

Back to Basics, Continued - So That's Why the Communications From Our Lawyers Are Captioned With Certain Language!

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This content was published prior to the combination of Dentons Sirote. Learn more about Dentons Sirote.

Clients often ask their lawyers to review their contracts and other documents not only for help with the substance of the documents but often for “compliance” as well. Think of all the times that your company has reached out to your lawyer to review your form note, installment sales contract, and disclosures. Imagine what would happen if your lawyer found problems with your documents, explained it all in a detailed letter or memo, and then you were challenged by the regulator or an opposing lawyer on the very issues raised by your lawyer’s review. You probably would not like your lawyer’s letter falling into the lap of either the regulator or an opposing lawyer.

So, how do you keep that from happening?

Well, the best approach is to protect from discovery your lawyer’s correspondence. And, that can be done by invoking a legal privilege against disclosing the communication.

A lawyer’s communications with a client with respect to a client’s matters are protected by a privilege known as the “attorney-client privilege.” This is a protection available to the client to guard against the disclosure of communications from its attorneys. Interestingly, this privilege “belongs” to the client, not the lawyers—and it is a privilege for the client to assert.

Similarly, there is a privilege for trial preparation materials. This one is similar to the attorney-client privilege. However, if it is time to assert this privilege, you may already be in trouble.

In today’s litigious world, it is important to have a great lawyer on your team. But, let’s make sure that communications between your great lawyer and you stay confidential and not discoverable. Routine communications may not merit such protection. But, certainly, those letters, emails, texts, and memos that point out problems with your documents or systems should be protected from disclosure.

Practice Pointer: Look at the communications between you and your attorney to make certain that a statement of confidentiality and attorney/client privilege is prominently included.

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