UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

HUSTLER CINCINNATI, INC., *et al.*, Plaintiffs,	Case No. 1:11-cv-718
v.	Bertelsman, J. Litkovitz, M.J.
PAUL J. CAMBRIA, JR., ESQ., *et al.*, Defendants.	**ORDER**

Plaintiffs Hustler Cincinnati, Inc. and Jimmy R. Flynt bring this action against Paul J. Cambria, Jr., Esq., Jonathan Brown, Esq., Jeffrey Reina, Esq., Michael Deal, Esq., Joseph Gumkowski, Esq., and Lipsitz, Green, Scime, Cambria LLP ("defendant attorneys") alleging, *inter alia*, claims of legal malpractice. The defendant attorneys were legal counsel to companies owned by Larry Flynt ("the Larry Flynt Companies") and Jimmy Flynt was an employee of the Larry Flynt Companies during the relevant time period.

This matter is before the Court on the issue of whether plaintiffs are entitled to discover certain email communications in the possession of defendant attorneys. Specifically, plaintiffs seek email correspondence between: (1) defendant attorneys and plaintiff Jimmy Flynt, and (2) defendant attorneys and attorney Lou Sirkin (who defendants allege was Jimmy Flynt's attorney during the relevant time frame), The parties have now submitted briefs on their respective positions as to whether the email communications are relevant and/or protected by the attorney-client privilege or Ohio Rules of Professional Conduct. (Docs. 63, 64, 65, 68). For the reasons that follow, plaintiffs' request for the subject emails is denied.

I. Background of this Lawsuit

For purposes of the instant discovery dispute, plaintiffs' legal malpractice claims arise from the following transactions:

1. A June 1, 2001 licensing agreement entered into between L.F.P., Inc. and Hustler Hollywood Ohio, Inc. (a store in Monroe, Ohio);

2. An unsigned licensing agreement between L.F.P., Inc. and plaintiff Hustler Cincinnati, Inc.;

3. An agreement of purchase and sale of 411 Elm (a store in Cincinnati, Ohio) by plaintiff Hustler Cincinnati, Inc. to Elm 411, LLC;

4. The execution of a lease between Elm 411, LLC and plaintiff Hustler Cincinnati, Inc.;

5. A December 2004 transfer of stock in Hustler Hollywood Ohio, Inc. from Jimmy Flynt to Hustler Entertainment, Inc.; and

6. Jimmy Flynt's termination from Flynt Management Group, LLC.

II. Background of Discovery Dispute

This discovery dispute has been the subject of numerous conferences with the Court, including an *in camera* review of most of the subject emails. Due to the large number of emails sought by plaintiffs, the parties and the Court agreed to a multi-step process for determining whether the requested documents are protected by the attorney-client privilege and the scope of any resultant privilege or redaction log. As an initial step, in lieu of a privilege log, defendants were ordered to submit redacted versions of the email communications to plaintiffs' counsel, and both redacted and unredacted versions to the Court. Defendants then produced over 5,000 pages of communications between plaintiffs, attorney Sirkin, and the defendant attorneys in response to plaintiffs' request for communications. Although the substance of the emails was redacted, certain portions of the emails were left unredacted. The emails produced to plaintiffs disclosed: the author of the email, the recipient(s) and person(s) copied on the email, the subject matter or a description of the substance of the email, the existence of attachments, and the date of the email.

Some of the documents, for example attachments to emails, were completely redacted. Following this production, plaintiffs were ordered to identify the redacted documents they believed were discoverable and the legal issues and claims entitling them to unredacted versions of these documents.

After plaintiffs reviewed the redacted portions of defendants' production, counsel for plaintiffs represented they were unable to identify the documents that might contain discoverable facts without further clarification of the emails from defendants. Plaintiffs were then ordered to identify by Bates number the specific documents needing clarification. In response, plaintiffs identified the vast majority of the redacted documents produced as needing clarification. Plaintiffs also raised concerns that the email communications could contain information relevant to this lawsuit even where the subject line appeared to be on an unrelated matter. After discussions among the parties and with the Court, plaintiffs were able to eliminate matters that were clearly unrelated to this litigation and to reduce the number of items needing clarification from 29 pages to 16 pages of approximately 30 items per page. At this point, the undersigned met with counsel for the parties in chambers on two occasions to review each item and resolve any disputes over the necessary clarification of the communications. The parties were then ordered to submit legal briefs on whether the emails sought by plaintiffs are relevant, and whether the emails are protected from disclosure by the attorney-client privilege or as confidential under the Ohio Rules of Professional Conduct.

