



Memorandum to Employees Regarding Proper Maintenance of the Attorney-Client Privilege

PLC Litigation & ADR and

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A memorandum from in-house counsel advising company employees on how to maintain the attorney-client privilege over their communications with the company's attorneys, and further explaining the nature of counsel's relationship with the company and its employees.

DRAFTING NOTE

General

The attorney-client privilege protects from disclosure to third parties confidential communications between an attorney and his client that are made for the purpose of obtaining or providing legal advice. From time to time, in-house counsel should remind company employees of their obligation to keep their communications with the company's attorneys confidential. This helps to ensure that privileged and confidential information does not fall into the hands of the company's litigation adversaries.

In addition, counsel should make clear to company employees that counsel's role is to represent the company and not the individual employee unless counsel specifically advises otherwise. This helps to ensure that the company (and not the individual employee) retains the right to assert or waive the attorney-client privilege concerning statements made between the company's attorneys and the individual employee.

[COMPANY LETTERHEAD]

Date: [DATE]

To: [NAME]

From: [NAME]

Re: Attorney-Client Privilege

During the course of your employment at [COMPANY NAME] you may, from time to time, be called upon to communicate with the company's attorneys (also referred to as "corporate counsel"). We are circulating this memorandum to point out some of the issues that you should keep in mind when communicating with corporate counsel and the steps you must take to ensure that your communications remain confidential.

First, your communications with counsel may be protected by the attorney-client privilege. This means that you cannot be required to disclose the contents of your communications to third parties unless: (a) you are authorized to do so by the company or (b) you are compelled to do so by valid court order. Although the scope of the attorney-client privilege varies to some degree from state to state, most courts recognize that the privilege attaches to confidential written or verbal communications between the company's employees and its attorneys regarding legal matters. The privilege generally applies regardless of whether you communicate with the company's "in-house" counsel or attorneys retained from an outside law firm. Moreover, the attorney-client privilege may cover more than just pending or anticipated lawsuits. For example, the privilege may also attach to your communications with counsel regarding compliance with federal and state laws or legal matters that relate to corporate transactions.

Second, when communicating with [COMPANY NAME]'s attorneys (both its in-house and outside counsel), you should always keep in mind that the attorneys represent [COMPANY NAME]. Do not presume that these attorneys represent you in your individual capacity unless they specifically tell you otherwise.

Third, you must always ensure that any communications you have with corporate counsel remain confidential. Never disclose the contents of these communications to anyone outside of the company unless the company's attorneys or management specifically authorize you to do so, and notify corporate counsel if any person from outside of the company asks you to divulge privileged information. In addition, you should not divulge the contents of any communications with corporate counsel to your co-workers unless you receive prior authorization. If you believe that one of your co-workers needs to be aware of privileged information to carry out his job duties, you should first contact the [COMPANY NAME] Legal Department for guidance before sharing this information. Some practical tips to keep in mind to ensure that communications with the company's attorneys remain confidential are:

- Never disclose the contents of your communications with corporate counsel to anyone outside of the company, including friends or family members.
- Always put the heading "PRIVILEGED AND CONFIDENTIAL" in the subject line on any correspondence you send to counsel or that reflect communications to or from counsel.
- Make sure that any correspondence you send to counsel is sent only to counsel—never "cc" or copy anyone on e-mail or other written correspondence with counsel.
- Never disclose the contents of your communications with corporate counsel on social media sites such as Facebook or Twitter.
- Never remove documents from the office that relate to communications with corporate counsel.
- Be mindful that e-mails are communications to which all of the above apply.
- Even privileged documents in certain circumstances might be reviewed by judges or other public officials. With that in mind, take care to be accurate in what you write.

Please do not hesitate to contact the [COMPANY NAME] Legal Department should you have any questions or concerns about any of the issues or policies discussed in this memorandum.

Very truly yours,

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[NAME OF SENDER]

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