DOWNLOAD PDF ATTORNEY-CLIENT PRIVILEGE AND WORK-PRODUCT DOCTRINE

Chapter 1 : Attorneyâ€“client privilege - Wikipedia

The attorney-client privilege and work product doctrine are powerful weapons in a litigator's arsenal. They are often the primary means for preventing the disclosure of highly sensitive and potentially damaging documents in litigation.

Each month this blog discusses examples of what those consequences can be. There are other reasons why otherwise discoverable information could be withheld, but this post will only address privilege and work product. A recent decision, In re: Abilify Aripiprazole Products Liability Litig. Abilify is a products liability action based on allegations that an anti-psychotic medication causes certain compulsive behavior. The plaintiffs moved to compel production of various documents withheld by the defendants on privilege and work product grounds. The Court described the dispute before it as follows: But, as is the situation in most complex cases litigated in federal court, disputes arise frequently concerning whether documents are privileged. Raising claims of privilege and resolving these claims require the parties to incur great expense and expend extensive time reviewing, identifying and litigating claims of privilege. This case is certainly no different. Defendants primarily raise two types of privilege claimsâ€”attorney-client and work product. While both doctrines protect from disclosure documents and other information, there are differences between the two. With regard to attorney-client privilege the underlying purpose of the doctrine is to encourage the client to communicate freely with the attorney. Work product protection on the other hand encourages careful and thorough preparation by the attorney. And sometimes both doctrines may apply to a single communication. An email or memo may contain confidential legal discussions between client and lawyer and at the same time disclose the preparation by the attorney in anticipation of legal proceedings. But even though a party claims both privileges or protections as to the same document the Court must analyze the applicability of each privilege or protection separately. An in camera review allows a judge to look at information on an ex parte basis, that is, to look at information withheld from another party without that party having an opportunity to look at it. However, several lessons can be drawn from this blog. First, Rule 26 B 5 A ii â€”and similar State rulesâ€”require that a log be prepared when otherwise discoverable information is withheld because of privilege or work product. Second, a party should have a process in place to identify such information, segregate it from what is discoverable, and generate an adequate log. That process might be automated, especially when large volumes of information might be subject to production. The views expressed in this column are those of the author alone and should not be interpreted otherwise or as legal advice. Ron Hedges, JD, is a former US Magistrate Judge in the District of New Jersey and is a writer, lecturer, and consultant on topics related to, among other things, electronic information. Submit a Comment Your email address will not be published.

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Chapter 2 : Attorney-Client Privilege & Work Product Protection in South Carolina | Duffy & Young, LLC

06/30/ 1 Attorney-Client Privilege and Work Product Doctrine Attorney-Client Privilege Elements â€¢ Legal advice of any kind is sought â€¢ From a professional legal advisor in that.