III. The Categories of Emails Produced

The emails and attachments produced fall into three categories: (1) unredacted emails and attachments; (2) redacted emails concerning other lawsuits, *i.e.*, the "2257/Denver," *Stagliano*, and *Krial* cases; and (3) redacted emails unrelated to these three cases.

The unredacted emails are not in dispute.

Plaintiffs no longer seek the redacted emails and information involving the "2257/Denver," *Stagliano*, and *Krial* cases, in which attorney Lou Sirkin's name appears as an email participant.

The remaining redacted emails and attachments that plaintiffs still seek include: (1) emails related to the opening of new Hustler Hollywood Stores by the Larry Flynt Companies; (2) emails related the use of trademarks owned by the Larry Flynt Companies; (3) emails related to the management of certain Hustler Hollywood retail stores (not the Monroe store) owned by the Larry Flynt Companies; (4) emails related to the termination of certain leases (not related to the Monroe or Cincinnati stores) entered into by the Larry Flynt Companies; and (5) prospective projects of the Larry Flynt Companies that are unrelated to the retail stores.

IV. The Parties' Positions

Plaintiffs seek unredacted copies of email correspondence between: (1) defendant attorneys and plaintiff Jimmy Flynt, and (2) defendant attorneys and attorney Lou Sirkin which are unrelated to the *Stagliano*, *Krial*, and "2257/Denver" litigations. Plaintiffs assert these email communications are relevant to whether an attorney-client relationship existed between plaintiffs and defendant attorneys; whether Jimmy Flynt's belief that he was represented by the attorney defendants was reasonable; and whether Jimmy Flynt was represented by attorney Lou Sirkin, and not the defendant attorneys, during the relevant time periods. Plaintiffs also allege that the claims in this case are not limited to the six transactions identified above; however, plaintiffs have not explained what other additional transactions or circumstances underlie this lawsuit. (Doc. 65 at 3-4).

The defendant attorneys state that any communications with Jimmy Flynt, plaintiffs'

agents, and attorney Lou Sirkin that are related to the six identified transactions have already been produced to plaintiffs.[1] Defendants contend the other emails plaintiffs now seek are not relevant because none are related to the six identified transactions involved in this case. Defendants also argue that Jimmy Flynt's name appears in the emails only because he was an employee of the Larry Flynt Companies – companies that the defendant attorneys represent – and Jimmy Flynt's status as an employee who participates in email correspondence with corporate counsel does not establish the existence of an attorney-client relationship. Defendants also contend that even if such emails are relevant, they are protected from disclosure by the attorney-client privilege held by the Larry Flynt Companies and Ohio Rule of Professional Conduct 1.6.

V. Whether the Email Communications are Relevant

A party is entitled to discover "any nonprivileged matter that is relevant to any party's claims or defenses. . . ." and "[r]elevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence." Fed. R. Civ. P. 26(b)(1). Relevant evidence is that "having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Fed. R. Evid. 401.

To establish their legal malpractice claims, plaintiffs must first prove the existence of an attorney-client relationship with the defendant attorneys. *See Antioch Litigation Trust v. McDermott Will & Emery LLP*, 738 F. Supp.2d 758, 764 (S.D. Ohio 2010) (citing *Shoemaker v. Gindlesberger*, 887 N.E.2d 1167, 1170 (Ohio 2008)). Plaintiffs appear to allege that rather than a contractual or consensual attorney-client relationship, the attorney-client relationship here was implied. (Doc. 65 at 4-5). To establish an implied attorney-client relationship, plaintiff Jimmy Flynt must show (1) he submitted confidential information to the defendant attorneys during the

[1] Plaintiffs have not disputed defendants' assertion in their brief. (Doc. 65).

time that the defendants represented the Larry Flynt Companies, and (2) that he did so with the reasonable belief that the defendant attorneys were acting as his personal attorney. *Nilavar v. Mercy Health System-Western Ohio*, 143 F. Supp.2d 909, 913 (S.D. Ohio 2001) (citing *Pain Prevention Lab. v. Electronic Waveform Labs*, 657 F. Supp. 1486, 1495 (N.D. Ill. 1987)). Therefore, the email communications sought by plaintiffs must be relevant or reasonably calculated to lead to the discovery of admissible evidence of the alleged implied attorney-client relationship.

