

COURT OF CHANCERY
OF THE
STATE OF DELAWARE

JOHN W. NOBLE
VICE CHANCELLOR

417 SOUTH STATE STREET
DOVER, DELAWARE 19901
TELEPHONE: (302) 739-4397
FACSIMILE: (302) 739-6179

September 22, 2006

David N. Rutt, Esquire
Moore & Rutt, P.A.
122 West Market Street
P.O. Box 554
Georgetown, DE 19947-0554

Beth B. Miller, Esquire
Schmittinger and Rodriguez, P.A.
414 South State Street
P.O. Box 497
Dover, DE 19903-0497

Re: Stone v. Stant
C.A. No. 890-K
Date Submitted: September 22, 2006

Dear Counsel:

This is an action among siblings over the handling of a parent's estate.

The Plaintiffs served a subpoena *duces tecum* upon an attorney who had advised the parent. The Defendants asserted the attorney-client privilege but, apparently, without first considering the applicability of Delaware Rule of Evidence 502(d)(2), and moved to quash the subpoena. Following receipt of the Plaintiffs' opposition to the motion to quash which cited Rule 502(d)(2), the Defendants changed the focus of their motion to the *possibility* that the documents held by the attorney may include documents that are not related to the issues in this

David N. Rutt, Esquire
Beth B. Miller, Esquire
September 22, 2006
Page 2

action or are subject to some privilege. The Defendants, however, evidently have not yet bothered to review the file to ascertain its contents, even though the subpoena was served approximately one month ago. The failure to undertake a timely and orderly review of documents in the attorney's file hardly presents a compelling basis for quashing the subpoena.

On the other hand, the Plaintiffs' right to inspect the documents in the parent's attorney's file may be limited and, thus, the Defendants should first be afforded the opportunity to review the file before production is required.

Accordingly, the motion to quash, as filed, is denied, and the Defendants shall either produce the requested documents or identify the grounds for withholding the documents and, to the extent that privilege is asserted, provide a log of the privileged documents in appropriate form no later than October 10, 2006.

IT IS SO ORDERED.

Very truly yours,

/s/ John W. Noble

JWN/cap
cc: Register in Chancery-K