

Summers, Sean E.

From: Jon Katz [jon@markskatz.com]
Sent: Tuesday, April 10, 2007 2:48 AM
To: Summers, Sean E.
Cc: 'Aleida Vividor'; jon@markskatz.com
Subject: FW: RE: Westboro's RPD answers

Hi, Sean- Please see my reply below in CAPS.

From: jon@markskatz.com [mailto:jon@markskatz.com]
Sent: Tuesday, April 10, 2007 2:53 AM
To: jon@markskatz.com
Subject: Fwd: RE: Westboro's RPD answers

AFTER I SEVERAL TIMES ASKED YOU TO CALL ME ABOUT ANY TIME-SENSITIVE E-MAILS, YOUR ATTACHED E-MAIL FROM APRIL 9 IN THE MORNING WAS SENT TO ME WITHOUT SUCH A CALL.

Jon,

Regarding the documents which you state are being produced under separate cover, please confirm that they will be in my office so that I can adequately prepare for our upcoming depositions. In that regard, I need them by this Wednesday, April 11, 2007.

THE EMAILS BETWEEN ME AND DR. BLUMBERG, AND THE E-MAILS FROM JOURNALISTS (TWO JOURNALISTS) TO ME ARE BEING FEDEX'D TO ARRIVE TO YOU ON APRIL 11. THE DOCUMENTS IN WESTBORO'S POSSESSION THAT ARE ADDRESSED IN THE RPD ANSWERS AS COMING UNDER SEPARATE COVER ARE BEING FORWARDED BY MY CLIENTS, WITH MY EXPECTATION TO RECEIVE THEM ON APRIL 11, IN ORDER FOR ME TO HAVE THEM OVERNIGHTED AND IN YOUR HANDS THE MORNING OF APRIL 12.

Just so we are on the same page, this request includes any emails, in addition to any other documents requested, to anyone other than your clients.

I DO UNDERSTAND THAT E-MAILS ARE INCLUDED IN THE DEFINITION OF DOCUMENTS IN PLAINTIFF'S RPD REQUESTS. YOUR FORGOING SENTENCE IS NOT AN RPD REQUEST; DEFENDANT WESTBORO'S RPD RESPONSES ARE DESIGNED TO RESPOND TO YOUR RPD REQUESTS.

You have repeatedly stated that Shirley and Rebekah Phelps are not your clients. Therefore, any emails to or from them would be discoverable.

THE RETAINER AGREEMENT BETWEEN ME AND WBC AND FRED PHELPS, SR., DESIGNATES MARGIE PHELPS AND SHIRLEY PHELPS AS THE PEOPLE WHO WILL BE MY PRIMARY CONTACT PEOPLE ON BEHALF OF SAID DEFENDANTS WBC AND FRED PHELPS. MY COMMUNICATIONS WITH SHIRLEY (AND MARGIE) HAVE BEEN LIMITED TO COMMUNICATING WITH HER IN THE FOREGOING ROLE (INCLUDING, BUT NOT AT ALL LIMITED TO, HER INVOLVEMENT WITH GETTING DISCOVERY ANSWERED, DEALING WITH ME FOR GIVING AUTHORITY FOR REACHING A SETTLEMENT TO DISMISS THE INTERLOCUTORY APPEAL, OBTAINING EXPERTS, ARRANGING MY TRAVEL ARRANGEMENTS TO FRED PHELPS'S DEPOSITION, AND ASSISTING ME WITH SCHEDULING FRED PHELPS'S AND TIM PHELPS'S AVAILABLE DEPOSITION TIMES), EXCEPT FOR A SMALL NUMBER OF COMMUNICATIONS ABOUT WHETHER I WILL BE REPRESENTING HER AS A DEFENDANT, AND THE TERMS AND CONDITIONS FOR DOING SO.

I HAVE HAD MANY WRITTEN COMMUNICATIONS (MAINLY BY E-MAIL) WITH SHIRLEY PHELPS, INCLUDING MESSAGES BY ME THAT I HAVE DIRECTED TO BOTH MARGIE PHELPS AND SHIRLEY

4/13/2007

PHELPS, AND MESSAGES FROM SHIRLEY PHELPS THAT SHE HAS COPIED TO MARGIE PHELPS. NUMEROUS OF THESE COMMUNICATIONS HAVE BEEN PART OF ONGOING COMMUNICATIONS AMONG THE THREE OF US. CONSEQUENTLY, WHILE I HAVE RETAINED SUCH MESSAGES, THEY ARE NOT BEING PROVIDED, BECAUSE THEY ARE PROTECTED BY THE ATTORNEY-CLIENT PRIVILEGE AND ATTORNEY WORK PRODUCT DOCTRINE.

