

Attorney-Client Privilege vs. Work Product vs. Duty of Confidentiality

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TEXAS RULE 503. LAWYER–CLIENT PRIVILEGE

(b) Rules of Privilege.

(1) *General Rule.* A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made to facilitate the rendition of professional legal services to the client:

(A) between the client or the client’s representative and the client’s lawyer or the lawyer’s representative;

(B) between the client’s lawyer and the lawyer’s representative;

* * *

(D) between the client’s representatives or between the client and the client’s representative; or

(E) among lawyers and their representatives representing the same client.

Texas Rule Of Civil Procedure 192.5

(a) Work Product Defined. Work product comprises:

(1) material prepared or mental impressions developed in anticipation of litigation or for trial by or for a party or a party's representatives, including the party's attorneys, consultants, sureties, indemnitors, insurers, employees, or agents; or

(2) a communication made in anticipation of litigation or for trial between a party and the party's representatives or among a party's representatives, including the party's attorneys, consultants, sureties, indemnitors, insurers, employees, or agents.

(b) Protection of Work Product.

(1) *Protection of Core Work Product--Attorney Mental Processes.* Core work product--the work product of an attorney or an attorney's representative that contains the attorney's or the attorney's representative's mental impressions, opinions, conclusions, or legal theories--is not discoverable.

(2) *Protection of Other Work Product.* Any other work product is discoverable only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the party's case and that the party is unable without undue hardship to obtain the substantial equivalent of the material by other means.

WORK PRODUCT

- Rules of civil procedure
- Litigation-based
- Not restricted to communications w/ client
- Only core WP is absolutely protected
 - Mental impressions, opinions, conclusions, legal theories
- Non-core: disclosure upon substantial need

PROFESSIONAL OBLIGATION TO MAINTAIN CONFIDENTIALITY

- Model Rule of Professional Conduct 1.6; Texas Disciplinary Rule of Professional Conduct 1.05
- Covers both privileged information and other information relating to client acquired because of representation
- Forbids L from revealing confidential information

Model Rule 1.6 Confidentiality of Information

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

Texas Rule 1.05 Confidentiality of Information

(a) Confidential information includes both privileged information and unprivileged client information. Privileged information refers to the information of a client protected by the lawyer-client privilege of Rule 503 of the Texas Rules of Evidence or of Rule 503 of the Texas Rules of Criminal Evidence or by the principles of attorney-client privilege governed by Rule 501 of the Federal Rules of Evidence for United States Courts and Magistrates. Unprivileged client information means all information relating to a client or furnished by the client, other than privileged information, acquired by the lawyer during the course of or by reason of the representation of the client.

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