[Cite as *Martin v. Martin,* 2012-Ohio-4889.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

TRUMBULL COUNTY, OHIO

ERIC MARTIN,	:	**O P I N I O N**
Plaintiff-Appellee,	:	
- vs -	:	**CASE NO. 2011-T-0034**
DENISE M. CARRADINE MARTIN,	:	
Defendant-Appellant,	:	
ATTORNEY D. KEITH ROLAND,	:	
Third Party Defendant-Appellant.	:	

Civil Appeal from the Court of Common Pleas, Domestic Relations Division, Case No. 09 DR 333.

Judgment: Affirmed as modified and remanded.

Deborah L. Smith, Smith Law Firm, 109 North Diamond Street, Mercer, PA 16137; and *John M. Rossi*, Guarnieri & Secrest, P.L.L., 151 East Market Street, P.O. Box 4270, Warren, OH 44482-4270 (For Plaintiff-Appellee).

Charles E. Dunlap, 7330 Market Street, Youngstown, OH 44512 (For Defendant-Appellant).

William R. Biviano, Biviano Law Firm, 700 Huntington Bank Tower, 108 Main Avenue, S.W., Warren, OH 44481-1089 (For Third Party Defendant-Appellant).

TIMOTHY P. CANNON, P.J.

{¶1} Appellants, Denise M. Carradine Martin (hereinafter "Carradine") and Attorney D. Keith Roland, appeal the judgment of the Trumbull County Court of

Common Pleas, Domestic Relations Division, granting appellee, Eric Martin's, motion to add Attorney D. Keith Roland as a third party defendant, motion to compel testimony, and motion for an accounting. For the following reasons, the trial court's judgment is affirmed as modified and remanded.

{¶2} In September 2009, Martin filed a complaint for divorce against Carradine. As part of the action, Martin contended that substantial marital assets had been transferred and concealed by Carradine and were being held by her attorney, D. Keith Roland. As such, Martin caused two separate subpoenas to be issued to Roland, commanding him to produce various documents in connection with his representation of Carradine, including the attorney fee agreement, billing statements, and an accounting of funds. Martin additionally filed three motions, now the subject of the present appeal: (1) a motion to add Roland as a party; (2) a motion for an accounting of all funds paid over to Roland from Carradine during the marriage; and (3) a motion to compel Roland to testify regarding the disposition of funds during the marriage.

{¶3} During her deposition, Carradine denied any concealment and improper transfer of marital assets; instead, she testified that she gave her attorney money for estate planning, investments, and various corporate work, including debt collection, evictions, and miscellaneous filings associated with her numerous business entities. She explained that a particularly large amount, in the six-figure range, was invested from 2006 to 2008 for estate-planning purposes through a brokerage company called U.S. Underwriting, even though Martin was a broker himself. Carradine testified that she used Roland to effectuate these transactions since she did not want her husband to find out she was investing through another broker because he would "throw a fit." She

explained that using another broker to invest funds had been a particularly tumultuous subject with her husband in the past. Carradine explained that the designated investment funds were paid over to Roland, who then paid them over to Jim France with U.S. Underwriting. She stated that Roland was essentially in charge of all aspects relating to her investments; she did not receive account records, she did not know how her money was being spent, nor did she know how much, if any, was being made. She also never received any tax forms from the transactions. Carradine ultimately contended that she was victimized in the transaction because the funds had been totally lost, the company's website and phone had disappeared, and Jim France was never seen or heard from again, apparently absconding with the investment capital and any proceeds. She stated Roland investigated the matter, but she knew no details of what, if anything, he was able to uncover.

{¶4} Carradine filed a motion to quash the subpoena issued to Roland, asserting the attorney-client privilege. Roland filed a motion to dismiss his addition as a party defendant and a motion for a protective order, asserting that he is the business attorney for Carradine and that she has invoked the attorney-client privilege. Martin argued that the privilege is not applicable because Roland was not acting as Carradine's attorney in these transactions. Further, Martin contended that, even if Roland was acting as an attorney, the privilege would not attach because the transactions constituted a crime or fraud, to wit: improper concealment of marital assets.