I HAVE HAD NO WRITTEN CONTACT WITH REBEKAH PHELPS. HOWEVER, I HAVE BEEN CONTACTED BY MARGIE PHELPS AND SHIRLEY PHELPS, AND HAVE REPLIED TO BOTH OF THEM, ABOUT REBEKAH'S CONSIDERING HIRING ME TO DEFEND HER IN THIS LITIGATION. CONSEQUENTLY, THERE CURRENTLY ARE NO CURRENT DOCUMENTS BETWEEN ME AND REBEKAH PHELPS. HOWEVER, IF THERE ARE ANY FUTURE DOCUMENTS (WHICH WORD INCLUDES E-MAILS) BETWEEN ME AND REBEKAH ABOUT MY POSSIBLY REPRESENTING HER, THOSE WILL BE PROTECTED BY THE ATTORNEY-CLIENT PRIVILEGE.

ASIDE FROM TIM PHELPS, FRED PHELPS SR, MARGIE PHELPS, AND SHIRLEY PHELPS, I BELIEVE THAT ELIZABETH PHELPS (MARGIE AND SHIRLEY PHELPS'S SISTER) IS THE ONLY OTHER MEMBER OF WBC OR RELATIVE OF FRED PHELPS OR EMPLOYEE OF PHELPS CHARTERED WITH WHOM I HAVE HAD WRITTEN CONTACT. ELIZABETH PHELPS'S WRITTEN CONTACTS WITH ME WERE LIMITED TO HER E-MAILING ME DOCUMENTS AT TIM PHELPS' REQUEST TO ASSIST IN MY TAKING OF PLAINTIFF'S DEPOSITION, AND TO DEFEND TIM PHELPS'S DEPOSITION. CONSEQUENTLY, THOSE DOCUMENTS ARE NOT BEING PRODUCED, BECAUSE THEY ARE PROTECTED BY THE ATTORNEY-CLIENT PRIVILEGE AND ATTORNEY WORK PRODUCT DOCTRINE.

AS TO ANY OTHER DOCUMENTS IN THE CONTROL OR POSSESSION OF WESTBORO, WESTBORO'S AGENTS, OR MYSELF THAT ARE RESPONSIVE TO YOUR RPD REQUESTS, YOU ALREADY HAVE THE LETTER FROM MARGIE AND REBEKAH THAT YOU USED AS THE BASIS TO SEND THE SERVICE WAIVER LETTER TO THEM RATHER THAN DIRECTLY TO FRED PHELPS AND WBC'S REGISTERED AGENT. ALSO, THE RPD RESPONSE SAYS THAT YOU WILL BE SENT THE TWO PIECES OF CORRESPONDENCE THAT WERE SENT TO THE POLICE CONCERNING PLANS FOR PICKETING ON THE DAY OF MATTHEW SNYDER'S FUNERAL. I HAVE CHECKED WITH BOTH MARGIE AND SHIRLEY, WHO INFORM ME THAT NO OTHER WRITTEN COMMUNICATIONS HAVE BEEN EXCHANGED AMONG WBC, ITS AGENTS, WBC MEMBERS, FRED PHELPS, SR., TIM PHELPS, OR PHELPS CHARTERED EMPLOYEES THAT ARE RESPONSIVE TO YOUR RPD REQUESTS.

You have repeatedly stated that you can only speak for Fred Phelps and WBC (i.e., Tim Phelps). Any other documents (to include emails) would be discoverable. THE FOREGOING PORTION OF THIS E-MAIL RESPONDS TO YOUR FOREGOING ASSERTION.

In addition, Phelps Chartered has claimed that they do not represent the defendants. Therefore, any requested documents to, from or by them would be discoverable. There should be no attorney-client objections until you were retained. THE FOREGOING PORTION OF THIS E-MAIL RESPONDS TO YOUR FOREGOING ASSERTION. MOREOVER, I UNDERSTAND FROM MARGIE AND SHIRLEY PHELPS THAT NO EMPLOYEE OF PHELPS CHARTERED HAS FILED ANY ETHICS COMPLAINTS AGAINST ANY ATTORNEYS REPRESENTING PLAINTIFF, AND THAT THEY DO NOT POSSESS SUCH DOCUMENTS.

Please bring the signs to Mr. Fred Phelps deposition for inspection. I UNDERSTAND FROM SHIRLEY PHELPS THAT THE SIGNS BROUGHT TO MATTHEW SNYDER'S FUNERAL WILL BE PRODUCED FOR INSPECTION AT FRED PHELPS'S DEPOSITION.

