

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

MELVIN HALE, PH.D.,)
)
 Plaintiff,)
) Case No. 16-4183-DDC-KGG
 v.)
)
 JACKIE VIETTI, PH.D., *et al.*,)
 Defendants.)

**ORDER DENYING MOTION TO COMPEL
PRODUCTION OF NON-PARTY LITIGATION FILES**

Plaintiff issued a subpoena directed to non-party Emporia State University to obtain copies of its “litigation files” related to the investigation of the incident that is the genesis of this dispute. ESU declined to produce the files and submitted a privilege log claiming that the materials were protected by attorney-client privilege and/or the work product doctrine. In the present motion (Doc. 56), Plaintiff challenges ESU’s failure to produce the documents, primarily claiming that the privilege/protection is invalidated under the crime-fraud exception, or waived by production of the documents to third parties.

These issues were litigated, involving the same documents and the same legal principals, in a companion case, *Angelica Hale v. Emporia State University*, Case No. 16-4182-DDC-TJJ. Therein, Magistrate Judge James evaluated these issues and denied the motion to compel the production of the documents. (*See* No. 16-4182-DDC-TJJ, Doc. 71). The District Judge in that case, who is the same

District Judge assigned to this case, affirmed Judge James' decision. (No. 16-4182, Doc. 87). The undersigned has reviewed Magistrate Judge James' opinion, and concurs in all respects. Her opinion is incorporated herein by reference.

The Motion to Compel (Doc. 56) is, therefore, **DENIED**. Defendant's request for fees (Doc. 62, at 26) is **DENIED**.

Dated: June 5, 2018.

S/ KENNETH G. GALE

Kenneth G. Gale

United States Magistrate Judge