

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2009-CP-10- 6415

ANDREW J. SAVAGE, III,)
)
Plaintiff,)

AMENDED SUMMONS

v)

SHERIFF AL CANNON,)
CHARLESTON COUNTY)
SHERIFF'S OFFICE,)
CHIEF GREGORY MULLEN,)
CITY OF CHARLESTON POLICE)
DEPARTMENT)
Defendant.)

FILED
2009 OCT 12 PM 3:12
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint on the subscriber at 15 Prioleau Street, Post Office Box 1002, Charleston, South Carolina, 29402, within thirty (30) days from the service hereof, exclusive of the date of such service; and if you fail to answer the Complaint within the time aforesaid, Plaintiff will apply to the Court for a judgment by default and the relief demanded in the Complaint.

SAVAGE & SAVAGE, P.A.
15 Prioleau Street
Post Office Box 1002
Charleston, SC 29402
Telephone (843) 720-7470

BY: *Lauren E. Williams*
LAUREN E. WILLIAMS
ATTORNEY FOR PLAINTIFF

Charleston, South Carolina
October 12, 2009

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2009-CP-10-6415

ANDREW J. SAVAGE, III,)
)
Plaintiff,)

**COMPLAINT
(CONVERSION)**

v)

SHERIFF AL CANNON,)
CHARLESTON COUNTY)
SHERIFF'S OFFICE,)
CHIEF GREGORY MULLEN,)
CITY OF CHARLESTON POLICE)
DEPARTMENT)

Defendant.)

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BY _____

COMES NOW, the Plaintiff, by and through their undersigned attorney who would show the Court as follows:

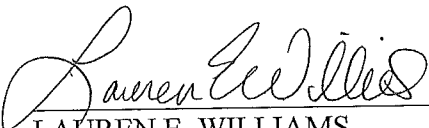
1. That the Plaintiff is an attorney residing and practicing law in the County of Charleston, State of South Carolina.
2. That the Defendants are a political subdivision subject to suit under the South Carolina Tort Claims Act.
3. That all actions complained of occurred in the County of Charleston and this Court has jurisdiction over the parties in the subject matter.
4. That the practicing attorney, has been retained by numerous clients to perform legal services.
5. That your Plaintiff in diligently representing his clients has utilized the services of various investigators, including but not limited to, Mr. William Capps.
6. That in performing legal investigations on behalf of your Plaintiff, William Capps, has performed investigation as directed by your Plaintiff, and in doing so has accumulated or produced various photographs, notes, reports and mental impressions.
7. That on October 10, 2009, members of the Charleston County Sheriff's Office seized numerous

items gathered or prepared by Investigator Capps at the direction of counsel.

8. That, upon information and belief, the seized items have been turned over to the City of Charleston Police Department.
9. That these items constitute the work product of your Plaintiff and Plaintiff has been denied access from use of these items.
10. That the Plaintiff has an interest in the items seized by and in the possession of the Defendants.
11. That the Defendants have converted this property to their own use without permission of the Plaintiff.
12. That this conversion by the Defendants was without the Plaintiff's permission wherefore Plaintiff hereby seeks and Orders this Court demanding that the items be immediately returned and damages as this Court may deem just and proper.

Respectfully submitted,

SAVAGE & SAVAGE, P.A.
15 Prioleau Street
Post Office Box 1002
Charleston, SC 29402
Telephone (843) 720-7470

BY: 
LAUREN E. WILLIAMS
ATTORNEY FOR PLAINTIFF

Charleston, South Carolina
October 12, 2009

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2009-CP-10- 6415

ANDREW J. SAVAGE, III,)
)
Plaintiff,)

**EX PARTE MOTION FOR
TEMPORARY RESTRAINING
ORDER**

v)

SHERIFF AL CANNON,)
CHARLESTON COUNTY)
SHERIFF'S OFFICE,)
CHIEF GREGORY MULLEN,)
CITY OF CHARLESTON POLICE)
DEPARTMENT)
)
Defendant.)