The emails plaintiffs seek involve the business operations of the Larry Flynt Companies' retail division and are not relevant to the six identified transactions underlying the malpractice claims in this case. The emails concern various zoning, lease, and trademark issues and other projects of the Larry Flynt Companies that do not involve the Monroe and Cincinnati stores. These emails concern the day-to-day business dealings of companies owned by Larry Flynt and do not reveal any information about the termination of Jimmy Flynt's employment from Flynt Management Group, LLC or the lease, licensing and sales transactions involving the Monroe and Cincinnati retail stores which are at issue in this case. Without a doubt, there are hundreds of emails between the defendant attorneys and Jimmy Flynt. However, the fact that Jimmy Flynt was an email participant by virtue of his employment with the Larry Flynt Companies[2] is not relevant to whether he had an implied attorney-client relationship with corporate counsel. "[T]he mere exchange of a confidential communication between counsel for an organization and the organization's officers or agents about a matter of interest to the organization does not, by itself, create an attorney-client relationship between counsel and the officer or agent with respect to that person's own interests in the same matter." *Nilavar*, 143 F. Supp.2d at 913. Therefore, the

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[2] It has previously been established that Jimmy Flynt was an employee of the Larry Flynt Companies and not a partner or owner. *See L.F.P. IP, LLC v. Hustler Cincinnati, Inc.*, 553 F. App'x 615 (6th Cir. Aug. 28, 2013).

Court determines that the emails are not relevant.

Nor are the email communications between attorney Lou Sirkin and the defendant attorneys relevant. The fact that attorney Sirkin and the defendant attorneys have co-counseled cases is undisputed. The Court notes that the bulk of the communications between Lou Sirkin and the defendant attorneys involve the "2257/Denver," *Krial*, and *Stagliano* cases, all of which are unrelated to the six transactions and malpractice claims in this case and is discovery which plaintiffs no longer seek. Likewise, attorney Sirkin's name appears in connection with unredacted emails relating to a first amendment lawyers' group and online pornography data. The other redacted emails between attorney Sirkin and the defendant lawyers concern potential store locations for the Larry Flynt Companies and are not relevant to the malpractice or attorney-client relationship issues in this case.

Nevertheless, plaintiffs contend that the "nature of the communications between Plaintiff (Jimmy Flynt) and Defendants go to the very crux of establishing Plaintiff's reasonable belief that Defendants were his attorneys." (Doc. 65 at 5). Plaintiffs allege "it is extremely common . . . for an employee of a business entity to seek personal counsel from the corporation's attorneys." *Id.* If the emails were to reveal that Jimmy Flynt related confidential information to the defendant attorneys for purposes of seeking legal advice *other than* that related to the retail business matters that are the subject of the emails, then the emails would arguably be relevant to whether Jimmy Flynt had a reasonable belief that the defendant attorneys were acting as his *personal* attorneys. Yet, plaintiffs have not identified what confidential information they believe was disclosed by Jimmy Flynt to the defendant attorneys that they would expect to find in these emails. Aside from the six transactions at issue in this case, plaintiffs have not identified any other transactions, conversations, or dealings on which Jimmy Flynt allegedly sought legal

advice from the defendant attorneys or the time frame when such advice was allegedly sought to enable the Court to conclude that somewhere in the thousands of pages of emails and attachments such confidential information may have been disclosed.

In addition, the undersigned has personally reviewed the email communications needing further clarification in chambers with counsel for the parties. The undersigned carefully reviewed the emails for any information that would suggest that Jimmy Flynt related confidential or personal information to the defendant attorneys for purposes of seeking legal advice. There is nothing in the nearly 500 email communications and attachments, many of which consist of multiple pages, reviewed *in camera* to indicate Jimmy Flynt related confidential information to defendant attorneys in the reasonable belief they were acting as his personal attorneys, as opposed to seeking business advice on behalf of the Larry Flynt Companies in conjunction with Jimmy Flynt's duties as an employee. Rather, the emails reviewed *in camera* show nothing more than business-related communications between Jimmy Flynt and the defendant attorneys concerning retail stores or projects that are unrelated to the Monroe or Cincinnati stores or the termination of Jimmy Flynt's employment.

