

**IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS**

KIRK ALLEN, JOHN KRAFT, AND)
EDGAR COUNTY WATCHDOGS INC.,)

Plaintiffs,)

V.)

Case No. 18 CH 000238

ALGONQUIN TOWNSHIP AND)
ALGONQUIN TOWNSHIP ROAD)
DISTRICT,)

Defendants.)

RESPONSE IN OPPOSITION TO PETITION OF ROBERT MILLER TO INTERVENE

NOW COMES Defendant, Algonquin Township Road District (hereinafter “Road District”), by and through its attorney, Law Offices of Robert T. Hanlon & Associates, P.C., and with its Response in Opposition to Petition of Robert Miller (hereinafter “Miller”) to Intervene, titled **PETITION OR INTERVENTION PURSUANT TO 735 ILCS 512-408(a) OR ALTERNATIVELY PURSUANT TO 735 ILCS 512-408 (b) FOR INTERVENTION AS A MATTER OF DISCRETION** (hereinafter “Petition”) and states as follows:

INTRODUCTION

This Court should deny the Miller’s Petition because: (A) the Petition and accompanying material is devoid of authority; (B) Miller has failed to support the contention that he is entitled to the relief sought; (C) Miller has no attorney-client privilege in the records of the Road District; (D) Miller’s interests are not affected by the outcome of this litigation; (E) Miller is not a necessary party to this litigation; and (F) Miller has no standing in this case.

The gravamen of Miller’s Petition is that he has a purported attorney-client interest in preventing the disclosure of Road District documents pursuant to a FOIA request. See Miller’s Petition at Paragraphs 5 and 7. Miller has been divested of any power as a Highway

Commissioner by the assertion of the will of the People in the election that resulted in his removal from public office. He cannot now assert the powers of the office of the Highway Commissioner nor claim privileges belonging to the Road District.

RELEVANT FACTS

Prior to 2017 Miller served as the Algonquin Township Highway Commissioner. By public vote Andrew Gasser succeeded Miller as the Algonquin Township Highway Commissioner and assumed the role of Highway Commissioner on May 15, 2017. See Miller's Petition at Paragraph 5. Miller has no official capacity in connection with the Road District. *Id.* The Road District hired James Kelly to perform work for the Road District. See Group Exhibit A attached hereto. James Kelly has billed the Road District for his work product. *Id.*

Plaintiffs, Kirk Allen et al, have sought documents and records of the Road District in this case. See Complaint in its entirety. Miller contends that the documents sought by Plaintiffs are "highly privileged".¹ See Miller's Petition at Paragraph 11. Likewise, Plaintiffs seek documents from Algonquin Township, a separate and distinct entity. Miller has never had any power to direct the Township. Although Miller may have convinced the prior supervisors to allow him to be unchecked, he has no power or control over either entity that is the subjects of this litigation. In order to prevent the waste of government resources, Defendant Road District seeks to settle and compromise the claims with Plaintiffs.

ARGUMENT

A. No Authority.

"[U]nsupported and underdeveloped arguments are waived." *United States v. Turcotte*, 405 F.3d 515 (7th Cir.2005). "Threadbare recitals of the elements of a cause of action, supported

¹ Defendant Road District is unaware of any legal distinction between a privileged item and a "highly privileged" item.

by mere conclusory statements, do not suffice." *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S. Ct. 1937, 49, 173 L. Ed. 2d 868, 2009 U.S. LEXIS 3472. An argument that is undeveloped and unsupported by authority need not be considered by the Court. *Commonwealth Edison Co. v. Illinois Commerce Com'n*, 398 Ill.App.3d 510 (2nd Dist 2009). See also *Grimes v. Saikley*, 388 Ill.App.3d 802, 904 N.E.2d 183 (4 Dist.,2009).

Here in this case, Miller's Petition is completely devoid of any authority whatsoever and is an indication that the Petition was advanced in violation of Rule 137. Miller has failed to support his Petition with any authority, precedent or legal argument tied to any authority. On this basis alone, the court ought to deny Miller's Petition. However, as set forth herein, the unsupported erroneous positions of Miller are: (A) contrary to the established law of the State of Illinois; (B) contrary to all of the voluminous authority cited herein; (C) contrary to court precedent; (D) contrary to fact; and (E) contrary to basic notions of justice and fair play. Even Miller's proposed first motion fails to set forth any authority to support his specious positions. Any candid observer can readily see that Miller's Petition and accompanying material were prepared and filed without a single reference to legal authority. But, see *United States v. Turcotte*, 405 F.3d 515 (7th Cir.2005).

