

Jerrie Hayes

From: Bob [bob@pickle-publishing.com]
Sent: Thursday, January 24, 2008 12:38 PM
To: Jerrie Hayes
Cc: G. Arthur Joy
Subject: Re: Response regarding a proposed confidentiality agreement

Ms. Hayes:

I believe I already provided you with a proposal, and that you already said you would be contacting your client about it.

But you missed part of what I said: The donor names would be kept confidential unless they voluntarily choose to have it be otherwise. I never said one word about getting donor permission before their names would be given to us in a separate, keyed to redacted donor code, confidential list.

It makes total sense for you to test the waters of your client's willingness to allow us to challenge their claims in the manner I have suggested, a manner that protects the confidentiality of the donor information. If you have difficulty explaining to them the importance of allowing such a process, since all communications are to be had with counsel present, why not arrange a conference that would include your client as a participant?

Verifying the donation information is a critical, key component to the plaintiffs' case. We really need to test the waters, especially since we have yet to receive one single document from either plaintiff.

If you need another issue to bounce off of them as well, I did not catch where your second proposal incorporated the idea that the public has a right to know what the correct figures should have been on the Form 990's and audited financial statements, since these documents are by statute a matter of public record. This was a point of mine that I made sure in our first conference that you understood I believed needed to be included.

Bob Pickle

Jerrie Hayes wrote:

First, I do not agree with your assessment of my client's position on the donor information. 3ABN moved considerably from its initial proposal of providing no donor information, to a proposal that included (1) providing all donor information (dates, amounts, etc.) except confidential donor identification information; (2) providing donor codes that could be linked to letters, e-mails and other information from those donors as to why their donations were discontinued; and (3) in camera verification of donor accuracy. If, for whatever reason, that is still not sufficient in your opinion, you need to provide an alternative solution that provides you with the information you believe you need and still protects our donors' confidentiality. This would need to include specifics about how and by whom donors would be contacted for permission to release their identifying information to you.

We are supposed to be engaged in good faith negotiations, here. I don't think it makes sense for me to go to my client with one proposed provision at a time. We came to the table with a complete agreement to work from. Our second draft was also a complete agreement. It only makes sense that, if you believe there exists a confidentiality agreement to which you would be willing to agree, you show your good faith by providing it to us in similarly complete form to review and discuss. If you are willing to continue negotiations, please provide a draft complete confidentiality agreement

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you could live with, that includes your position on donors, financial records, and proprietary business and operational information, by February 1, 2008. If you are not willing to do so, please inform me and we can discontinue our discussions.

Jerrie Hayes

From: Bob [mailto:bob@pickle-publishing.com]
Sent: Thursday, January 24, 2008 11:30 AM
To: Jerrie Hayes
Cc: G. Arthur Joy
Subject: Re: Response regarding a proposed confidentiality agreement

It seems to me that we need to first hear back from your client before we can say that we will begin working on a proposed agreement by any date. Thus far they have been unwilling to allow us to adequately challenge their claims regarding donation declines and the reasons behind any actual declines. If they will now change their position, then it makes sense to draft an agreement that would enshrine that new position.

Bob Pickle

Jerrie Hayes wrote:

I now better understand your question concerning donors and will contact my client and get back to you.

As to the February 1 issue, I believe you are saying you and Mr. Joy have agreed to draft a proposed confidentiality agreement and provide it to me by February 1. Please confirm if my understanding is correct.

From: Bob [mailto:bob@pickle-publishing.com]
Sent: Thursday, January 24, 2008 11:03 AM
To: Jerrie Hayes
Cc: G. Arthur Joy
Subject: Re: Response regarding a proposed confidentiality agreement

Ms. Hayes:

There are confidentiality agreements to which both Gailon and I could agree, and I think we have made that fairly clear, even before I entered my appearance *pro se*. The question is really whether there are confidentiality agreements that the plaintiffs would agree to which would allow the case to be properly adjudicated under appropriate and traditional public scrutiny, which is why I asked what I did about donor names. Are the plaintiffs willing to allow necessary verification of their claims regarding the decline of donations and the reasons for any actual decline?

As a preliminary answer to your question regarding logistics, once donors going back to perhaps January 1, 2003, have been identified that have ceased giving or declined the amounts they have given, we would then be able to contact them to verify, including but not limited to regarding any declines claimed by the plaintiffs in the last half of 2006, a) whether their "donations" were truly donations or whether they were purchases or shipping charges, b) if true donations, why they chose to stop or decline giving, c) whether they would be willing to produce an affidavit stating those reasons, and d) whether they wished their name to continue to be kept confidential, if it is not already a matter of public record.

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As far as names that are already a matter of public record, it could hardly be expected that the sharp decline in giving coming from the Garmar Foundation, declines which are reported on Form 990-PF, should be kept confidential. But of course, just the fact that such a name is a matter of public record does not mean that the decline was due to Danny Shelton or the defendants. There are other valid reasons why true donations could decline.

Bob Pickle

Jerrie Hayes wrote:

I don't understand your request. Are you saying you have decided to propose an alternative draft confidentiality agreement and are proposing providing it to me by February 1? Or are you saying you haven't decided on the more fundamental question of whether there is a confidentiality agreement to which you could agree or not? If your statement means the former, February 1 is fine with me as a deadline for you to provide me an alternate proposed agreement. If your statement means the latter, I genuinely do not believe you need nine days to decide the issue and would want to know your answer much sooner than your proposed February 1 deadline. If your statement means the latter, I would request an answer on or before Friday, January 25.

In regard to the latter, I will take your proposal to the client, but before I do so, I'd like to clarify a logistic concern I have with the donor names. How would it be determined which donor would be asked to release their identifying information and how would you propose the donors be contacted to determine whether they would agree to such release?

-----Original Message-----

From: Bob [mailto:bob@pickle-publishing.com]
Sent: Wednesday, January 23, 2008 4:13 PM
To: Jerrie Hayes
Cc: G. Arthur Joy
Subject: Response regarding a proposed confidentiality agreement

Ms. Hayes:

In discussing the matter of a confidentiality agreement with Mr. Joy, we'd like to get back to you with a response by February 1.

In the meantime, it would be quite helpful to me if you could find out from 3ABN whether redacted donor names with an accompanying confidential

list that tied donor codes to donor names, each name not being able to be disclosed without permission from that particular donor or his/her heir(s), would be acceptable. Such a procedure would allow us to verify who stopped giving for what reasons and still respect their privacy.

Thanks for getting back to me on this matter soon enough before February 1 so that I have time to do something regarding it.

Bob Pickle