

VERMONT SUPERIOR COURT, CIVIL DIVISION, WASHINGTON UNIT

In re: Virginia Black

No. 24-CV-03053 (Vt. Super. Ct. Civ. Div. Oct. 31, 2025) · No. 24-CV-03053 · Decided March 30, 2026

SUMMARY

The Vermont Superior Court, Civil Division, Washington Unit, partially grants and partially denies a motion for a protective order concerning discovery in an appeal from a Probate Division decision awarding former guardian fees. The court holds that attorney notes, attorney-drafted materials, and litigation-related materials are protected work product, while potentially responsive recordings, emails, papers, and letters must be produced or addressed through a supplemental motion. The court denies a request requiring counsel to prepare meeting summaries, orders a discovery conference, and stays other discovery pending that conference.

CASE DETAILS

COURT	Vermont Superior Court, Civil Division, Washington Unit
WRITING FOR THE COURT	Daniel Richardson
JURISDICTION	Vermont Superior Court, Civil Division, Washington Unit
DECIDED	March 30, 2026
DOCKET	24-CV-03053
DISPOSITION	other
PROCEDURAL POSTURE	Appeal under Vermont Rule of Civil Procedure 72 from a Probate Division decision awarding a former guardian \$42,855 in fees, with the court resolving a motion for a discovery protective order during the appeal.
STANDARD OF REVIEW	The appeal from the Probate Division is reviewed de novo as to the guardian fees at issue, within the scope defined by the decision under appeal and the standards of Vermont Rule of Probate Procedure 66(d). Discovery is governed by the relevance, proportionality, and protective-order standards in Vermont Rules of Civil Procedure 26, 33, and 34.
PRECEDENTIAL VALUE	Unknown; Vermont Superior Court entry with no reporter or neutral citation in the source.
PARTIES	Elizabeth Black v. Andrea L. Gallitano

TOPICS

discovery dispute

probate procedure

guardianship procedure

appellate procedure

civil procedure

PRACTICE AREAS

civil procedure

probate

guardianships

appellate procedure

QUESTIONS PRESENTED

1. Whether attorney notes and other attorney-drafted or litigation-created materials responsive to the discovery requests were protected by the work-product doctrine under Vermont Rule of Civil Procedure 26(b)(4).
2. Whether the requested recordings, emails, papers, and letters were relevant to the appeal concerning the reasonableness and documentary support for the former guardian's fees.
3. Whether the discovery requests were sufficiently particularized under Vermont Rule of Civil Procedure 34.
4. Whether the court could require production of nonprivileged materials or supplementation of the protective-order motion while setting a discovery conference to address proportionality and scope.
5. Whether attorney Gallitano could be required to create written summaries of meetings for which no recording existed.

HOLDINGS

1. Attorney notes, attorney-drafted materials, and materials created for litigation are protected by the work-product doctrine under Vermont Rule of Civil Procedure 26(b)(4) and need not be produced.
2. Recordings, emails, papers, and letters concerning the six identified meetings and billing dates were potentially relevant to the appeal and were not excluded from discovery on relevance grounds.
3. The request was sufficiently particularized as to phone calls, emails, meetings, conference calls, papers, letters, and notes for the six specified dates, but the phrases "etc." and "this list is not exhaustive" were insufficiently particularized and could not be enforced.
4. Rule 34 does not require a party to create a record or modify an existing record in response to a request for production.
5. The request that attorney Gallitano create written summaries of meetings for which no recording existed was denied because it would require creation of attorney work product.
6. The court could set a discovery conference to establish the reasonable size and scope of discovery and stay further discovery pending that conference, while leaving Gallitano's specified production or supplementation obligation in effect.

KEY QUOTATIONS

"For these reasons, the Court finds that any notes or similar documents that an attorney, representing a party, in a contested matter, possesses is protected under the strongest provisions of the work-product doctrine." (at

6)

“The Court directs that Attorney Gallitano is not obligated to produce any notes that he took before, after, or during any of the six meetings, and he is not obligated to draft summaries of those meetings.” (at 9)

FACTUAL BACKGROUND

The underlying appeal concerns fees awarded to former guardian Susan Buckholz for her service as guardian of Virginia Black. Elizabeth Black, an interested party, requested documents, recordings, and written accounts relating to six billing dates and communications involving attorney Andrea L. Gallitano. Gallitano asserted work-product protection, irrelevance, and undue burden. The court found attorney notes and litigation-created materials protected, but concluded that potentially nonprivileged recordings, emails, papers, and letters could relate to whether the guardian's charges were reasonable and supported by documentary evidence.

PROCEDURAL HISTORY

Elizabeth Black appealed the Probate Division's June 6, 2024 decision awarding former guardian Susan Buckholz fees for services provided from January 1, 2020, through April 3, 2023. During the appeal, Black served discovery requests on attorney Andrea L. Gallitano, who represented an interested party and sought a protective order. The Superior Court granted the motion in part and denied it in part, protecting attorney notes and attorney-drafted meeting summaries while requiring production of certain nonprivileged materials or supplementation of the motion.

DISPOSITION

other

REMAND INSTRUCTIONS

Attorney Gallitano must produce any recordings, emails, papers, or letters associated with the six meetings on behalf of his client within 30 days of the order, or supplement the protective-order motion with information about responsive documents and the applicability of work-product protection. The court will hold a one-hour discovery conference to establish the reasonable scope and extent of discovery. All other discovery is stayed until the conference.

CASES CITED

- In re Estate of Doran, 2010 VT 13, ¶ 14, 187 Vt. 349
- Energy Policy Advocates v. Attorney General's Office, 2023 VT 43, ¶¶ 8–9, 218 Vt. 310
- In re Porsche Cars North America, Inc., No. 2:11-md-2233, 2012 WL 4361430, at *9 (S.D. Ohio Sept. 25, 2012)