B. Requirements of 735 ILCS 408(a) are not met by Miller.

The right to intervene in a proceeding is not absolute, but permission of court must be secured and intervention may be granted or denied depending on the circumstances of each case. *Jackson v. Pioletti*, 1952, 346 Ill.App. 569, 105 N.E.2d 779; *Town of Centreville v. Deckard*, 1944, 322 Ill.App. 9, 53 N.E.2d 717. Miller's Petition for intervention pursuant to Sec. 2-408(a). That section provides as follows:

Intervention. (a) Upon timely application anyone shall be permitted as of right to intervene in an action: (1) when a statute confers an unconditional right to

intervene; or (2) when the representation of the applicant's interest by existing parties is or may be inadequate and the applicant will or may be bound by an order or judgment in the action; or (3) when the applicant is so situated as to be adversely affected by a distribution or other disposition of property in the custody or subject to the control or disposition of the court or a court officer.

Addressing each requirement in turn reveals an inability of Miller to intervene.

First, Miller cites to no statute conferring upon him an unconditional right to intervene in this case. (In fact, Miller cites to no authority at all.) As such, his Petition fails a basic test in this case. As it applies to the second area of the section cited, the remedies in this case are limited solely to the production of public records. Miller has no interest in the production or retention of public records. While such records may reflect on Miller's incompetence, guile, or even misappropriation of public money, such a position is not one where he has a stake in the outcome of this litigation and certainly he is not going to be bound by an order of this Court as the complaint and the defenses raised herein do not even mention Miller. Likewise, the third test of the applicable statute is not met. There in subsection three (3) it refers to the distribution or disposition of property in the custody of the court. Here, the only item at issue in this case is that Road District has sought return of its own records and plaintiffs seek copies of public records. The Road District is not under the control of Robert Miller and he has failed to show how he would be adversely affected by any order in this FOIA case. This case is about public records.

C. No Attorney-Client Privilege Over Road District Documents.

The legions of authority on the topic of the attorney-client privilege negate Miller's erroneous contention that the Attorney-Client Privilege is "Sacrosanct"². See paragraph 8 of the intended Miller's Motion attached to his Petition as Exhibit C.

² The statement in Miller's motion is indicative of an absolute failure to perform the slightest of research into the topic.

Because the attorney–client privilege “protects only those disclosures necessary to obtain informed legal advice which might not have been made absent the privilege,” *In re Carl Walsh*, 623 F.2d 489, 494 (7th Cir.1980), documents prepared for both legal and non-legal review are not privileged. See, e.g., *Frederick*, 182 F.3d at 500; *In re Air Crash Disaster at Sioux City, Iowa*, 133 F.R.D. 515, 518 (N.D.Ill.1990). Documents prepared for a business purpose are not privileged. See e.g., *In re Spalding Sports Worldwide, Inc.*, 203 F.3d 800, 805 (Fed.Cir.2000), documents concerning “advice on political, strategic or policy issues, valuable as it may have been, would not be shielded from disclosure by the attorney-client privilege.” *In Re Lindsey*, 148 F.3d 1100, 1106 (D.C.Cir.1998); see also *Republican Party of North Carolina v. Martin*, 136 F.R.D. 421, 426 (E.D.N.C.1991) (“if the communication essentially involves the giving of political advice, then it is not privileged”).

D. Elements of the Attorney-Client Privilege

The attorney-client privilege applies: (1) where legal advice of any kind is sought (2) from a professional legal advisory in his capacity as such, (3) the communication relating to that purpose, (4) made in confidence (5) by the client, (6) are at his instance permanently protected (7) from disclosure by himself or by the legal adviser, (8) except the protection may be waived. *United States v. Lawless*, 709 F.2d 485, 487 (7th Cir.1983). See also *Radiant Burners, Inc. v. American Gas Ass'n*, 320 F.2d 314, 319 (7th Cir.), cert. denied, 375 U.S. 929, 84 S.Ct. 330, 11 L.Ed.2d 262 (1963). *Ceseena v. Du Page Co.*, 201 Ill. App. 3d 96, 103 (Ill. App. Ct. 1990).

