

STATE OF MICHIGAN
IN THE 17th CIRCUIT COURT FOR KENT COUNTY

GRIFFIN TRANSPORTATION, INC.;
RIVER CITY EQUIPMENT SALES, INC.;
RIVER CITY EQUIPMENT LEASING,
LLC; ACCURATE TRUCK SERVICES,
LLC; LAD PROPERTIES, LLC; CRAIG
SCHOLTEN; and JESSICA SCHOLTEN,

Plaintiffs/Counter-Defendants,

vs.

HUNGERFORD, ALDRIN, NICHOLS &
CARTER, P.C., d/b/a HUNGERFORD
NICHOLS CPAS + ADVISORS,

Defendant/Counter-Plaintiff.

Case No. 16-08800-CBB

HON. CHRISTOPHER P. YATES

ORDER ON *IN CAMERA* REVIEW OF PERSONNEL FILES

Employers and employees alike regard personnel files as sacrosanct, but does that place files containing employee-performance records beyond the reach of discovery in Michigan? Obviously not. “Michigan follows an open, broad discovery policy that permits liberal discovery of any matter, not privileged, that is relevant to the subject matter involved in the pending case.” Augustine v Allstate Ins Co, 292 Mich App 408, 419 (2011). Although Michigan recognizes an accountant-client privilege, see MCL 339.732(1); People v Paasche, 207 Mich App 698, 706 (1994), that privilege has no application here because former clients have sued their former accounting firm for malpractice. See MCL 339.732(2)(a). Thus, Defendant Hungerford, Aldrin, Nichols & Carter, P.C., has nothing but the general requirement of “relevance” in MCR 2.302(B)(1) to use as a shield against discovery of its employees’ personnel files. That is a slender reed on which to hang a discovery challenge.

When the debate over discovery of personnel files flared, the Court conducted a conference call with the attorneys for the parties. Then the Court directed that the materials at issue be furnished to the Court for *in camera* review. See Ostoin v Waterford Township Police Dep't, 189 Mich App 334, 339 (1991). Unsurprisingly, the Court's *in camera* review revealed that most of the materials in the personnel files ought not be kept from the plaintiffs because of amorphous privacy concerns,¹ or based upon the "relevance" requirement prescribed by MCL 2.302(B)(1). Simply stated, almost everything in the personnel files supplied to the Court for *in camera* review is fodder for discovery.² The Court shall meet with the attorneys for the competing parties to fashion a protective order, and the Court acknowledges that several pages include contents such as social security numbers that must be redacted, but the parties should come to that meeting expecting that virtually everything furnished for *in camera* review must be disclosed, albeit subject to an appropriate protective order.

IT IS SO ORDERED.

Dated: May 29, 2018



HON. CHRISTOPHER P. YATES (P41017)
Kent County Circuit Court Judge

¹ Pursuant to MCR 2.302(C), the Court can issue a protective order to prevent "annoyance, embarrassment, oppression, or undue burden or expense," but such a protective order can be drafted to ensure privacy by restricting the disclosure of the protected information, as opposed to preventing the discovery in its entirety. Thus, the Court is willing to entertain a request for a protective order in the instant case, but the Court is unwilling to flatly bar the discovery sought by the plaintiffs.

² One internal e-mail concerning a personnel file merely states: "Hillary is sick today, so I'm sending these out for her. See you all tomorrow." In its *in camera* submission, the defendant chose to redact even that innocuous note. This is but one example of the redaction overkill encountered by the Court during the *in camera* review.