Rules 26â€”37 set forth the pretrial discovery mechanisms available to litigants in federal civil lawsuits. Those rules broadly define what is discoverable and narrowly define what is privileged sub- ject matter. Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence. At the same time, however, privileges permit litigants to avoid disclosing certain information. In order to preclude the discovery of otherwise discoverable matter, a party must timely assert a claim of privilege. Constitution, federal statute, or rules prescribed by the Supreme Court. The most common privilege is the attorney-client privilege. The most common privilege doctrine is the work-product doctrine. Both of these privileges are addressed below. Attorney-Client Privilege The attorney-client privilege is the oldest recognized form of common law privilege. Rule generally requires that federal courts apply federal attorney-client privilege law in criminal cases and federal question cases but that state law applies in diversity cases. The Committee believes that in civil cases in the federal courts where an element of a claim or defense is not grounded upon a federal question, there is no federal interest strong enough to justify departure from State policy. However, a claim of attorney-client privilege is not a blanket claim, but must be made and sustained on a document-by-document or question-by-question basis. Regarding corporations and the claims they can assert, corporations are equally entitled to assert claims of privilege as individuals. Across the country, the courts usually apply either the control-group or the subject-matter tests to review claims of privilege. A few courts have adopted a third test, which is really a slight variation on the subject-matter test. Under the control-group test, which was originally formulated in Philadelphia v. United States, the Supreme Court rejected the control-group test as frustrating the very purpose of the privilege by discouraging the communication of relevant information by employees of the client to attorneys seeking to render legal advice to the client corporation. The Diversified Industries test was crafted as an alternative to the subject-matter test to concentrate on the reason the attorney was consulted and to prevent the routine routing of information through counsel to prevent later disclosure and to prevent an employee from functioning as merely a fortuitous witness. The protection of the privilege extends only to the content of an attorney-client communication and not to the underlying facts. Waiver of privileges may take any of the following forms: When a party objects to a discovery request with an express claim of a specific privilege, the best protection is to prepare a privilege log. The specific rules for the required content of a privilege a log may vary among the jurisdictions. While the first two methods of waiver are self-explanatory, the others need greater clarification. As stated above, a privilege may be waived by inadvertently producing it. This is a particular issue with insurance policies containing a cooperation clause. Among other things, that clause may require insureds to turn over various kinds of information to their insurers. Some courts have construed the cooperation clause to require the insured to turn over information that is otherwise subject to the attorney- client privilege. Thus, there is within the law of attorney- client privilege the common interest doctrine, which is an exception to the law of waiver. An example of this is when codefendants enter into a joint defense agreement. In the case of a joint defense agreement, to assert the joint defense privilege, a party must establish 1 that the protected communications were made in the course of a joint litigation effort and 2 that the communications were designed to further that effort. Additionally, a number of exceptions exist where the court will essentially hold that the privilege does not exist for the purpose of the proceedings. Primary exceptions to the attorney-client privilege include the following: In contrast to the attorney- client privilege, which may be asserted only by the client, either the attorney or the client may invoke the work-product doctrine. At common law, the privilege was much broader than its modern day counterpart. The federal law of work-product governs in civil actions brought in federal court. The discovering party must specifically explain its need for the materials sought. Finally, as

work-product privilege is ordinarily asserted on the basis of each individual document, it is advisable to maintain a record of each document over which a particular client may assert the privilege exception to discovery or disclosure. While the attorney-client privilege and work-product privilege offer benefits that can be reaped during litigation, the savvy practitioner must understand the nuances of those privileges. Familiarity with the rules is a great place to start, but because the courts interpret these privileges and their waivers differently, investing time into learning the law will ensure that you can best serve your clients. See generally Nix v. United States, F. United States, U. BDO Seidman, F.

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Chapter 3 : Attorney-Client Privilege and Work Product | Journal of AHIMA

The work-product doctrine is more inclusive than attorney-client privilege. Unlike the attorney-client privilege, which includes only communications between an attorney and the client, work product includes materials prepared by persons other than the attorney him/herself: The materials may have been prepared by anybody as long as they were.