Importantly, the burden of establishing a privilege rests with the party asserting the privilege. *Claxton v. Thackston*, 201 Ill.App.3d 232, 234 (1st Dist. 1990). See also *United States v. Lawless*, 709 F.2d 485, 487 (7th Cir.1983). See also *Radiant Burners, Inc. v. American Gas*

Ass'n, 320 F.2d 314, 319 (7th Cir.), *cert. denied*, 375 U.S. 929, 84 S.Ct. 330, 11 L.Ed.2d 262 (1963). *Cesena v. DuPage Co.* 201 Ill. App. 3d 96, 103 (Ill. App. Ct. 1990).

E. Burden to Assert the Attorney-Client Privilege.

The burden is on the party claiming the attorney-client privilege to prove each element of the privilege. *White*, 950 F.2d at 430. Moreover, there cannot be a blanket assertion of privilege; instead, the attorney-client privilege must be raised document by document. *Id.* *Christman v. Brauvin Realty Advisors, Inc.*, 185 F.R.D. 251, 255 (N.D. Ill. 1999). The burden of showing facts which give rise to the privilege rests on the one who claims the exemption. *Cox v. Yellow Cab Co.* (1975), 61 Ill.2d 416, 419-20, 337 N.E.2d 15; *Krupp v. Chicago Transit Authority* (1956), 8 Ill.2d 37, 42, 132 N.E.2d 532. Moreover, the claimant of the attorney-client privilege must show certain threshold requirements in order to avail itself of the privilege, including a showing that the communication originated in a confidence that it would not be disclosed, was made to an attorney acting in his legal capacity for the purpose of securing legal advice or services, and remained confidential. (*See* 8 *Wigmore*, Evidence Sec. 2292 (Rev.Ed.1961); *United States v. United Shoe Machinery Corp.* (D.Mass.1950), 89 F.Supp. 357, 358-59.) *Consolidation Coal Co. v. Bucyrus-Erie Co.*, 89 Ill. 2d 103, 119, 432 N.E.2d 250, 257 (1982).

Miller has not met his burden, and has attempted to assert a blanket privilege which he cannot advance under the law. Miller's Petition fails at every turn to establish his burden.

Moreover, Miller fails to include facts supporting the assertion of the privilege in the first place or that the elements of the privilege exist. Here, Miller has even failed to set forth the necessary facts to show that he himself has any attorney-client privilege. But, see *Claxton v. Thackston*, 201 Ill.App.3d 232, 234 (1st Dist. 1990). Miller even fails to attempt to articulate the

elements of the privilege in a hope that the court would simply assume that the privilege is “sacrosanct”.³

F. Privilege Development and Application.

The attorney-client privilege is derived from the common law. *People v. Knuckles*, 165 Ill.2d 125, 131, 209 Ill.Dec. 1, 650 N.E.2d 974 (1995). It is a limited evidentiary privilege that protects communications made by a client. *In re Marriage of Decker*, 153 Ill.2d 298, 312–13, 180 Ill.Dec. 17, 606 N.E.2d 1094 (1993). The privilege encourages full and frank consultation between client and legal advisor by removing the fear of compelled disclosure. *Consolidation Coal*, 89 Ill.2d at 117–18, 59 Ill.Dec. 666, 432 N.E.2d 250, *Fischel*, 189 Ill.2d at 590, 244 Ill.Dec. 941, 727 N.E.2d 240. *Hayes v. Burlington N. & Santa Fe Ry. Co.*, 323 Ill. App. 3d 474, 480, 752 N.E.2d 470, 476 (2001)

Illinois Supreme Court Rule 201(b)(2) (eff. Jan. 1, 2013) provides that “[a]ll matters that are privileged against disclosure at trial, including privileged communications between a party or his agent and the attorney for the party, are privileged against disclosure through any discovery procedure.”. *Swidler & Berlin v. United States*, 524 U.S. 399, 403, 118 S.Ct. 2081, 141 L.Ed.2d 379 (1998) (quoting *Upjohn Co. v. United States*, 449 U.S. 383, 389, 101 S.Ct. 677, 66 L.Ed.2d 584 (1981)). However, the privilege is the exception and the duty to disclose is the rule; accordingly, the privilege should be confined as narrowly as possible. *Waste Management, Inc. v. International Surplus Lines Insurance Co.*, 144 Ill.2d 178, 190, 161 Ill.Dec. 774, 579 N.E.2d 322 (1991). Additionally, Illinois “adheres to a strong policy of encouraging disclosure, with an eye toward ascertaining truth which is essential to the proper disposition of a lawsuit.” *Id.*

³ The definition of sacrosanct is: 1: most sacred or holy: INVIOABLE; 2: treated as if holy: immune from criticism or violation. Yet, the appellate courts and the legions of authority set forth in this response demonstrate that Miller’s contention of a sacrosanct privilege is sophomoric at best.