The Court must balance a party's "right to discovery with the need to prevent 'fishing expeditions.'" *Conti v. Am. Axle and Mfg., Inc.*, 326 F. App'x 900, 907 (6th Cir. 2009) (quoting *Bush v. Dictaphone Corp.*, 161 F.3d 363, 367 (6th Cir. 1998)). Plaintiffs have not offered any evidence or argument that persuades the Court that the emails they seek are somehow relevant to whether there was an implied attorney-client relationship between Jimmy Flynt and the defendant attorneys. Given the absence of any indication in the emails plaintiffs seek that Jimmy Flynt conveyed confidential information to corporate counsel that was unrelated to the retail store issues that are the subject of the emails, the Court finds that the emails and attachment are

neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

VI. Whether the Attorney-Client Privilege Shields Disclosure of the Emails

Assuming, arguendo, that the emails sought by plaintiffs are relevant, they are nevertheless, in part, protected from disclosure by the attorney-client privilege held by the Larry Flynt Companies.

The attorney-client privilege has long been recognized by the courts, and unless waived the privilege protects communications made by a client in confidence to his attorney in order to secure legal advice. *Boone v. Vanliner Ins. Co.*, 744 N.E.2d 154, 155 n.2 (Ohio 2001) (citing *Upjohn Co. v. U.S.*, 449 U.S. 383, 389 (1981)). *See also Reed v. Baxter*, 134 F.3d 351, 355-56 (6th Cir. 1998). The attorney-client privilege applies in the corporate context and extends to communications between attorneys and corporate employees regardless of their position within the corporation where the communications concern matters within the scope of the employees' corporate duties and the employees are aware that the communication was for purposes of obtaining legal advice. *Upjohn Co.*, 449 U.S. at 394. *See also In re Perrigo Co.*, 128 F.3d 430, 437 (6th Cir. 1997). The privilege may be asserted by corporate entities, *Commodity Futures Trading Com. v. Weintraub,* 471 U.S. 343, 348 (1985), but it is to be narrowly construed to prevent frustrating the fact-finding process. *See In re Grand Jury Investigation No. 83235*, 723 F.2d 447, 451 (6th Cir. 1983). "The burden of establishing the existence of the privilege rests with the person asserting it." *Id.* at 450. Because this is a diversity case, the Court applies state law to resolve attorney-client privilege issues. *See* Fed. R. Evid. 501; *see also In re Powerhouse Licensing, LLC*, 441 F.3d 467, 472 (6th Cir. 2006) (applying Ohio law to resolve attorney-client privilege claims).

In this case, even if the emails plaintiffs seek are relevant, the attorney-client privilege

shields certain emails from disclosure. Contrary to plaintiffs' representation, defendants do not claim the attorney-client privilege for every email or document. While defendants have asserted that all of the emails and documents at issue are "confidential" and are so marked, not all of the documents are marked "attorney-client privilege." Only those emails for which attorney advice was solicited by or given to the client, *i.e.,* one of the Larry Flynt Companies, are marked "attorney-client privilege."[3] In addition, the Court has been able to ascertain from the content and context of the communications marked "attorney-client privilege" that they involve giving or seeking legal advice. Finally, plaintiffs have failed to direct the Court's attention to any particular documents or emails they suspect or believe should not protected by the attorney-client privilege.

Nor has the attorney-client privilege been waived. "[T]he attorney-client privilege belongs to the company and not to its employees outside of their employment capacity." *Shaffer v. OhioHealth Corp.*, No. 03AP-102, 2004 WL 35725, at *3 (Ohio App. 10 Dist. 2004) (former president and CEO of company whose employment had been terminated was without the authority to waive the corporation's attorney-client privilege) (citing *Commodity Futures Trading Com'n*, 471 U.S. at 348). *See also Stuffleben v. Cowden*, No. 82537, 2003 WL 22805065, at *8 (Ohio App. 8 Dist. 2003) (and cases cited therein). In this case, the "client" who is entitled to waive the privilege is the particular Larry Flynt Company involved in the email or document. Jimmy Flynt, as a former employee of the Larry Flynt Companies, has no standing or authority to waive the privilege. Nor is there a waiver by virtue of his being the author or recipient of the email. *Shaffer*, 2004 WL 35725, at *4. "[T]o hold that any such communication was voluntarily disclosed because an employee in the course of his duties necessarily became

[3] The Court's ruling is therefore limited to those documents and emails that include the notation "attorney-client privilege."

aware of the content of the communication would be to essentially eliminate the existence of attorney-client privilege for all collective entities. . . ." *Id.* The fact that Jimmy Flynt was a party to the communications does not waive the privilege.