In the event that this is not acceptable, please let me know so we can address this matter with the court. Any suggestion that there is a First Amendment concern because the signs cannot be used for one day is not based upon any law or case that I am aware of. I cannot imagine that the court will be happy to hear from us over this objection. I UNDERSTAND FROM SHIRLEY PHELPS THAT THE SIGNS BROUGHT TO MATTHEW SNYDER'S FUNERAL WILL BE PRODUCED FOR INSPECTION AT FRED PHELPS'S DEPOSITION.

Additionally, we intend to use the signs as exhibits at trial so please make sure the signs are

available at that time as well. I UNDERSTAND THAT THE SIGNS BROUGHT TO MATTHEW SNYDER'S FUNERAL WILL BE PRODUCED AT ANY TRIAL. IN THE INTERIM, THEY WILL BE AT THE DISPOSAL OF WBC MEMBERS FOR PICKETING THAT PRECEDES THE TRIAL DATE.

I do not need your comments, emails or letters to reporters or journalists. However, if you or your clients have any documents from anyone other than you, this request covers those documents. WITH THE PACKET OF E-MAILS BETWEEN ME AND DR. BLUMBERG WILL ALSO BE E-MAILS TO ME FROM A REPORTER FROM THE YORK DAILY RECORD AND THE BALTIMORE EXAMINER. I DO NOT BELIEVE I HAVE RECEIVED WRITTEN COMMUNICATIONS FROM ANY OTHER REPORTERS. FROM CHECKING WITH MARGIE PHELPS, MY UNDERSTANDING IS THAT NO COMMUNICATIONS RESPONSIVE TO THE RPD REQUESTS ARE IN THE POSSESSION OR CONTROL OF WESTBORO OR ITS MEMBERS BEYOND WHAT IS ALREADY ADDRESSED IN THIS E-MAIL AND IN THE RPD ANSWERS.

Your response to number 13 below is not clear to me. Please provide whatever documents you are referring to. THE RPD REQUEST AND ANSWER ARE AS FOLLOWS:

13. All documents concerning or related to efforts by Defendants to establish the factual accuracy of any statements made on the website concerning or related to Plaintiff Albert Snyder, Lance Corporal Matthew Snyder, or any past or present member of the Snyder family.

Response: Objection to the extent this request seeks information protected from disclosure by the attorney-client privilege and the attorney work product doctrine. Without waiving said objection, Defendant states that for the godhatesfags.com website, for accuracy Defendant included reliance on scripture. Defendant also relied on news items that contained facts that were available to some Westboro members prior to the March 10, 2006 picket, and prior to the epic related to that picket that was posted on godhatesfags.com. Upon Plaintiff's request, said news items will be provided for inspection and copying.

YOU ALREADY HAVE BEEN PROVIDED BY ME A COPY OF ONE OF PLAINTIFF'S PLEADINGS IN HIS DIVORCE COURT CASE. I AM INFORMED THAT MANY PARTS OF SCRIPTURE HAVE BEEN RELIED UPON TO ESTABLISH THE FACTUAL ACCURACY OF STATEMENTS ON THE GODHATESFAGS.COM WEBSITE; CONSEQUENTLY, PLEASE BE PRECISE ABOUT WHAT INFORMATION YOU SEEK FROM SCRIPTURE (E.G., I CAN ASK MY CLIENT TO PROVIDE CHAPTER AND VERSE CITES TO THE BIBLE, IF YOU SO REQUEST). MARGIE PHELPS IS IN THE PROCESS OF GATHERING NEWS ITEMS THAT ARE REFERENCED IN WESTBORO'S RESPONSE NO. 13; I WILL TELL YOU WHETHER THEY WILL BE IN YOUR HANDS BEFORE THE KANSAS CITY DEPOSITION. THE "EPIC" REFERENCED IN DEFENDANT'S RESPONSE NO. 13 REFERS TO THE REPORT ON GODHATESFAGS.COM GIVING AN UPDATE FROM THE PICKETING ON MATTHEW SNYDER'S FUNERAL DATE. .

After I receive your documents, I'll respond further if applicable.

You may have already mailed your documents and I apologize in advance if that has occurred. Considering our short timeline before depositions, I thought that it was important to communicate regarding your response. Please advise immediately if you have any concerns regarding this communication. PLEASE CALL ME WHENEVER YOU SEND ANYMORE E-MAILS THAT YOU CONSIDER TO BE TIME SENSITIVE. I DO NOT USE A BLACKBERRY, OFTEN AM AWAY FROM THE COMPUTER FOR LONG STRETCHES OF TIME, AND MY SECRETARIES ORDINARILY DO NOT CHECK MY E-MAIL WITHOUT MY ASKING THEM TO LOOK FOR A PARTICULAR E-MAIL MESSAGE.

Sean

Sean E. Summers (ssummers@barley.com)
Esquire

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