



MEMORANDUM

TO: Patrick Hinds

FROM: David Seaver, Special Operations DPA

SUBJECT: Aaron Pelley/Anne van Leynseele

I was asked to review several boxes of materials presented by the complainant, Ms. Van Leynseele, in connection with her allegation that Pelley committed theft, computer trespass, perjury, and possible tampering of evidence. My review was largely limited to examining the submitted materials to determine if potentially privileged information, either of an attorney-client or attorney work product nature, was contained within them.

Much of the contents of the boxes I received consisted of materials gathered in preparation for, and the conducting of, an arbitration before retired King County Superior Court Judge Sharon Armstrong. Disclosure of privileged materials in an arbitration setting does not constitute a waiver of attorney-client confidentiality. Indeed, one of the primary appeals of arbitration, like other forms of alternate dispute resolution, is the privacy that such mechanisms afford.

I did not find, within the materials presented to me, much in the form of direct attorney-client communication, other than several emails that were not especially information-heavy. However, the allegations against Mr. Pelley concern, in large part, billing matters and diversion of client payments from the claimed appropriate recipient, i.e., the firm account, to Mr. Pelley directly, or to accounts he created. Although the identity of a client and any fee agreements are, under almost all circumstances, not privileged, the substance of the consultation, research, and work performed typically is. See, e.g., State v. Shepperd, 52 Wn. App. 707, 711, 763 P.2d 1232 (1988). That is, if a client bill, or the corresponding internal record of a client bill, details the specifics of the work that the attorney performed, it is traditionally deemed to be a privileged document. As an example, a bill or record of a bill that states "Consulted with client; performed legal research" would not raise privilege issues, whereas "Consulted with client about seizure of [bank account no. XXXXX] by law enforcement and possible avenues of relief; prepared for deposition of Detective YYY" likely triggers both attorney-client and work product protections.

As I mentioned at the outset, the scope of my examination was limited to privilege review, rather than assessing the strengths and limits of the evidence for charging purposes. I thus am unable to offer an opinion on the potential for prosecuting the alleged culprit for crimes involving destruction of evidence and computer trespass. Absent waiver of confidentiality by all parties, however, I am skeptical that a theft case could survive an assertion of privilege if it were dependent on conversion of client payments, given that in order to prove that the funds were due to the firm, it would be necessary to establish the nature of the billable work that was performed.