In addition, the joint representation exception does not apply to vitiate the privilege:

> Ohio courts have applied the common-law joint-representation exception to the attorney-client privilege, which provides that a client of an attorney cannot invoke the privilege in litigation against a co-client. *See, e.g., Emley v. Selepchak* (1945), 76 Ohio App. 257, 262, 31 O.O. 558, 63 N.E.2d 919, quoting 8 Wigmore on Evidence (3d Ed. 1940), Section 2312 ("Another exception * * * is 'when the *same attorney acts for two parties* having a common interest, and each party communicates with him. Here the communications are clearly privileged from disclosure at the instance of a third person. Yet they are not privileged in a controversy between the two original parties, inasmuch as the common interest and employment forbade concealment by either from the other * * *.' " [Emphasis sic]); *Netzley v. Nationwide Mut. Ins. Co.* (1971), 34 Ohio App.2d 65, 78, 63 O.O.2d 127, 296 N.E.2d 550 (following *Emley*); *see also* Weissenberger's Ohio Evidence Treatise (2009) 246–247, Section 501.8 ("A similar exception applies when an action arises between parties who were previously co-clients within an attorney-client relationship").

Squire, Sanders & Dempsey, L.L.P. v. Givaudan Flavors Corp., 937 N.E.2d 533, 540 (Ohio 2010) (emphasis in the original).

In this case, plaintiffs argue the joint representation exception applies to the emails in question because the defendant attorneys gave advice jointly to Jimmy Flynt, Larry Flynt, and other agents of the Larry Flynt Companies. However, the instant case is not one involving co-clients where one client is invoking the privilege against another client in litigation. Jimmy Flynt has not sued Larry Flynt or the Larry Flynt Companies; rather, Jimmy Flynt has sued the attorneys for the Larry Flynt Companies. Therefore, plaintiffs must identify the common interest between Jimmy Flynt and the Larry Flynt Companies in the emails that defendant attorneys acted upon.

Plaintiffs have failed to identify a common interest between Jimmy Flynt and the Larry

Flynt Companies concerning the management of the Hustler Hollywood retail stores (aside from the Monroe store or Cincinnati store), the leases, or other prospective projects of the Larry Flynt Companies which are the subject of the emails and documents at issue. It is undisputed that Jimmy Flynt had no ownership in the Larry Flynt Companies and was merely an employee of the Larry Flynt Companies. *Hustler Cincinnati, Inc.*, 533 F. App'x at 624. The emails and documents to which he was a party was in his capacity as an employee of the Larry Flynt Companies and plaintiffs have failed to identify any personal interest Jimmy Flynt held in the subject emails. The Court concludes the joint representation exception does not apply in this case.

VII. Whether the Emails Are Protected from Disclosure as Confidential under Rule 1.6 of the Ohio Rules of Professional Conduct

Rule 1.6 of the Ohio Rules of Professional Conduct provides:

> (a) A lawyer shall not reveal information relating to the representation of a client, including information protected by the attorney-client privilege under applicable law, unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted by division (b) or required by division (c) of this rule.
>
> (b) A lawyer may reveal information relating to the representation of a client, including information protected by the attorney-client privilege under applicable law, to the extent the lawyer reasonably believes necessary for any of the following purposes:
>
> > (1) to prevent reasonably certain death or substantial bodily harm;
> >
> > (2) to prevent the commission of a crime by the client or other person;
> >
> > (3) to mitigate substantial injury to the financial interests or property of another that has resulted from the client's commission of an illegal or fraudulent act, in furtherance of which the client has used the lawyer's services;
> >
> > (4) to secure legal advice about the lawyer's compliance with these rules;
> >
> > (5) to establish a claim or defense on behalf of the lawyer in a controversy

> between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding, including any disciplinary matter, concerning the lawyer's representation of the client;
>
> (6) to comply with other law or a court order.
>
> (c) A lawyer shall reveal information relating to the representation of a client, including information protected by the attorney-client privilege under applicable law, to the extent the lawyer reasonably believes necessary to comply with Rule 3.3 or 4.1.

Ohio R. Prof. Cond. 1.6.

Defendants assert that all of the emails in question arise from defendant attorneys' representation of the Larry Flynt Companies and are confidential under Rule 1.6(a) prohibiting the disclosure of information relating to the representation of a client. Defendants contend that they may only disclose this information as "authorized or required by the Ohio Rules of Professional Conduct or other law," Ohio R. Prof. Cond. 1.6, Comment 3, and they are not aware of any law or exception requiring the disclosure.