G. New Management.

When control of an entity passes to new management, the authority to assert and waive the attorney-client privilege passes as well. See generally *In re O.P.M. Leasing Services, Inc.*, *supra*, at 386; *Citibank v. Andros*, *supra*, at 1195; *In re Grand Jury Investigation*, 599 F.2d 1224, 1236 (CA3 1979); *Diversified Industries, Inc. v. Meredith*, 572 F.2d 596, 611, n. 5 (CA8 1978) (en banc). New managers installed as a result of a takeover, merger, loss of confidence by shareholders, or simply normal succession, may waive the attorney-client privilege with respect to communications made by former officers and directors. *Id.* Displaced managers may not assert the privilege over the wishes of current managers, even as to statements that the former might have made to counsel concerning matters within the scope of their duties. See generally *In re O.P.M. Leasing Services, Inc.*, *supra*, at 386; *Citibank v. Andros*, *supra*, at 1195; *In re Grand Jury Investigation*, 599 F.2d 1224, 1236 (CA3 1979); *Diversified Industries, Inc. v. Meredith*, 572 F.2d 596, 611, n. 5 (CA8 1978) (en banc).

Miller's scant argument also fails to distinguish the attorney-client privilege in an entity context. But, see *Waste Management*, 144 Ill.2d at 188, 161 Ill.Dec. 774, 579 N.E.2d 322. The attorney-client privilege belongs to and can only be waived by the client. See *In re Marriage of Decker*, 153 Ill.2d 298, 313, 180 Ill.Dec. 17, 606 N.E.2d 1094 (1992), see also *People v. Mudge* (1986), 143 Ill.App.3d 193, 195, 97 Ill.Dec. 391, 492 N.E.2d 1050. This is so because the privilege belongs to the client, and not to the attorney. (*People v. Duarte*(1979), 79 Ill.App.3d 110, 125, 34 Ill.Dec. 657, 398 N.E.2d 332; *People v. Marcofsky* (1920), 219 Ill.App. 230, 232; M. Graham, Cleary & Graham's Handbook of Illinois Evidence § 505.6, at 259 (4th ed. 1984).) *Cesena v. Du Page Cty.*, 201 Ill. App. 3d 96, 107, 558 N.E.2d 1378, 1385 (1990), rev'd, 145 Ill. 2d 32, 582 N.E.2d 177 (1991) (*In re Estate of Busse* (2nd Dist. 1947), 332

Ill.App. 258, 266, 75 N.E.2d 36.) (citing *Paters v. United States*, 159 F.3d 1043, 1047 n.6 (7th Cir.1998).

The client in this context is the Road District. Therefore, as a prior manager of the Road District, Miller has no standing to assert any claim to a privilege in this case. The argument that he possesses an attorney-client privilege in Road District records is not even a good faith based argument.

H. Attorney-Client Privilege in a Public Body Context.

The attorney-client privilege is even more limited when a public body is involved. In particular, the Seventh Circuit Court of Appeals observed that a manager of a public body may not even have a right to assert the attorney-client privilege. See *In re: A Witness Before the Special Grand Jury 2000-2 (Witness)*, 288 F3d 289 (7th Cir 2002). In *In re: A Witness Before the Special Grand Jury 2000-2 (Witness)*, the Seventh Circuit held that a state official may not assert a state government attorney-client privilege.⁴ 288 F3d 289 (7th Cir 2002). The court there found that the "policy reasons behind the attorney-client privilege do not justify its extension to [state] government attorneys." Focusing on the public policy reasons associated with the attorney-client privilege, the Seventh Circuit declined to distinguish these decisions from *Witness* where it articulated: "[W]e can see no reason why state government lawyers are so different from federal government lawyers that a different result is justified." and therefore disallowed any attorney-client privilege.

I. The Fraud Exception to the Attorney-Client Privilege.

Here, the facts clearly support that Attorney James Kelly (hereinafter "Kelly") was billing the Road District. See Group Exhibit A. The files plaintiff seeks are those of the Road

⁴ In re A witness before the grand jury dealt with Governor Blagojevich's attempt to assert the attorney-client privilege in the context of an attorney paid by the State of Illinois who purportedly gave advice and received information from Governor Blagojevich. The argument was rejected.

