seeks advice or assistance from an attorney, (2) the advice or assistance sought pertains to matters within the attorney's professional competence, and (3) the attorney expressly or impliedly agrees to give or actually gives the desired advice or assistance.

*Estate of Keatinge v. Biddle*, 2002 ME 21, ¶14, 789 A.2d 1271.

In the current case, the Engagement and Fee Agreement signed by Defendant and Ms. Cabatit-Alegre names Ms. Cabatit-Alegre as the client and defines the scope of the work as the probate of Mr. Thomas Cabatit's estate. The agreement specifies that the work will be performed for Ms. Cabatit-Alegre and that she will pay an hourly rate. Defendant was the attorney of Ms. Cabatit-Alegre in her role as personal representative of the estate of Thomas Cabatit only. Neither the agreement, nor any actions alleged, suggest Defendant held himself out as attorney for the Estate of Thomas Cabatit or the beneficiaries thereof. There was no formation of an attorney-client relationship between

Defendant and either the estate of Thomas Cabatit or the estate's beneficiaries. Therefore, the attorney-client privilege of Ms. Cabatit-Alegre remains intact.


*B. Motion to Quash*

Plaintiff has a right to discovery in the case and ordinarily the right to depose Defendant under M.R. Civ. P. 30. However it would appear that the deposition would be focused upon the communications deemed privileged. As discussed above, Defendant is not required to produce documents or information where Defendant does have reason to assert privilege.. Defendant's Motion to Quash is granted on the issue of privilege is granted.

III. Conclusion

Defendant's Motion to Quash Notice of Deposition is granted in part. However, if the Plaintiff intends to proceed on areas which are not privileged as defined above the Motion is denied in part.

DATED: 3/7/13

  
\_\_\_\_\_  
John O'Neil, Jr.  
Justice, Superior Court

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