

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, SS

SUPERIOR COURT DEPARTMENT

PAUL O'KEEFE, as Personal
Representative of the Estate of JOHN
JOSEPH O'KEEFE III, PAUL O'KEEFE,
Individually, JOHN O'KEEFE II,
MARGARET O'KEEFE, and MARGARET
O'KEEFE as Grandparent/
Guardian of KAYLEY FURBUSH,

Plaintiffs,

v.

C&C HOSPITALITY, LLC d/b/a C.F.
MCCARTHY'S, G&S HOSPITALITY,
LLC d/b/a C.F. MCCARTHY'S,
WATERFALL BAR & GRILL, LTD d/b/a
WATERFALL BAR & GRILL, and
KAREN READ,

Defendants.

Civil Action No. 2483cv00692

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT KAREN READ'S MOTION
FOR ORDER REQUIRING PLAINTIFFS' COUNSEL TO DESTROY
INADVERTENTLY PRODUCED COMMUNICATION**

Defendant Karen Read ("Read") respectfully requests that the Court order Plaintiffs to destroy all copies of an email that Read inadvertently sent to Plaintiffs' counsel. On December 16th, Read accidentally "replied all" to an email on which she was blind copied, which unintentionally included Plaintiffs' counsel on her otherwise-privileged message. The reply-all email directly related to Read's legal representation and this case. Despite numerous requests that begin 39 minutes after the reply-all email was accidentally sent, Plaintiffs' counsel refuses to delete the email, temporarily sequester the message, or even seek the Court's instructions.

Therefore, Read seeks an order requiring Plaintiffs' counsel to delete the message and any copies, and recover and ensure deletion of any copies sent to his clients or anyone else.

Analysis

On December 16, 2025, Read's undersigned counsel sent an email to Plaintiffs' counsel and blind copied Read, so she would be aware of his email. Read mistakenly "replied all" to the email to share her thoughts on the legal issue that was the subject of the message, which meant that Plaintiffs' counsel was inadvertently included on her response. Thirty-nine minutes later, another of Read's attorneys "replied all" to Read's email, informed all recipients – and particularly Plaintiffs' counsel – that the email had been inadvertently sent, and instructed Plaintiffs' counsel to delete it without reviewing the message. Read's counsel then followed up shortly thereafter reiterating these instructions and requesting confirmation that Plaintiffs had complied. Instead, Plaintiffs' counsel suggested he would not. Despite the obvious context clues, he claimed that the email from Read had appeared to be directed to him, and that somehow Read's mistake, corrected minutes later, resulted in some undefined waiver of the attorney-client privilege. Read's counsel followed up with Plaintiffs' counsel multiple times, explaining counsel's obligations under the applicable Rules of Professional Conduct and case law, but to no avail. Plaintiffs' counsel refuse to delete the message, even sequester it, or seek the Court's instruction.

Although most cases regarding inadvertent disclosure involve an attorney accidentally producing in discovery a document that should have been withheld, Massachusetts courts have faced this issue before. Specifically, in 2010, Judge Fabricant decided that a client who replied all to an email to opposing counsel after being blind copied had not waived the attorney-client privilege. *See generally Charm v. Kohn*, 08-2789-BLS2, 2010 Mass. Super. LEXIS 276 (Mass.

Super. Ct. Sep. 30, 2010). In that case, Judge Fabricant applied the standard that would apply in the more common scenario: “[A] client does not lose the benefit of the attorney-client privilege for an otherwise privileged communication through inadvertent disclosure if the client proves that he and his counsel took reasonable steps to preserve the confidentiality of that particular communication.” *Id.* at *3-*4. The Court found that the client’s “transmission of the communication to opposing counsel was obviously unintended. His mistake was of a type that is common and easy to make; indeed, there may be few e-mail users who have not on occasion used the reply all function in a manner they later regretted.” *Id.* at *2. The Court highlighted the fact that “counsel noticed the error quickly, and immediately alerted his opponent and demanded deletion.” *Id.* The Court also explained that, in that case, there were facts that supported a potential waiver – primarily that the same error had occurred before and the disclosing party had not filed a motion to recover the email until much later when the opposing party attempted to use the email. But even with those countervailing facts in that matter, on balance, the Court still explained that “as a matter of courtesy – and in recognition of their own vulnerability – lawyers should avoid the temptation to seize opportunities arising from inadvertent disclosures.” *Id.* at *5. It then held that, under the circumstances, the email in question was privileged and should be stricken from the record. *Id.* at *6.

Here, Read sent the email in question at 2:28 PM and her counsel notified all recipients of the inadvertent message at 3:07 PM. This is the first time this issue has arisen in this case. And Read is now serving this Motion, promptly after the message in question was sent. Thus, this is a clearer case than *Charm*, warranting the same result: a finding that the email is privileged.

Read respectfully asks the Court to order Plaintiffs to delete the message and any copies thereof.

Respectfully submitted,

KAREN READ,

By her attorneys,

/s/ Damon M. Seligson

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Dated: January 9, 2026

CERTIFICATE OF SERVICE

I certify that I served a copy of this document on all counsel of record by email on January 9, 2026.

/s/ Damon M. Seligson

Damon M. Seligson