District. For sake of argument, accepting that Kelly was actually representing Miller personally, as opposed to the Road District, and billing the Road District for that work, no attorney-client privilege can exist. This is because that relationship could only exist in the context of the fraud exception. But, see *In re Marriage of Decker*, 153 Ill. 2d 298, 316, 606 N.E.2d 1094, 1103 (1992). Assuming for sake of argument that Kelly was or is performing services for Miller, but billing the Road District for that work, and Miller undertook any steps to secure payment for Kelly in connection with Miller's personal legal work, the entire relationship was formed and cloaked in furtherance of a felonious criminal act, theft of public money⁵. For any Road District payment to occur, the Highway Commissioner is required to sign the warrant for the purposes of payment. The warrant is his representation and warranty that the expense was for the Road District's benefit and, therefore, no payment from the Road District cannot be made unless the warrant is signed by the Highway Commissioner. As can be seen in Group Exhibit A, Kelly submitted at least three invoices related to non-Road District legal work to the Road District. The phrases "following-up concerning NITHCA", "Prepare material for NITHCA", "Attend Highway Commissioners meeting", are all referenced on the Road District's billing records. Importantly, the NITHCA (Northern Illinois Township Highway Commissioner's Association) was a non-profit entity created and run by Miller out of the Road District offices. Kelly served as its registered agent. See Exhibit B attached hereto. Accordingly, the billing records give colour to the existence of criminal conduct and the application of the fraud exception to the attorney-client privilege. See *In re Marriage of Decker*, 153 Ill. 2d 298, 316, 606 N.E.2d 1094, 1103 (1992).

⁵ The fact that Attorney Kelly filed his appearance in this case, knowing that he had participated in this conduct is astonishing.

It takes more than mere allegation to advance the fraud exception to the attorney-client privilege. To drive the privilege away, there must be ‘something to give colour to the charge’; there must be ‘prima facie evidence that the fraud exception has some foundation in fact.’ [Citation omitted in original text.]” (Clark, 289 U.S. at 15, 53 S.Ct. at 469, 77 L.Ed. at 1000.) See also: *In re Marriage of Decker*, 153 Ill. 2d 298, 321, 606 N.E.2d 1094, 1105 (1992). Here, the thing that would give colour and drive away the privilege, the prima facie evidence, under *Clark* and *Decker*, is Miller’s assertion of privilege as if Kelly was working for him and not the Road District when the documentation makes clear that the Road District was billed for Kelly’s work, along with the various billing items that demonstrate without a doubt that Kelly was engaged in fraud against the public body.

J. Vague Description of Documents.

In addition, the attorney-client privilege does not protect documents whose descriptions are vague—and therefore insufficient to establish the privilege. See *In re Stern Walters Partners, Inc.*, No. 94 C 5705, 1996 WL 115290, at *4 (N.D.Ill. Mar. 13, 1996) (finding that where the Court could not discern from description of documents that a privilege applied, documents would be produced despite the assertion of attorney-client privilege).

Here, in this case, Miller has done nothing to identify what specific document enjoys any purported privilege, nor has Miller attempted to describe how and why the privilege applies, nor has he set forth the elements of privilege, nor has he demonstrated that he was the client as opposed to the Road District. As a result of the scant vague Petition, this Court ought to reject the claim of Miller to privilege of any type in connection with Road District documents.

K. Privilege Conclusion.

Based on the aforementioned authority, the attorney-client privilege cannot exist in the context of a government attorney-client relationship where the attorney is merely creating documents for the public entity. If, however, the privilege did exist, the client was the Road District and not its prior manager. To the extent that any privilege existed, the privilege passed along with the holder of the office of Highway Commissioner which is not Miller, but rather Andrew Gasser. Therefore, if any attorney-client privilege exists to be asserted or waived, that privilege cannot be asserted or waived by Miller. Taking into consideration the fraud exception, no attorney-client privilege can exist in the context of legal services being paid for by the Road District for Miller individually. While Miller may have a separate claim to representational interest in other settings, it has nothing to do with Road District records or services performed and billed to the Road District. Moreover, since Miller has failed to establish his burden in any way to show how he is entitled to privilege, his scant argument must fail.

L. Attorney Work Product Doctrine

Illinois courts narrowly construe assertions of the attorney work product doctrine. *Archer Daniels Midland Co. v. Koppers Co., Inc.*, 138 Ill.App.3d 276, 278 (1st Dist. 1985). Even a broad interpretation of the attorney work product doctrine would do Miller no good in this context.