Plaintiffs contend that defendants have failed to cite any case law in support of their argument and assert they are unaware of any case or authority that would prevent the disclosure of relevant documents through the discovery process. Plaintiffs point to Rule 1.6(b)(6), which allows for disclosure of confidential information "to comply with other law or court order," as authority for this Court to order disclosure of the subject emails and documents. Plaintiffs assert that the Court may fashion a protective order limiting the use of confidential information and preventing public disclosure.

In the only case located by the undersigned on the issue, the court determined that ordering the discovery of confidential information from an attorney in the context of litigation did not violate the attorney's ethical obligations under Ohio R. Prof. Cond. 1.6. In *Zino v.*

Whirlpool Corp., No. 5:11cv1676, 2012 WL 5197377 (N.D. Ohio 2012), retirees brought suit against the Whirlpool Corp. challenging changes to their retirement benefits provided through a collective bargaining agreement. A non-party attorney for a local union was subpoenaed to testify at and bring documents to a deposition. He moved to quash the deposition, arguing he would be required to testify about legal advice and communications exchanged in confidence with the local union, a former client, and that such testimony was barred by his ethical obligations under the Ohio Rules of Professional Conduct. The *Zino* court examined Rule 1.6(b)(6), the provision allowing for disclosure "to comply with other law or a court order," and Comment 3 to Rule 1.6 which provides:

> The principle of client-lawyer confidentiality is given effect by related bodies of law: the attorney-client privilege, the work-product doctrine, and the rule of confidentiality established in professional ethics. The attorney-client privilege and work-product doctrine apply in judicial and other proceedings in which a lawyer may be called as a witness *or otherwise required to produce evidence concerning a client. The rule of client-lawyer confidentiality applies in situations other than those where evidence is sought from the lawyer through compulsion of law.* The confidentiality rule, for example, applies not only to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source. A lawyer may not disclose such information except as authorized or required by the Ohio Rules of Professional Conduct or other law.

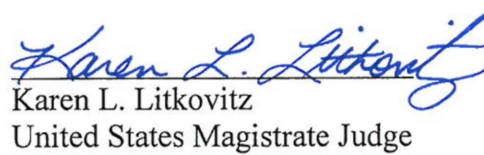
Comment 3 to Ohio R. Prof. Cond. 1.6. (emphasis added). The *Zino* court determined that the lawyer's testimony would not run afoul of his ethical obligations under Rule 1.6. The court reasoned that Comment 3 clarifies "the rule of client-attorney confidentiality as set forth in Rule 1.6 does not apply to restrict testimony in judicial proceedings in which a lawyer is a witness, or is required to produce evidence concerning a client. The attorney-client privilege and the work-product doctrine may apply, as recognized by the rule." *Zino*, 2012 WL 5197377, at *5. The court therefore ordered the attorney to testify to relevant matters not otherwise protected by the attorney-client privilege or the work-product doctrine. *Id.*

There is a presumptive prohibition on the disclosure of confidential information that is not otherwise protected by the attorney-client privilege, Ohio R. Prof. Cond. 1.6(a), and the confidentiality provisions set forth in Rule 1.6 are broader than the attorney-client privilege. *See* Comment 3 to Rule 6.1 (specifying that the confidentiality provision "applies in situations other than those where evidence is sought from the lawyer through compulsion of law"). Nevertheless, confidential information may be compelled "to comply with other law or a court order." Ohio R. Prof. Cond. 1.6(b)(6). Comment 13 to the rule clarifies when such disclosure is permitted: "A lawyer may be ordered to reveal information relating to the representation of a client by a court or by another tribunal or governmental entity claiming authority *pursuant to other law to compel the disclosure*." *Id.*, Comment 13 (emphasis added). Reading Comments 3 and 13 together, along with the *Zino* court's reasoning, the undersigned concludes that disclosure of confidential information that is not protected by the attorney-client privilege or work product doctrine may be compelled by court order when provided by law. Here, the pertinent "law" is Rule 26 of the Federal Rules of Civil Procedure which requires the email evidence to be relevant or reasonably calculated to lead to the discovery of admissible evidence. Fed. R. Civ. P. 26(b)(1). Although this Court has the authority to order defendants to produce confidential information that is not protected by the attorney-client privilege or work product doctrine under Rule 26(b)(1), there has been no showing that this information is relevant or reasonably calculated to lead to the discovery of admissible evidence as discussed above in Section V. Therefore, the Court will not order defendant attorneys to disclose the subject emails and other documents.

In conclusion, the Court determines that the emails and attachments plaintiffs seek are not discoverable.

IT IS SO ORDERED.

Date: 1/30/14



Karen L. Litkovitz
United States Magistrate Judge