FILED
2009 OCT 12 PM 3:14
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

NOW COMES the Plaintiff, Andrew J. Savage, III, respectfully submitting before this Honorable Court this Ex Parte Motion for Temporary Restraining Order until such time as a hearing for a Preliminary Injunction can be heard. For the meritorious reasons set forth below and pursuant to South Carolina Rule of Civil Procedure, Rule 65, the Plaintiff requests that this Court grant this Motion and temporarily restrain the Charleston County Sheriff's Office, the City of Charleston Police Department or any other associated law enforcement agency from reviewing, utilizing or disseminated the items at issue and listed below.

Facts

On October 10, 2009, members of the Charleston County Sheriff's Office executed a Search Warrant on a Green 1994 Jeep Grand Cherokee SC tag FGW946 VIN 1J4GZ784Y5RC331282,

associated with OCA Number 2009-019410.¹ This vehicle belongs to William Capps, a private investigator retained by the Plaintiff's law firm to conduct investigation into the June 12, 2009 disappearance of Katherine Waring, a local woman.²

In conjunction with his retention by the Plaintiff, Mr. Capps prepared numerous documents, photographs, notes and electronic data at the direction of the Plaintiff. All information prepared was in anticipation of litigation and as an agent of the Plaintiff.

During the execution of the Search Warrant, the Charleston County Sheriff's Office seized the following items from Mr. Capps's vehicle:

- 1) One Silver Cannon power slot with 2 GB SD card serial #1228830531;
- 2) One Silver Kodak easy share camera with mini SD adapter card serial #KCKDT54227866;
- 3) One note book tablet;
- 4) Three satalite [sic] photos from Google;
- 5) White notebook from black case in hatch of vehicle in black case, and
- 6) Two pieces of white tablet paper in hatch of vehicle in black case

(See attached Exhibit 1). The items seized each contain sensitive work product information related to the Waring case as well as other cases. Item Number 1 contains photographs prepared by Robert L. Minter, another member of the investigative team who was likewise retained by the Plaintiff.

Upon information and belief, the items seized have been turned over the City of Charleston

¹ Upon information and belief, the Charleston County Sheriff's Office is the law enforcement agency who seized and searched the items at issue herein, although the City of Charleston Police Department was previously involved in the investigation into Ms. Waring's disappearance.

² The private investigation performed in this matter was conducted with the knowledge of the City of Charleston Police Department (CPD), who ostensibly performed their own investigation into Ms. Waring's disappearance. CPD was the law enforcement agency originally assigned to the missing persons investigation, as Ms. Waring's last-known whereabouts were within CPD's jurisdiction.

Police Department. All items seized represent confidential, privileged work product information and their review, use and dissemination must be stopped as it is a fundamental intrusion into the attorney-client privilege and relationship.

Law and Argument

The work-product doctrine and privilege, first recognized by the United States Supreme Court in *Hickman v. Taylor*, 329 U.S. 495, 509-11, 67 S.Ct. 385, 91 L.Ed. 451 (1947), “shelters the mental processes of the attorney, providing a privileged area within which he can analyze and prepare his client's case.” The Court held that, “In performing his various duties . . . it is essential that a lawyer work with a certain degree of privacy, free from unnecessary intrusion by opposing parties and their counsel.” *Hickman*, 329 U.S. at 510, 67 S.Ct. 385 See also *United States v. Nobles*, 422 U.S. 225, 238, 95 S.Ct. 2160, 45 L.Ed.2d 141 (1975).

In *Hickman*, the Court carefully defined and highlighted the importance of the work product privilege, stating,

Historically, a lawyer is an officer of the court and is bound to work for the advancement of justice while faithfully protecting the rightful interests of his clients. In performing his various duties, however, **it is essential that a lawyer work with a certain degree of privacy, free from unnecessary intrusion.** . . . Proper preparation of a client's case demands that he assemble information, sift what he considers to be the relevant from the irrelevant facts, prepare his legal theories and plan his strategy without undue and needless interference. That is the historical and the necessary way in which lawyers act within the framework of our system of jurisprudence to promote justice and to protect their clients' interests. This work is reflected, of course, in interviews, statements, memoranda, correspondence, briefs, mental impressions, personal beliefs, and countless other tangible and intangible ways—aptly though roughly termed by the Circuit Court of Appeals in this case as the ‘Work product of the lawyer.’