Miller's unsupported claims related to purporting attorney work product of Kelly are most displaced because Miller has not established any actual work product privilege. Miller does nothing to demonstrate that the attorney work product doctrine is even applicable.

The attorney work product doctrine gives qualified protection to documents prepared in anticipation of litigation. *Binks Mfg. Co. v. National Presto Indus., Inc.*, 709 F.2d 1109, 1118

(7th Cir.1983). The doctrine is broader in scope than the attorney-client privilege. *United States v. Nobles*, 422 U.S. 225, 238 n. 11, 95 S.Ct. 2160, 45 L.Ed.2d 141 (1975) (citing *Hickman v. Taylor*, 329 U.S. 495, 67 S.Ct. 385, 91 L.Ed. 451 (1947)). The rationale for protecting work product from discovery is to prevent either party from learning the other party's or counsel's legal strategies and theories. *Allendale*, 152 F.R.D. at 135, cited by *Christman v. Brauvin Realty Advisors, Inc.*, 185 F.R.D. 251, 255 (N.D. Ill. 1999).

The attorney work product doctrine protects: (1) “documents and tangible things otherwise discoverable”, (2) “prepared by or for another party or by or for that other party's representative”, and (3) “in anticipation of litigation or for trial.” See *Christman v. Brauvin Realty Advisors, Inc.*, 185 F.R.D. 251, 255–56 (N.D. Ill. 1999). To be protected under the attorney work product doctrine, work product must have been prepared for adversarial proceedings. *Binks*, 709 F.2d at 1118–19. Work prepared in the regular course of business is not protected by the attorney work product doctrine⁶. *Allendale*, *256 152 F.R.D. at 135. Moreover, mere anticipation of litigation is not sufficient to invoke the doctrine. See *Ferguson v. Lurie*, 139 F.R.D. 362, 367 (N.D.Ill.1991). Finally, the burden of establishing the elements of the attorney work product doctrine is on the party claiming protection. See *Binks*, 709 F.2d at 1118. See also *Christman v. Brauvin Realty Advisors, Inc.*, 185 F.R.D. 251, 255–56 (N.D. Ill. 1999).

In this case there is absolutely no application of the attorney work product doctrine because none of the documents involved in this case were prepared for litigation. In fact, there has been virtually no litigation involving the Road District prior to the People's decision to replace Miller from the office he previously held. The Petition is so defective in raising the

⁶ For example, drafts of proxy materials may come under the attorney work product doctrine if the drafts were prepared after the lawsuit is filed, but not if the drafts were prepared before. *Ziemack*, 1995 WL 314526 at *5

attorney work product doctrine that the Petition only mentions it by name without any application whatsoever. This cannot be cured by any amendment because Miller cannot point to any applicable litigation. Moreover, for the same reasons discussed above the privilege to assert passed with the office of Highway Commissioner to Andrew Gasser.

M. Miller has No Standing.

Standing contains three elements. First, the plaintiff must have suffered an “injury in fact”—an invasion of a legally protected interest which is (a) concrete and particularized, see *id.*, at 756, 104 S.Ct., at 3327; *Warth v. Seldin*, 422 U.S. 490, 508, 95 S.Ct. 2197, 2210, 45 L.Ed.2d 343 (1975); *Sierra Club v. Morton*, 405 U.S. 727, 740–741, n. 16, 92 S.Ct. 1361, 1368–1369, n. 16, 31 L.Ed.2d 636 (1972);¹ and (b) “actual or imminent harm, not ‘conjectural’ or ‘hypothetical,’ ” *Whitmore, supra*, 495 U.S., at 155, 110 S.Ct., at 1723 (quoting *Los Angeles v. Lyons*, 461 U.S. 95, 102, 103 S.Ct. 1660, 1665, 75 L.Ed.2d 675 (1983)). Second, there must be a causal connection between the injury and the conduct complained of—the injury has to be “fairly ... trace[able] to the challenged action of the defendant, and not ... th[e] result [of] the independent action of some third party not before the court.” *Simon v. Eastern Ky. Welfare *561 Rights Organization*, 426 U.S. 26, 41–42, 96 S.Ct. 1917, 1926, 48 L.Ed.2d 450 (1976). Third, it must be “likely,” as opposed to merely “speculative,” that the injury will be “redressed by a favorable decision.” *Id.*, at 38, 43, 96 S.Ct., at 1924, 1926. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61, 112 S. Ct. 2130, 2136, 119 L. Ed. 2d 351 (1992).

