

From: Eveleigh, Dennis <Dennis.Eveleigh@connapp.jud.ct.gov>
Sent: Monday, June 05, 2017 11:54 AM
To: Del Ciampo, Joseph
Subject: "black-box" discivery

Hi Joe. I received a copy of a discovery order involving a ruling on 13-3 and whether a car "black box" is included in the discovery order. Would you kindly place this matter on the agenda for September. Thank you. I hope that all is well. JE

Sec. 13-3. —Materials Prepared in Anticipation of Litigation; Statements of Parties; Privilege Log

(Amended June 14, 2013, to take effect Jan. 1, 2014.)

(a) Subject to the provisions of Section 13-4, a party may obtain discovery of documents and tangible things otherwise discoverable under Section 13-2 and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the case and is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the judicial authority shall not order disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

(b) A party may obtain, without the showing required under this section, discovery of the party's own statement and of any nonprivileged statement of any other party concerning the action or its subject matter.

(c) A party may obtain, without the showing required under this section, discovery of any recording, by film, photograph, video, audio or any other digital or electronic means, of the requesting party and of any recording of any other party concerning the action or the subject matter, thereof, including any transcript of such recording, prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative. A party may obtain information identifying any such recording and transcript, if one was created, prior to the deposition of the party who is the subject of the recording; but the person from whom discovery is sought shall not be required to produce the recording or transcript until thirty days after the completion of the deposition of the party who is the subject of the recording or sixty days prior to the date the case is assigned to commence trial, whichever is earlier; except that if a deposition of the party who is the subject of the recording was not taken, the recording and transcript shall be produced sixty days prior to the date the case is assigned to commence trial. If a recording was created within such sixty day period, the recording and transcript must be produced immediately. No such recording or transcript is required to be identified or produced if neither it nor any part thereof will be introduced into evidence at trial. However, if any such recording or part or transcript thereof is required to be identified or produced, all recordings and

transcripts thereof of the subject of the recording party shall be identified and produced, rather than only those recordings, or transcripts or parts thereof that the producing party intends to use or introduce at trial.

(d) When a claim of privilege or work product protection has been asserted pursuant to Sections 13-5 or 13-10 in response to a discovery request for documents or electronically stored information, the party asserting the privilege or protection shall provide, within forty-five days from the request of the party serving the discovery, the following information in the form of a privilege log:

- (1) The type of document or electronically stored information;
- (2) The general subject matter of the document or electronically stored information;
- (3) The date of the document or electronically stored information;
- (4) The author of the document or electronically stored information;
- (5) Each recipient of the document or electronically stored information; and
- (6) The nature of the privilege or protection asserted.

The privilege log shall initially be served upon all parties but not filed in court.

If the information called for by one or more of the foregoing categories is itself privileged, it need not be disclosed. However, the existence of the document and any nonprivileged information called for by the other categories must be disclosed. A privilege log must be prepared with respect to all documents and electronically stored information withheld on the basis of a claim of privilege or work product protection, except for the following: written or electronic communications after commencement of the action between a party and the firm or lawyer appearing for the party in the action or as otherwise ordered by the judicial authority.

(P.B. 1978-1997, Sec. 219.) (Amended June 29, 2007, to take effect Jan. 1, 2008; amended June 14, 2013, to take effect Jan. 1, 2014; amended June 24, 2016, to take effect Jan. 1, 2017.)

HISTORY—2017: Prior to 2017, the first sentence of subsection (c) read: "A party may obtain, without the showing required under this section, discovery of any recording, by film, photograph, videotape, audiotape or any other digital or electronic means, of the requesting party and of any recording of any other party concerning the action or the subject matter, thereof, including any transcript of such recording."

COMMENTARY—2017: The change to this section clarifies that only recordings prepared by a party in anticipation of litigation or for trial, and not just any recordings, are covered by this rule.