{¶5} A hearing was held on the pending motions. During the hearing, Carradine again affirmatively maintained that she did not attempt to conceal marital assets. Carradine was asked why she failed to list the investment company and the

funds transferred in response to the interrogatories which called for such information. Carradine explained that she did not list U.S. Underwriting as a financial institution she had transacted with, in response to at least six interrogatories, because she did not consider it a real company since it apparently never existed.

{¶6} The trial court granted Martin's three motions, thereby adding Roland as a third party; compelling him to testify and produce various documents, including the attorney fee agreement and billing statements; and also compelling him to provide an accounting.

{¶7} Carradine and Roland now appeal and assert three assignments of error for consideration by this court. Carradine and Roland's first assignment of error states:

{¶8} "The trial court abused its discretion in adding Attorney D. Keith Roland as a party in the absence of any evidence that he possessed, controlled, or claimed an interest in any property out of which Appellee sought a division of marital property."

{¶9} In their first assignment of error, Carradine and Roland contend that the trial court abused its discretion in joining Roland as a party pursuant to Civ.R. 75(B)(1). In response, Martin argues this court is without jurisdiction to assess the merits of this claim because the trial court's order adding Roland as a party is not final and appealable.

{¶10} It is well founded that appellate courts have jurisdiction to review only final orders or judgments, pursuant to Section 3(B)(2), Article IV of the Ohio Constitution, and R.C. 2505.02. From this rule, it is axiomatic that if an order is not final and appealable, an appellate court is without jurisdiction to entertain the merits of that order. Here, the subject order being attacked under the first assignment of error granted a motion which

joined Roland as a party, pursuant to Civ.R. 75(B). A court's order determining a motion to join a party does not generally constitute a final, appealable order, pursuant to R.C. 2505.02. *See Postlewaite v. Gray*, 9th Dist. No. 2005CA00110, 2005-Ohio-5652, ¶19, citing *Gelum v. Governor*, 11th Dist. No. 3680, 1987 Ohio App. LEXIS 7438 (June 12, 1987) and *BancOhio Natl. Bank v. Rubicon Cadillac, Inc.*, 11 Ohio St.3d 32, 34 (1984) (determining joinder orders under Civ.R. 19(B) to not be final and appealable).

{¶11} While Civ.R. 75 expressly states that "Civ.R. 14, 19, 19.1, and 24 shall not apply in divorce, annulment or legal separation action," the rationale of cases such as *Gelum* and *Postlewaite*, *supra*, nonetheless applies here. *See also Rymers v. Rymers*, 11th Dist. Nos. 2009-L-109, 2009-L-156, 2010-Ohio-4289 (appellate court without jurisdiction to consider trial court's denial of Civ.R. 75(B) motion to intervene). The order joining Roland as a party is interlocutory in nature and not rendered a final order by any part of R.C. 2505.02. Therefore, with respect to appellants' first assignment of error, the appeal is premature, and we are without jurisdiction to consider this assignment. Consequently, Carradine and Roland's first assignment of error is dismissed.

{¶12} Carradine and Roland's second and third assignments of error state:

{¶13} "[2.] The trial court erred in granting the motion to compel Attorney D. Keith Roland to testify.

{¶14} "[3.] The trial court erred in granting the motion requiring Attorney D. Keith Roland to provide an accounting."

{¶15} Before the merits of these assignments are addressed, this court must again assess a jurisdictional argument. As with the first assigned error, Martin argues

that this court is without jurisdiction to consider the order requiring an accounting because it is not final and appealable. Appellants contend the accounting in this case would result in disclosure of privileged information, and therefore, a discovery order directing the disclosure of the accounting is a final, appealable order.

{¶16} R.C. 2505.02(A)(3) defines a "provisional remedy" as including the "discovery of privileged matter." R.C. 2505.02(B)(4) explains that, if two elements are met, a provisional remedy constitutes a final, appealable order:

> **{¶17}** (B) An order is a final order that may be reviewed, affirmed, modified, or reversed, with or without retrial, when it is one of the following:
>
> **{¶18}** * * *
>
> **{¶19}** (4) An order that grants or denies a provisional remedy and to which both of the following apply:
>
> **{¶20}** (a) The order in effect determines the action with respect to the provisional remedy and prevents a judgment in the action in favor of the appealing party with respect to the provisional remedy.
>
> **{¶21}** (b) The appealing party would not be afforded a meaningful or effective remedy by an appeal following final judgment as to all proceedings, issues, claims, and parties in the action.