As to each of the elements of standing, Miller possesses none of them. In particular, Miller has no legally protected concrete and particularized interest in the outcome of this case. The outcome of this case is based entirely on the basic concept of whether or not documents are public documents. Only this Court will decide if documents are public or not, conversely the

Road District can make documents public if it elects to do so. No single person can be said to have a protected interest in secreting a public document. Where is the concrete and particularized interest of Miller? No place. What exactly is Miller's injury tied to the outcome of this case? This case is about public documents and records. How could Miller be harmed in this case? What specifically is his actual concern? What causal connection exists between the outcome in this case and the purported harm to Miller? He provides us with nothing and there can be nothing. Miller failed to identify how he is harmed by any action in this case that would allow him to intervene in this case. Miller's rights are not adjudicated with a decision on the merits of this case. He simply has not identified any right or interest he has worthy of protection.

Interestingly, the rule that injury must be "likely," as opposed to merely "speculative," that the injury will be "redressed by a favorable decision" cannot be met by Miller in this case. This is particularly evident in the proposed motion shown as Exhibit C to Miller's Petition, wherein in paragraph 11 it is clear that the motion is based upon speculation. There in the proposed motion to bar the furnishing of Road District documents to the Road District⁷, Miller uses the term "appears to be embarking upon an expedition"... This is speculation!

Moreover, even if Plaintiffs prevail, then Plaintiffs would have established that they were entitled to public records. If settlement occurred, that settlement would be between the Road District and the Plaintiffs and Miller would not suffer any injury. Even if Defendants prevail, Miller's interests are not vindicated at all. Thus, Miller has no standing in this case.

Incorporating by reference the above privilege discussion, Miller cannot be said to have privilege in any Road District document and, therefore, no standing in the assertion of privilege either of attorney work product or the attorney-client privilege. The documents can only reflect upon the

⁷ A bizarre concept in its own right.

truth of what has actually occurred. With that in mind, the goal of the judicial system is to advance truth and justice, not encourage dishonesty and concealment of public documents.

CONCLUSION

As set forth hereinabove, the under-developed scant Petition of Miller to intervene in this case is without a doubt an attempt to interfere with the judicial process, cloaked under the concept of asserting privileges that do not exist. Miller's absolute failure to examine the law on the topic of attorney-client privilege and the attorney work product doctrine has only burdened the Road District with the legal expense of responding to the obviously frivolous and patently unsupportable claim of privilege by Miller.

WHEREFORE, Defendant, Algonquin Township Road District, respectfully prays that this Honorable Court deny Robert Miller's Petition to Intervene in this action and grant it leave to file a fee petition for responding to the obviously frivolous Petition of Robert Miller.

Dated: September 6, 2018

Respectfully submitted,

ALGONQUIN TOWNSHIP ROAD DISTRICT

By: /s/ Robert Hanlon
One of Algonquin Township Road District's
Attorneys

Attorney for Algonquin Township Road District:
Robert T. Hanlon, ARDC #6286331
Law Offices of Robert T. Hanlon & Associates, P.C.
131 East Calhoun Street
Woodstock, IL 60098
(815) 206-2200; (815) 206-6184 (Fax)

GROUP EXHIBIT A

LAW OFFICES OF
MATUSZEWICH & KELLY, LLP

101 North Virginia Street, Suite 150
Crystal Lake, Illinois 60014
(815) 459-3120 Telephone
(815) 459-3123 Facsimile

ATRD
3702 U.S. Highway 14
Crystal Lake, IL 60014-8204

July 2, 2015

Attention: Robert J. Miller, Highway Commissioner

Invoice #: 7559

DESCRIPTION

Receipt of reimbursement agreement signed by ATRD. Draft letter to IDOT, Call IDOT.

Email to client re: J. Liataud Stormwater management project.

Research for Road District

Meeting with client.

Follow-up concerning NITHCA

Call from Highway Commissioner re: ordinance authority.

Meeting with client re: IDOT

Research police powers.

Draft letter to client re: police powers.

