

Ex. Y

Subject: Re: Response regarding a proposed confidentiality agreement
From: Bob
Date: Thu, 24 Jan 2008 18:21:44 -0600
To: Jerrie Hayes
CC: "G. Arthur Joy"

Ms. Hayes:

I already gave you something new, unless I missed your telling me that you had already presented my proposal to your client. And unless I missed that, your statement is another mischaracterization of the situation.

I have not passed the buck. I have merely asked if they are willing to consider my proposal before I start drafting an agreement. Another mischaracterization. Is there another attorney I should be conversing with who will refrain from misinterpreting what I have said?

In camera review does not allow us to verify the information we need to verify, and it would be inappropriate to cross examine at trial the judge who did such a review.

The issues at stake are important enough that I would want to reserve the right to verify every donor, not just do a random sampling.

I would not call this dialog "good faith efforts," since I have repeatedly presented you with a proposal that would safeguard the donor's identity, but you refuse to acknowledge that fact. But very well. If you choose to break off negotiations and refuse to verify that your client is willing to consider my proposal, then that's the way it is. I can't force you to negotiate in good faith if both you and your colleagues refuse to do so.

Bob Pickle

Jerrie Hayes wrote:

Mr. Pickle;

Not having been employed by or, to my knowledge, having even visited 3ABN, your charge that 3ABN maintains a culture of lying is nothing more than a second-hand opinion, not an evidentiary fact that would EVER hold up in court. If your comments constituted an effort to "prove" a need to verify 3ABN's donor reports, you have failed miserably.

I am done with your efforts to "pass the buck" and lay all the responsibility for the creation of what is supposed to be a MUTUAL confidentiality agreement on the Plaintiffs' shoulders. I will not go back to my clients without something new. It is Defendants' turn to make a complete, written proposal for a confidentiality agreement. Period.

If former contributors have come to you, willing to provide you with their donor information, 3ABN cannot ask you to keep that confidential as the donors themselves have waived their confidentiality. But Plaintiffs intend to respect the donors' confidentiality and will not disclose that information—even to you—without safeguards. I have proposed two options (in camera review or random sampling) in an effort to compromise on the issue and meet with your (as yet not established) need for data verification.

By your email you appear to be rejecting both those ideas, in which case the ball would be in your court to either propose—as part of a complete, written draft confidentiality agreement—a means of obtaining the verification you feel you need, while safeguarding the confidentiality of the donors' identities, or ending the negotiations here and now, since my client's position on the sanctity of the donor information is not going to change. But since I have three times asked you to make that choice, and since you have three times refused to do so, I believe our good faith efforts towards resolution have concluded.

Jerrie Hayes

From: Bob
Sent: Thursday, January 24, 2008 4:11 PM
To: Jerrie Hayes
Cc: G. Arthur Joy
Subject: Re: Response regarding a proposed confidentiality agreement

Ms. Hayes:

I never assumed that your proposal provided us with actual donor names, and I would think you would realize that. My proposal did that. Yours never has. Furthermore, if you cannot properly state what I have said, please either refrain from such attempts, or direct me to a different attorney who has an easier time grasping what is being said.

The idea of publishing confidential information, from what I recall, was placed on the table by your clients who used their concerns about that as a way to justify a protective order. My point is that there are some former donors out there who clearly do not mind their names being publicly disclosed, and I cannot agree to keep confidential what the former donors themselves want to be disclosed.

Due to the culture of prevarication that has existed at 3ABN, I do not see any other way to go about things. It would be one thing if it were just Danny who has prevaricated, but it isn't just him. We have to be able to freely and thoroughly challenge and verify the claims of the plaintiffs regarding donation declines. And that could mean our attempting to verify every last former donor's existence, the amounts they gave in real donations, and why they stopped or decreased giving.

I would suggest that you not rely merely on the word of Mollie Steenson that 3ABN as a whole refuses to allow us to do what needs to be done. Perhaps the board could discuss the issue, or at least the president.

Perhaps the real problem is that 3ABN does not want its donors to know that it is in the midst of litigation.

At any rate, see if my proposal meets with tentative approval, and we would then be able to work on a proposed agreement.

Bob Pickle

Jerrie Hayes wrote:
Mr. Pickle;

What we apparently have here is a failure to communicate. You are assuming my proposal provides you with the donor's actual names and identifying information. It does not. I was NEVER talking about releasing the information to you and then, if the donor approves, allowing you to disclose that donor's information to the public. I was talking about you identifying coded donors whose name and information you wanted, and then we would get the donor's permission to release their identifying information to YOU! The idea of publishing the donor's information to third parties has NEVER been on the table.