{¶22} As to R.C. 2505.02(B)(4)(a), the order compelling production of alleged privileged materials unequivocally determines the action in this case. As to R.C. 2505.02(B)(4)(b), appellants would not be afforded an effective remedy following the complete adjudication of this case. As explained by the Seventh Appellate District:

{¶23} [T]he granting of a motion to compel alleged privileged material or the denial of a protective order is a final appealable order pursuant to R.C. 2505.02(B)(4) because once the material is disclosed and is public, 'the proverbial bell cannot be unrung.' *Ramun v. Ramun*, 7th Dist. No. 08 MA 185, 2009-Ohio-6405, ¶26, quoting *Concheck v. Concheck*, 10th Dist. No. 07AP-896, 2008-Ohio-2569, ¶10.

{¶24} As the discovery order in this case implicates a claim of privilege, the order is final and appealable such that this court may entertain the underlying merits.

{¶25} In this case, the trial court denied the motions to quash and granted all motions to conduct discovery, thereby adding Roland as a third party, compelling him to testify and produce various documents, including the attorney fee agreement and billing statements, and also to provide an accounting. As stated earlier, at the trial court, appellee presented two theories that would allow for discovery of the requested information. The first theory was the information sought is not protected by the privilege. The second theory was the information is not protected due to the crime-fraud exception. Unfortunately, the trial court's order does not expressly indicate which theory formed the basis for ordering release of the requested information.

{¶26} R.C. 2317.02(A)(1) governs the attorney-client privilege and prevents, with exceptions, an attorney from testifying concerning communications with his or her client. The statutory privilege, which is testimonial in nature, protects the sought-after communications both at trial and during the discovery process. *Helfrich v. Madison*, 5th Dist. 11 CA 26, 2012-Ohio-551, ¶30. Moreover, "R.C. 2317.02(A) is applicable not only to a request to compel testimony but is also applicable to a request for attorney-client

communications contained within the attorney's file." *Estate of Hohler v. Hohler*, 185 Ohio App.3d 420, 2009-Ohio-7013, ¶39 (7th Dist.). In cases not addressed by R.C. 2317.02(A), the attorney-client privilege is governed by common law. *State ex rel. Leslie v. Ohio Hous. Fin. Agency*, 105 Ohio St.3d 261, 2005-Ohio-1508, ¶18. The common-law privilege provides protection beyond the testimonial realm.

{¶27} The attorney-client privilege is not absolute, and many exceptions can apply whereby the privilege, though it otherwise may be applicable, will not attach to the communication or document. One such exception, as noted herein, is the crime-fraud exception. This exception holds that communications between an attorney and client in furtherance of a crime or fraud are not protected by the privilege. That is, "the attorney-client privilege may not be asserted to conceal the attorney's cooperation with the client's wrongdoing." *Squire, Sanders & Dempsey, L.L.P. v. Givaudan Flavors Corp.*, 127 Ohio St.3d 161, 2010-Ohio-4469, ¶25. As explained by the Ohio Supreme Court:

> **{¶28}** [I]t is beyond contradiction that the privilege does not attach in a situation where the advice sought by the client and conveyed by the attorney relates to some future unlawful or fraudulent transaction. Advice sought and rendered in this regard is not worthy of protection, and the principles upon which the attorney-client privilege is founded do not dictate otherwise. *Moskovitz v. Mt. Sinai Med. Ctr.*, 69 Ohio St.3d 638, 660 (1994).