Hickman, 329 U.S. at 510-511, 67 S.Ct. at 400 (emphasis added).

The work product privilege protection likewise applies to materials prepared by an attorney's agent, if that agent acts at the attorney's direction in creating the documents. See *Nobles*, 422 U.S. at 238, 95 S.Ct. at 2165; *State v. Jones*, 383 S.C. 535 (S.C. 2009).

The protection of work-product is not absolute and may be waived. *Nobles*, 422 U.S. at 239, 95 S.Ct. 2160. Waiver of the privilege is a right belonging to the client. See *State v. Hitopoulos*, 309 S.E.2d 747 (S.C. 1983) Waiver of the protection must be an unequivocal and voluntary disclosure, and when material is seized pursuant to a search warrant, production is not voluntary. See *United States v. de la Jara*, 973 F.2d 746, 749 (9th Cir.1992). See also *Floyd v. Floyd*, 615 S.E.2d 465 (S.C. App. 2005). Courts examining the work product doctrine have routinely held that not even the most expansive or liberal of investigative or discovery theories “can justify unwarranted inquiries into the files and the mental impressions of an attorney”. *Hickman*, 329 U.S. at 510, 67 S.Ct. at 400.

In the instant matter, the items seized from Mr Capps’s vehicle are indisputably work product. Each seized document, photograph, handwritten or typed note, email, graph, log, chart or piece of electronic data was created for the sole purpose of investigating a matter at the behest of the Plaintiff.

The harm that will result from the review, use or dissemination of the seized items herein is immediate and irreparable: that the confidential communications and investigation of the Plaintiff will be revealed. Should the defendant be permitted to review, use or disseminate the seized information, the Plaintiff’s ability to adequately assist his clients and seek justice without fear of unprecedented police intrusion into his thoughts, strategies, methods and theories will be utterly destroyed.

Failure to prevent review, use and dissemination of the seized items would create the very evil that the Supreme Court sought to avoid in acknowledging the work product privilege:

An attorney's thoughts, heretofore inviolate, would not be his own. Inefficiency, unfairness and sharp practices would inevitably develop in the giving of legal advice and in the preparation of cases for trial. The effect on the legal profession would be demoralizing. And the interests of the clients and the cause of justice would be poorly served.

Hickman 329 U.S. at 511, 67 S.Ct. at 401. Moreover, the Plaintiff asserts that there is no adequate remedy at law for this intrusion, as the typical damages will not right this wrong. As a result, the Plaintiff respectfully requests that this Honorable Court restrain the Charleston County Sheriff's Office and the City of Charleston Police Department from reviewing, utilizing, or disseminating the items seized and listed in Exhibit 2.

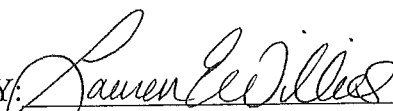
Conclusion

WHEREFORE, the Plaintiff, Andrew J. Savage, III, respectfully requests that this Honorable Court issue a Temporary Restraining Order against the Charleston County Sheriff's Office, the City of Charleston Police Department or any associated law enforcement agency, restraining them from the review, use or dissemination of the items seized pursuant to the Search Warrant issued for the Green 1994 Jeep Grand Cherokee SC tag FGW946 VIN 1J4GZ784Y5RC331282, associated with OCA Number 2009-019410. The items seized represent privileged work product information, and the Plaintiff asserts that his cause of action has a likelihood of success on the merits. Specifically, the Plaintiff asserts that immediate and irreparable harm will result before notice can be served on

the adverse party, and that there is no adequate remedy at law, pursuant to South Carolina Rule of Civil Procedure, Rule 65.

Respectfully submitted,

SAVAGE & SAVAGE, P.A.
15 Prioleau Street
Post Office Box 1002
Charleston, South Carolina 29402
Telephone: (843) 720-7470

BY: 
LAUREN E. WILLIAMS
SC Bar Number: 75158
ATTORNEY FOR PLAINTIFF

Charleston, South Carolina

October 12, 2009.