

LPMC issued subpoenas to three of Mr. Gollersrud's former employers. In those subpoenas, LPMC sought to compel production of all communications, from 2008 to the present, between Mr. Gollersrud's work email addresses and nine other email addresses, among them that of Ms. Gollersrud. Relators sought to quash LPMC's subpoenas on the ground that some of the email messages between Mr. Gollersrud and Ms. Gollersrud included communications with their attorneys and were therefore protected under the attorney-client privilege, codified at OEC 503.¹ They alternatively proposed that the scope of the subpoenas be limited or that the trial court order that their attorneys be permitted to screen privileged documents produced in response to the subpoenas.

In response, LPMC argued that the email messages were not covered by the attorney-client privilege because (1) Mr. Gollersrud had no reasonable expectation of privacy in email communications transmitted using his employers' email systems; and (2) even if the email messages were privileged when transmitted, that privilege had been waived when Mr. Gollersrud failed to delete them from his employers' email systems before severing his employment relationships.

After taking the matter under advisement, the trial court denied relators' motion to quash the subpoenas. In a letter opinion, the trial court concluded that the email messages "between Mr. Gollersrud and [Ms.] Gollersrud to be recovered from the former employers' servers are not privileged." The trial court concluded by requesting that LPMC prepare a proposed order.

Relators objected to LPMC's proposed order and requested that the trial court hold an evidentiary hearing on the attorney-client privilege issue or, in the alternative, clarify its findings. In support of that objection, Mr. Gollersrud submitted a supplemental declaration that stated that (1) it was his "understanding that none of [his] three prior employers monitored the use of [his] computer or e-mail while [he] was employed with them"; (2) he had "received no notices

¹ Although relators initially opposed LPMC's subpoenas on several additional grounds, they did not raise those issues in their mandamus petition, and we do not consider them here.