{¶29} "The mere fact that communications may be related to a crime is insufficient to overcome the attorney-client privilege." *State ex rel. Nix v. Cleveland*, 83 Ohio St.3d 379, 384 (1998). Rather, a party invoking the crime-fraud exception must

make a prima facie showing: i.e., the party "must demonstrate that there is a factual basis for a showing of probable cause to believe that a crime or fraud has been committed and that the communications were in furtherance of the crime or fraud." *Id.*

{¶30} Generally, on review, a trial court's judgment in a discovery matter involving a claim of privilege is a question of law subject to a de novo standard. *Cobb v. Shipman*, 11th Dist. No. 2011-T-0048, 2012-Ohio-1676, citing *Ward v. Summa Health Sys*., 128 Ohio St.3d 212, 2010-Ohio-6275, ¶13, and *Med. Mut. of Ohio v. Schlotterer*, 122 Ohio St.3d 181, 2009-Ohio-2496. However, in determining whether there is a factual basis concerning crime or fraud, the trial court is also deciding factual issues. To this extent, we recognize the trial court, sitting as trier-of-fact during the hearing involving a crime-fraud claim, is in the best position to observe the witnesses, weigh the testimony, and assess the questions of credibility.

{¶31} If the trial court indeed found the crime-fraud exception to apply (thereby allowing the protections of the attorney-client relationship to take flight), then such a conclusion will not be disturbed because we find it to be supported by ample evidence in the record.

{¶32} Carradine testified that she invested upwards of $100,000 over a period of several years with a broker through her attorney, without seeking or relying upon the advice of either her attorney or the broker. She testified that she wanted to conceal these transactions because her husband was a jealous broker who would become angry if he learned she was investing through another broker. Also, Carradine testified that the money, the broker, and all statements and/or documentary evidence relating to these funds have simply vanished.

{¶33} There was also evidence that Carradine made several large payments to Roland, also in excess of $100,000, purportedly to pay for several years of collection work that Roland performed on her behalf without compensation. Carradine admitted that she did not report these payments as such on her tax returns but, rather, deducted them as equipment lease payments.

{¶34} Additionally, there is the significant matter of the interrogatories specifically calling for certain information which, it appears, Carradine did not properly answer. Carradine failed to list U.S. Underwriting as an institution that has funds on deposit by which she claimed an interest; as a firm she has employed for investments; as an entity that has held an interest for her during the past five years; or as an entity she sold or transferred interest in excess of $100. Moreover, she failed to list her account at U.S. Underwriting altogether. She also failed to list Jim France and Roland as persons to whom she has transferred funds.

{¶35} Carradine's explanations for failing to provide the called-for responses are equally suspect. She explained that she had written off the entire company—and the significant amount of investment capital—as a complete and total loss. She also explained that she did not consider U.S. Underwriting a financial institution, and she did not consider her previous transferred capital to be "funds" since neither now exist.

{¶36} Based on our review of the record, it seems clear to this court that the trial court found the privilege did not attach to protect the documents based on appellee's second theory, i.e., due to the crime-fraud exception.

{¶37} We reach this conclusion for two reasons. First, the trial court granted the release of information from a very broad subpoena and yet requested no in-camera

inspection of the documents to gauge whether the privilege was applicable. It does not appear the trial court ever viewed the documents or communications, and they are not part of the record on review. *See Sherwin-Williams Co. v. Motley Rice LLC*, 8th Dist. No. 96927, 2012-Ohio-809, ¶55. Thus, without reviewing the documents, there was no way for the trial court (or this court) to know whether the majority of the documents and records Roland was required to produce came within the scope of either statutory or common-law privilege. However, this inquiry would be unnecessary if the trial court found evidence of crime or fraud. Indeed, under the crime-fraud exception, the trial court is not required to view the documents if it found a prima facie case of crime or fraud. The fact the trial court did not conduct an in-camera review suggests it found the crime-fraud exception to swallow the privilege whole, rendering an in-camera viewing of the documents a moot exercise.

{¶38} Second, and as explained above, the evidence adduced at the crime-fraud hearing unequivocally supported a prime facie finding of crime or fraud. The trial court noted that it had reached its decision "based on the hearing." Thus, it seems the trial court made its determination upon finding the existence of a crime-fraud exception. The record supports a finding that a prima facie case was made demonstrating probable cause to believe a crime or fraud had been perpetuated, and the communications were in furtherance of such crime or fraud.

{¶39} As there is no attorney-client privilege when a client consults an attorney for assistance in carrying out an ongoing fraud, the requested communications would not be protected. *See generally Euclid Retirement Village, Ltd. Partnership v. Giffin*, 8th Dist. No. 79840, 2002-Ohio-2710, ¶29.