Total Hours 10.50

Total Fees \$1,575.00

Total Fees & Client Costs	<u>\$1,575.00</u>
Previous Balance	\$712.50
Payments Received	\$712.50



LAW OFFICES OF
MATUSZEWICH & KELLY, LLP

101 North Virginia Street, Suite 160
Crystal Lake, Illinois 60014
(815) 459-3120 Telephone
(815) 459-3123 Facsimile

ATRD
3702 U.S. Highway 14
Crystal Lake, IL 60014-8204

June 5, 2015

Attention: Robert J. Miller, Highway Commissioner

Invoice #: 7499

DESCRIPTION

Prepare material for NITHCA

Revisions to IDOT agreement.

Correspondence with Raymond Ritchie IDOT Agreement Specialist.

Correspondence to client re: non - dedicated road program.

Discussion and research concerning road district matter

Meeting with client.

Receipt and review of revised IGA from IDOT, forward to client with recommendations.

Total Hours

4.75

Total Fees

\$712.50

Total Fees & Client Costs

\$712.50

Previous Balance

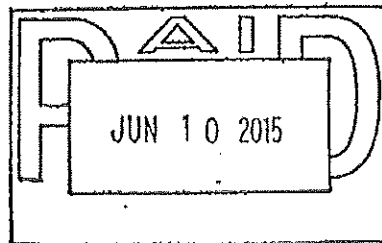
\$1,897.50

Payments Received

\$1,897.50

Balance Now Due

\$712.50



5160.005

5

LAW OFFICES OF
MATUSZEWICH & KELLY, LLP

101 North Virginia Street, Suite 150
Crystal Lake, Illinois 60014
(815) 459-3120 Telephone
(815) 459-3123 Facsimile

ATRD
3702 U.S. Highway 14
Crystal Lake, IL 60014-8204

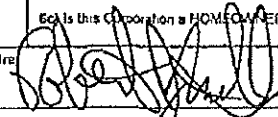
May 9, 2016

Attention: Robert J. Miller, Highway Commissioner
Re: Miscellaneous

Invoice #: 8051
File #: 05-0010

DATE	DESCRIPTION	HOURS
Apr-01-16	Attend Highway Commissioners meeting.	5.50
	E-mail to Highway Commissioner Re: Highway meeting	0.30
Apr-06-16	Phone conference with client. Email to client.	0.25
Apr-13-16	Call to Highway Commissioner.	0.25
Apr-18-16	Call from client Re: MFT.	0.25
Apr-19-16	Research and send to Highway Commissioner statute and opinion concerning MFT funds	0.25
	Revisions to Employee Handbook, send the same to client.	0.40
	Call from client Re: Employee Handbook, discuss revisions, make further revisions and send to client.	0.40
Apr-28-16	Meeting with client.	1.00
	Total Hours	<u>8.60</u>
	Total Fees	<u>\$1,290.00</u>
	Total Fee & Client Costs	<u>\$1,290.00</u>
	Previous Balance	\$1,606.50

EXHIBIT B

1) Corporate Name NORTHERN ILLINOIS TOWNSHIP HIGHWAY COMMISSIONERS ASSOCIATION		File Number N 7010-008-8
4) President Name/Address Robert Miller, 3702 U.S. 14, Crystal Lake, IL		3a) Date of Inc./Qual 06-17-2015
Secretary Name/Address Tom Kaider, 530 N. Smith St., Palatine, IL		3b) State of Inc ILLINOIS
Treasurer Name/Address Sig Vaznelis, 1115 Warner Ave., Lemont, IL		IL Annual Report General Not For Profit Corporation Act
Director Name/Address Tom Poznański, 10709 Vine St., Unit A, Huntley, IL		
Director Name/Address		
Director Name/Address		
6) Brief Description of the corporation's activities Educational programs and seminars.		
7) Principal Address of the Corporation (Street, City, State, Zip Code) 3702 U.S. Hwy 14, Crystal Lake, IL 2016		Year of IL 2016
2) Registered Agent % MATUSZEWICH & ASSOCIATES P 06-17-15 101 N VIRGINIA ST STE 150 CRYSTAL LAKE IL 60014 MC HENRY COUNTY		6a) Is this Corporation a CONDOMINIUM ASSOCIATION? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
		6b) Is this Corporation a COOPERATIVE HOUSING CORP? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
		6c) Is this Corporation a HOMEOWNER'S ASSOCIATION? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
Under the penalty of perjury and as an authorized officer, I declare that this annual report, pursuant to the provisions of the General Not For Profit Corporation Act, has been examined by me and is, to the best of my knowledge and belief, true, correct and complete		B) Signature  President Title 5/13/16 Date