

ATTORNEY-CLIENT PRIVILEGE FOR IN-HOUSE COUNSEL

BEYOND THE BASICS

INTRODUCTION

- Overview of Privilege
- Privilege in Investigations
- Privilege for Affiliated Entities
- Common Interest Doctrine
- Advisors & Consultants
- Mergers & Acquisitions
- Privilege Around the World
- Best Practices for Preserving Privilege



OVERVIEW OF PRIVILEGE



ATTORNEY-CLIENT PRIVILEGE

- The attorney-client privilege protects:
 - A communication,
 - Made between privileged persons (i.e., attorney, client or agent),
 - In confidence,
 - For the purpose of obtaining or providing legal assistance for the client.
- Courts typically construe the privilege narrowly.

ATTORNEY-CLIENT PRIVILEGE (CONT'D)

- The communication must be made for the purpose of obtaining ***legal*** advice, rather than business or other advice.
- Legal advice should be the primary purpose of the communication.
- There should be an expectation that the advice will not be disclosed to others.
- The attorney's primary role in making the communication cannot be non-legal, such as giving business advice or acting as corporate secretary.

WORK PRODUCT DOCTRINE

- Protects material prepared and attorney mental impressions formed ***in anticipation of litigation***.
- There is no work product protection for documents prepared in the ordinary course of business.

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First appeared as part of the conference materials for the
2017 Renewable Energy Law session

"Attorney-Client Privilege: Best Practices for Keeping Privileged Information Privileged"