{¶40} If the trial court indeed found the crime-fraud exception to apply, its entry concerning all three discovery motions can stand, as the record supports this finding.

{¶41} However, this case is remanded for clarification and/or modification of the trial court's order. The trial court must journalize whether it indeed found the crime-fraud exception to exist, or whether it found the documents simply did not contain privileged communications. If the trial court found the latter, it is clear, based on the broad scope of the requested documentation, that some of the requested documents are not protected by the privilege, such as those dealing with the "investment" accounts. The only way to practically arrive at that determination with respect to some documents would be to conduct a limited in-camera review. If the trial court allowed disclosure of the information based on finding no attorney-client privilege, then its order may be appropriate with respect to most of the documents, but may need to be clarified with respect to others. There is simply no way to determine, without viewing the documents, whether *all* of the requested documents are not privileged. However, if the trial court allowed disclosure of the information based on the crime-fraud exception as the above-framed analysis supposes, then the order is affirmed.

{¶42} The judgment of the Trumbull County Court of Common Pleas, Domestic Relations Division, is affirmed as modified and remanded for proceedings consistent with this opinion.

MARY JANE TRAPP, J., concurs,

DIANE V. GRENDELL, J., dissents with a Dissenting Opinion.

DIANE V. GRENDELL, J., dissents with a Dissenting Opinion.

{¶43} The principles governing the disposition of this appeal are simple and straightforward. The domestic relations court's March 22, 2011 Judgment Entry should be affirmed and the parties allowed to proceed with the divorce.

{¶44} "[T]he mere relation of attorney and client does not raise a presumption of confidentiality of all communications made between them." *Moskovitz v. Mt. Sinai Med. Ctr.*, 69 Ohio St.3d 638, 660-661, 635 N.E.2d 331 (1994). "It is well-settled that the burden of showing that testimony sought to be excluded under the doctrine of privileged attorney-client communications rests upon the party seeking to exclude it." *Waldmann v. Waldmann*, 48 Ohio St.2d 176, 178, 358 N.E.2d 521 (1976).

{¶45} In the present case, the appellants made no showing that the discovery sought by appellee fell within the attorney-client privilege. Where such a showing is not made, discovery is permissible.

{¶46} The Ohio Supreme Court, confronted with the same set of facts as the court herein, "simply" and succinctly disposed of the matter by noting that the party asserting the privilege failed to meet his burden:

> **{¶47}** In his motion to quash plaintiff's subpoena duces tecum, [the party opposing discovery] offered no proof that any of the materials in the insurer's claims file were privileged, and he did not request the court to conduct an *in camera* inspection of the file. [The party's] motion relied upon the blanket assertion that the file contained privileged communications; and, because the assertion is not

> supported in the record, it fails to satisfy [the party's] burden of showing that the file, or any part thereof, is privileged.

Peyko v. Frederick, 25 Ohio St.3d 164, 166, 495 N.E.2d 918 (1986). No more is necessary to resolve the present appeal.

{¶48} In the present case, Attorney D. Keith Roland filed a Motion for Protective Order in which he asserted that he is Denise Carradine's "business attorney" and that Carradine has invoked the attorney-client privilege. Carradine filed a Motion to Quash in which she asserted the privilege. Nothing further was offered by either Roland or Carradine to meet their burden of demonstrating that the testimony and/or documents sought by the appellee fell within the privilege.

{¶49} The specific production requested of Roland in the Subpoenas is reproduced below.[1] A review of the requested production demonstrates that nothing inherently privileged or confidential was sought. It was completely unnecessary for the lower court, as well as for this court, to consider whether exceptions to the attorney-client privilege apply where the party asserting the privilege does not meet its initial burden.