After your arguments concerning authentication, I made a compromise to you by suggesting that, although you have not shown any evidence that would lead a fact-finder to believe the donor information we would provide would be anything but authentic and genuine, my clients would be willing to accommodate your "verification" needs in two possible ways: (1) allow the court to verify the information in an in camera review; or (2) allow you to identify a random sampling of coded donors you believed would be sufficient to establish that the information as a whole was accurate and we would secure those donor's permission to release their identifying information to you. You would then be responsible for obtaining that donor's permission to publish their information to third-parties or the public and, accordingly, responsible directly to the donor for any harassment or defamation the donor suffers as a result of your publication of their information.

I have now once again informed you of the manner in which my client is willing to accommodate your (as I see it, yet unfounded) need for verification. This is their most recent and current position. I will not go back to my clients until I have something new from you to present to them. Either of the alternative donor verification solutions could be included by you in a proposed written draft agreement to be provided to us, or your proposed agreement could include a different solution, understanding that my client, concerned about preserving their donor's confidentiality and concerned about you, Mr. Joy or your investigative cronies badgering and harassing former contributors, does not intend to release identifying information for its donors without some assurance that those donors and their identities will be protected.

I will no longer belabor these points. For the third, and FINAL time, I will ask you a simple question with just two possible choices: do you want to provide to me a written, complete proposed confidentiality agreement by February 1, 2008, or do you want to discontinue our efforts to resolve the issue of maintaining confidentiality of donors, financial records, and proprietary business and operational information?

Jerrie Hayes

From: Bob
Sent: Thursday, January 24, 2008 3:14 PM
To: Jerrie Hayes
Cc: G. Arthur Joy
Subject: Re: Response regarding a proposed confidentiality agreement

Ms. Hayes:

I was crystal clear in my proposal, and my proposal stands as is. Find out from your client if they

are willing to provide to us the donor information with names redacted, with an accompanying confidential list tying the donor names to the donor codes from the redacted documents. We would not disclose the donor names unless those donors explicitly gave us permission.

See if you can get back to me by the end of the day regarding whether your client is willing to allow us to adequately challenge their claims in the manner I have proposed, proposed more than once. Then I would be able to work on a proposed agreement.

Bob Pickle

Jerrie Hayes wrote:

Mr. Pickle;

If you reread my e-mail, you will see I told you that I could not take a proposal concerning the donors back to my client without you having clarified the terms of any such disclosure. You have not done so to my satisfaction and, as we exchange e-mails, I don't think you can without putting your suggestions in writing – hence my request. My suggestion concerning disclosure of the donor names was that we provide all information in coded form, and allow verification to be conducted in camera. If there were specific donors you felt you personally needed to contact for verification purposes (a random sampling should be sufficient to serve your purposes), I would propose 3ABN contact the donor to see if they would voluntarily agree to a release of their name and donation information. That's just one suggestion for a resolution; your draft might contain a different suggestion. But Plaintiffs need a concrete proposal to review and the ball is in your court.

We have provided not one but two versions of a proposed agreement that Plaintiffs could live with, neither of which were met with Defendants' approval. It is now your turn to suggest an agreement to which Defendants would consent. I don't know that my client will necessarily accept it without further negotiation, but it's the fair and logical next step.

I am really not sure how to make this any clearer. To advance these negotiations, you (and Mr. Joy, if he is participating) need to provide to the Plaintiffs a complete, written proposed confidentiality agreement, incorporating all the issues you feel important and drafted in a fashion you could accept, on or before February 1, 2008. If you want to propose a different structure concerning donor information, you should include it. If you want to propose a different definition of "confidential" or "highly confidential" that reflects your views on whether the public is entitled not only to the actual 990's and audited financial statements, but to the supporting documents underlying those reports, you should include it. I have already told you my client's general position on these issues, but we cannot hope to agree to a confidentiality agreement operating in a vacuum using hypotheticals – Plaintiffs must have a complete, written proposed agreement from Defendants to review and evaluate before any further progress can be made.

So, for the last time I will ask you a simple question with just two possible choices: do you want to provide to me a written, complete proposed confidentiality agreement by February 1, 2008, or do you want to discontinue our efforts to resolve the issue of maintaining confidentiality of donors, financial records, and proprietary business and operational information?

Please advise me of your choice (which I thought I would be getting by the end of the day yesterday), by the end of the day today.

Thank you.

Jerrie Hayes

From: Bob
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 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
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
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.

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
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