

THE LAWYER-CLIENT PRIVILEGES

By K. Dean Kantaras and Jennifer H. Cavill

FLORIDA LAW AFFORDS A variety of privileges when it comes to disclosing certain information in a court case. For example, Florida Evidence Code provides a Journalist's Privilege, Psychotherapist-Patient Privilege, Sexual Assault Counselor-Victim Privilege, Domestic Violence Advocate-Victim Privilege, Husband-Wife Privilege, Privilege with Respect to Communications to Clergy, Accountant-Client Privilege and Privilege with Respect to Trade Secrets. For full details on the privileges allowed under Florida Law, see Florida Statutes 90.501- 90.510. However, this article focuses on the Lawyer-Client Privilege and protecting your attorney's work-product.

Florida Statute 90.502 holds that a communication between a lawyer and a client, one who consults a lawyer with the purpose of obtaining legal services or receives legal services from a lawyer, are confidential if they are not intended to be disclosed to third persons, other than when disclosure is in furtherance of the legal services to the client or those reasonably necessary for the transmission of the communication. Since this is the case, the client has the right to refuse to disclose or prevent others from disclosing the content of this confidential communication.

However, Florida Statute 90.502 also states that this privilege does not apply in certain circumstances, including when the services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew was a crime or a fraud, or when the communication is relevant to an issue of breach of duty by the lawyer to the client or from the client to the lawyer arising from the lawyer-client relationship, among others. For complete details, see Florida Statute 90.502.

This means that not only are communications with your attorney confidential, but communications with the law firm staff and experts you retained in the matter may be confidential as well. Nonetheless, one may inadvertently waive the attorney-



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client privilege when they want to involve a non-party in the meeting with the attorney, law firm staff or experts retained in the legal matter. If a non-party is involved in the communications, the opposing party may be entitled to set the deposition of the non-party to learn of any attorney-client communication that occurred in the non-parties' presence.

Likewise, Florida case law provides for a work-product privilege. This protects from disclosure any information which relates to the case and is gathered in anticipation of litigation as well as legal opinions, mental impressions, conclusions and/or theories concerning litigation. See Heartland Express, Inc. of Iowa v. Torres, 90 So.3d 365 (Fla. 1st DCA 2012.) Therefore, if a party serves a discovery request seeking such documents (the requesting party), the other party (the responding party) should timely file an objection to the discovery request based upon the work-product privilege. If the requested information is truly work-product, then the only way it will be

disclosed is if the requesting party can show that they have a need and undue hardship to obtain the substantial equivalent of the material through other means. *Id.*

These privileges extend to e-mails and letters between the client and the attorney. Accordingly, it is important to ensure that if you are using an e-mail address to communicate with your attorney, that you use a secured computer and an e-mail address to which no one else has access. It is important to note that if you are using your work e-mail to communicate with your attorney, the e-mail could be monitored and, therefore, the communication is not confidential, regardless of whether you intended the disclosure to your employer. It is often best to open a new personal e-mail account strictly for communications between you and your counsel. ■■■

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