{¶50} These basic principles have been often applied by Ohio courts of appeals. *Hartzell v. Breneman*, 7th Dist. No. 10 MA 67, 2011-Ohio-2472, ¶ 23 ("the burden is on the party claiming privilege so that an in-camera hearing is unnecessary if that party fails to show a factual basis for believing in good faith that the records are not properly discoverable"); *Ro-Mai Industries v. Manning Properties*, 11th Dist. No. 2009-P-0066, 2010-Ohio-2290, ¶ 28 ("documents and/or communications are not privileged * * *

1. Contrary to the majority's description, *supra* at ¶ 37, the scope of the subpoena can hardly be described as "a very broad subpoena."

merely because the parties themselves have deemed them confidential"); *McManaway v. Fairfield Med. Ctr.*, 5th Dist. No. 05 CA 34, 2006-Ohio-1915, ¶ 174 ("FMC offered no proof that any of the documents or information appellees sought to discover were privileged, and FMC further did not request the trial court to conduct an in camera inspection of the file. FMC merely relied upon the assertion that it would be premature to disclose this information because the matter was subject to further litigation. Thus, FMC failed to satisfy its burden in establishing that the information sought by appellees contained privileged communications."); *Invacare Corp. v. Fay, Sharpe, Beall, Fagan, Minnich & McKee*, 8th Dist. No. 77600, 2000 Ohio App. LEXIS 5478, *13 (Nov. 22, 2000) ("failure to timely request an *in camera* inspection waives error in not providing that inspection").

{¶51} The majority's "remand as modified" judgment is also unnecessary because our standard of review is de novo. The majority expresses perplexity at the basis for the domestic relations court's judgment and remands for clarification. Since, however, our standard of review is de novo, this court owes no deference to the lower court's judgment or the bases for that judgment. As has often been acknowledged, "[r]eviewing courts affirm and reverse judgments, not reasons." *State v. Rubes*, 11th Dist. No. 2012-P-0009, 2012-Ohio-4100, ¶ 33, citing *State v. Eschenauer*, 11th Dist. No. 12-237, 1988 Ohio App. LEXIS 4479, *8 (Nov. 10, 1988); *also Agricultural Ins. Co. v. Constantine*, 144 Ohio St. 275, 284, 58 N.E.2d 658 (1944) ("it is the definitely established law of this state that where the judgment is correct, a reviewing court is not authorized to reverse such judgment merely because erroneous reasons were assigned as the basis thereof").

{¶52} If the majority believes the domestic relations court's judgment is ultimately correct, it should simply affirm that judgment.

{¶53} Assuming, arguendo, that consideration of the cooperation with wrongdoing (crime-fraud) exception were appropriate, I would still dissent from the majority's opinion. Carradine's conduct may be described as deceitful, but not illegal. The majority cites no criminal statute as being violated and offers no analysis of how Carradine's conduct would constitute fraud. To affirm the domestic court's judgment on the basis of the crime-fraud exception establishes a dubious precedent from which I must also dissent.

{¶54} The Subpoenas issued to Roland requested the production of the following documents:

> (1) Attorney fee agreement(s) between yourself and your law office and Denise M. Carradine
>
> (2) All billing statements for all services rendered by you on behalf of the following, whether paid or unpaid:
>
> (a) Denise M. Carradine
> (b) Carradine Chiropractic Center, Inc.
> (c) Breath of Vitality, Inc.
> (d) Advanced Medical Hair Removal and Cosmetic Therapy, LLC
> (e) Tudor Properties LLC
> (f) Juniper Properties LLC
> (g) Rosewood Properties LLC
>
> (3) An accounting of all funds given, transferred or paid to you or your law firm by any of the individuals/entities listed in paragraph (2) above.
>
> (4) The name, address, and account number for any and all bank account(s) where any funds given, transferred or paid to you or your law firm by any of the individuals/entities listed in paragraph (2) above have been deposited.
>
> (5) A detailed list of the equipment and accounting of all start up costs for Advanced Medical Hair Removal and Cosmetic Therapy LLC, including costs in 2006 and 2007;
>
> (6) A complete list of all equipment purchased for Advanced Medical and for each, receipts or any other documentation evidencing the cost, date of

> purchase and current location of said equipment. If said equipment has been sold, please provide documentation evidencing the date sold and the amount received.
>
> (7) Documentation evidencing the current status of Advanced Medical Hair Removal and Cosmetic Therapy LLC, including when and if it was dissolved, sold, or otherwise disposed of. Also bring documentation evidencing the date of dissolution and any proceeds realized at the time of the dissolution, sale or other disposition. If sold/disposed of, please bring documentation evidencing the date and individual/entity to whom it was sold and the amount(s) received for the entity or its assets.

