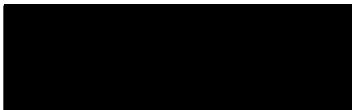


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District Court, El Paso County, Colorado Court Address: 270 S. Tejon Street Colorado Springs, Colorado 80903	FILED IN THE DISTRICT AND COUNTY COURTS OF EL PASO COUNTY, COLORADO SJK JAN 26 2016 DR. LYNETTE CORNELIUS CLERK OF COURT ▲ COURT USE ONLY ▲
The People Of The State Of Colorado vs. Defendant: Robert Dear, Jr.	Case #: 15CR5795 Division #: 10
District Attorneys: Daniel H. May #11379; Jeffrey Lindsay #24664; Donna Billek #30721 105 E. Vermijo, Colorado Springs, Co. 80903 Phone Number: 719-520-6000 District Attorney: Daniel H. May #11379	
<p style="text-align: center;">D-15 PEOPLE'S SURRESPONSE TO MOTION TO LIMIT SCOPE OF COMPETENCY EVALUATION ON ISSUE OF ATTORNEY-CLIENT PRIVILEGE</p>	

COMES NOW, DANIEL H. MAY, by and through his duly appointed deputy and hereby submits the following "People's Surrespnse to Motion to Limit Scope of Competency Evaluation." The defendant has raised, for the first time in his reply, the issue of attorney-client privilege as to the fact of jail visits. There is no attorney-client privilege or any constitutional right that applies to public acts, here acts perceived by law enforcement in the public defenders' attempts to visit the defendant, nor the defendant's public act in the refusal to meet with the public defenders.

1. The attorney-client privilege is codified in C.R.S. 13-90-107(1)(b). The statute states:

“(b) An attorney shall not be examined without the consent of his client as to any communication made by the client to him or his advice given thereon in the course of professional employment; nor shall an attorney's secretary, paralegal, legal assistant, stenographer, or clerk be examined without the consent of his employer concerning any fact, the knowledge of which he has acquired in such capacity.”

Thus, the privilege is applicable to “communications” between the client and the attorney, and advice from the attorney to the client. The attorney-client privilege that originated in common law is now codified. *Losavio v. District Court*, 188 Colo. 127, 133, 533 P.3d 32, 35 (1975) (“The privilege is established by the act of the client seeking professional advice from a lawyer and extends only to confidential matters communicated by or to the client in the course of gaining counsel, advice, or direction with respect to the client’s rights or obligations.”)

EC

2. “Confidential disclosures by a client to an attorney made in order to obtain legal assistance are privileged. The purpose of the privilege is to encourage clients to make full disclosure to their

attorneys.” *Fisher v. United States*, 425 U.S. 391, 403 (1976) (citations omitted) (emphasis added) (documents created by the defendant but given to his attorney are not privileged).

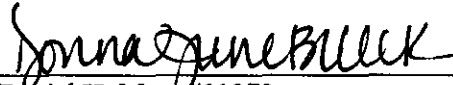
“Accordingly it protects only those disclosures necessary to obtain informed legal advice which might not have been made absent the privilege.” *Id.* at 404. “ Thus, the purpose of the attorney-client privilege is to “encourage full and frank communication between attorneys and their clients and thereby promote broader public interests in the observance of law and administration of justice.” *Jaffee v. Redmond*, 518 U.S. 1, 11 (1996).

3. The act of going to the jail to visit with the defendant and informing the sheriff about their intent is not a communication of any sort between the client and the attorney. The act of the defendant telling the sheriff he does not want to see the public defenders is not a communication of any sort between the client and the attorney. Therefore, the information is not privileged.
4. The Sixth Amendment right to counsel extends to the right to consult with his attorney in an area where private conversation is possible. *People v. Dehmer*, 931 P.2d 460, 463 (Colo.App. 1996). While there is a constitutional right to a “sufficiently private attorney-client consultation facility,” *Id.*, there is no corollary right to secrecy of the fact of the visit.
5. The defendant claims that “information about visits between attorney and client are privileged” without citation to any authority, because there is none. If this sentence is meant to imply that it applies to the fact of a visit, the defendant is incorrect. If it is meant to imply that communications that are made during a visit between the defendant and his attorney, he would be correct as to this assertion only.
6. There is nothing in Order C-003 that prohibits the statement of relevant facts in pleadings such as in motions, responses, or replies.

Respectfully submitted this 26th day of January, 2016.

DANIEL H. MAY #11379
DISTRICT ATTORNEY

By



Daniel H. May, #11379
Jeffrey Lindsay, #24664
Donna Billek, #30721

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **PEOPLE'S SURRESPONSE TO MOTION TO LIMIT SCOPE OF COMPETENCY EVALUATION ON ISSUE OF ATTORNEY-CLIENT PRIVILEGE (D-015)** has been forwarded to the Public Defender's Office by placing it into the Public Defender's box for pickup:

1/26/16

Mina Jacques