{¶55} The majority of the documents and/or records Roland was required to produce do not come within the scope of either the statutory or common-law privilege. Specifically, item numbers 3 through 7 do not seek information constituting any sort of communication between an attorney and client. Item numbers 3 and 4 seek an accounting of funds transferred and the disposition thereof. Item numbers 5 and 6 relate to the purchase and sale of equipment. Item number 7 requests information regarding the status of a limited liability corporation.

{¶56} With respect to the first two items, i.e., the fee agreement and billing statements, it has been held that documents such as "time sheets and billing records can generally 'be categorized as "routine office records" that fall outside the definition of "trial preparation records,"' and, consequently, are not covered by attorney-client privilege or work product." *Pavlik v. Barium & Chemicals, Inc.*, 7th Dist. No. 02 JE 33, 2004-Ohio-1726, ¶ 92, quoting *State ex rel. Beacon Journal Publishing Co. v. Bodiker*, 134 Ohio App.3d 415, 427, 731 N.E.2d 245 (10th Dist.1999). Likewise, "[i]n the absence of special circumstances, the amount of money paid or owed to an attorney by his client is generally not within the attorney-client privilege." (Citation omitted.) *Tullis v. UMB Bank, N.A.*, N.D.Ohio No. 3:06 CV 7029, 2011 U.S. Dist. LEXIS 139368, *23 (Dec. 5, 2011).

{¶57} The following observations made with respect to the work-product doctrine are equally applicable in the context of the testimonial privilege: "Financial transactions between the attorney and client, including the compensation paid by or on behalf of the client … are not within the privilege except in special circumstances not present here. An attorney who acts as his client's business advisor, or his agent for receipt or disbursement of money or property to or from third parties … is not acting in a legal capacity, and records of such transactions are not privileged." (Citation omitted.) *In re Grand Jury Investigation*, 769 F.2d 1485, 1488 (11th Cir.1985).

{¶58} To say that Roland acted as Carradine's business agent for the purposes of receiving and disbursing funds or property is a fair description of his role with respect to the matters for which he was subpoenaed. The fee agreement and billing records are not substantively related to the communication of legal advice so as to implicate the attorney-client privilege.

{¶59} In certain circumstances, fee agreements and billing statements may contain privileged information that must be protected or redacted. For example, in *Shell v. Drew & Ward Co., L.P.A.*, 178 Ohio App.3d 163, 2008-Ohio-4474, 897 N.E.2d 201 (1st Dist.), the fee agreements at issue were "either contained within or accompanied by letters containing information about [the attorney's] assessment of [pending] litigation, as well as how the litigation was proceeding." *Id.* at ¶ 20. The court of appeals held that this privileged information, contained within the fee agreements, would have to be removed so that "[o]nly those portions of the fee agreements not containing privileged information [were] subject to disclosure." *Id.* at ¶ 22.

{¶60} Similarly, the court of appeals in *Shell* held that billing records were discoverable, when maintained in a "concise format," i.e., "limited to explaining the fee, the type of work billed for, or the purpose of the litigation." In that case, however, the billing records "reflect[ed] legal strategies of the attorney and provide[d] insight about the attorney's thoughts concerning the direction of the litigation." *Id.* at ¶ 26. Accordingly, the "billing records [were] not discoverable in an unredacted form." *Id.* at ¶ 28.

{¶61} Unlike *Shell*, there has been no argument or evidence in the present case that the fee agreement between Carradine and Roland, or the billing statements for services rendered on Carradine's behalf or on behalf of her business entities contained privileged information. Rather, Carradine and Roland assume the position that such records are inherently privileged. Such a position, as shown above, is not supported by the law regarding the attorney client privilege.

{¶62} I note that the domestic relations court's Judgment Entry denying the Motions to Quash and for a Protective Order contained the following qualification: "All until further Order of Court." If, in the course of Roland's deposition, trial testimony, or production of records, he was required to divulge confidential communications, the domestic relations court would be at liberty to prohibit such testimony in accord with the law set forth above.