However, the statutory privileges, such as, attorney client privilege Evidence Code and attorney work-product privilege CCP The attorney-client privilege confers a privilege on a client to refuse to disclose and to prevent another from disclosing confidential communications between client and lawyer. California Evidence Code section The attorney-client privilege attaches to a confidential communication between the attorney and client and bars discovery of the communication irrespective of whether it includes unprivileged material. Attorney-client privilege is the most robust privilege in California Evidence law. The only circumstances in which the privilege does not apply is when the client is seeking legal assistance in carrying out crime or fraud, or if the attorney believes that the disclosure of the confidential communication is necessary to prevent death or substantial bodily harm. These two ethical concerns are the only exceptions to the attorney-client privilege. The attorney work-product privilege is set forth in California Code of Civil Procedure Its purpose is to allow attorneys to "prepare cases for trial with that degree of privacy necessary to encourage them to prepare their cases thoroughly and to investigate not only the favorable but the unfavorable aspects of those cases" CCP Such writing is not discoverable under any circumstances. There is qualified protection for all other work product. The Board held the notes were subject to discovery by an applicant even though they were prepared for the purposes of defending against the claim and contained statements made by the policyholder to the insurer, as well as the personal observations of the claims adjuster. Furthermore, information gathered by an investigator or by a claims adjuster before counsel was retained is not protected by the attorney work-product doctrine. The attorney work-product privilege would not apply as the information was not gathered by an attorney to prepare for litigation. However, in Coito v. The Superior Court of Stanislaus County, the California Supreme Court held witness statements obtained as a result of interviews conducted by an attorney constituted work product protected by CCP The Court did curtail this privilege by ruling witness statements procured by an attorney were not automatically entitled as a matter of law to absolute work product protection. The Court ruled such statements, as a matter of law, were entitled to at least qualified work product protection. A key distinction to remember is, although a communication between attorney and client is provided absolute protection, the actual subject matter may not be and could be discoverable through other means. Speaking about a subject with an attorney does not make the subject itself non-discoverable. If the applicant makes a request for the claim notes or other documentation, the documents should be forwarded to the attorney for review. If there is any particular document or information you believe to be sensitive, these should be noted in order for the attorney to determine whether a privilege protects that information from disclosure. Any privilege information should be redacted, and a privilege log should be prepared with enough information to determine what information was redacted and what the claimed privilege is.

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Chapter 4 : A Practical Guide to the Attorney-Client Privilege - SMU

Difficult questions can arise when 1) a disclosure of a communication or information protected by the attorney-client privilege or as work product is made in a state proceeding, 2) the communication or information is offered in a subsequent federal proceeding on the ground that the disclosure waived the privilege or protection, and 3) the state.

Attorney-Client Privilege and Work Product; Limitations on Waiver The following provisions apply, in the circumstances set out, to disclosure of a communication or information covered by the attorney-client privilege or work-product protection. When the disclosure is made in a federal proceeding or to a federal office or agency and waives the attorney-client privilege or work-product protection, the waiver extends to an undisclosed communication or information in a federal or state proceeding only if: When made in a federal proceeding or to a federal office or agency, the disclosure does not operate as a waiver in a federal or state proceeding if: When the disclosure is made in a state proceeding and is not the subject of a state-court order concerning waiver, the disclosure does not operate as a waiver in a federal proceeding if the disclosure: A federal court may order that the privilege or protection is not waived by disclosure connected with the litigation pending before the court â€" in which event the disclosure is also not a waiver in any other federal or state proceeding. An agreement on the effect of disclosure in a federal proceeding is binding only on the parties to the agreement, unless it is incorporated into a court order. Notwithstanding Rules and , this rule applies to state proceedings and to federal court-annexed and federal court-mandated arbitration proceedings, in the circumstances set out in the rule. And notwithstanding Rule , this rule applies even if state law provides the rule of decision. This new rule has two major purposes: This concern is especially troubling in cases involving electronic discovery. City of Baltimore, F. The rule seeks to provide a predictable, uniform set of standards under which parties can determine the consequences of a disclosure of a communication or information covered by the attorney-client privilege or work-product protection. The rule makes no attempt to alter federal or state law on whether a communication or information is protected under the attorney-client privilege or work-product immunity as an initial matter. Moreover, while establishing some exceptions to waiver, the rule does not purport to supplant applicable waiver doctrine generally. The rule governs only certain waivers by disclosure. Other common-law waiver doctrines may result in a finding of waiver even where there is no disclosure of privileged information or work product. The rule is not intended to displace or modify federal common law concerning waiver of privilege or work product where no disclosure has been made. The rule provides that a voluntary disclosure in a federal proceeding or to a federal office or agency, if a waiver, generally results in a waiver only of the communication or information disclosed; a subject matter waiver of either privilege or work product is reserved for those unusual situations in which fairness requires a further disclosure of related, protected information, in order to prevent a selective and misleading presentation of evidence to the disadvantage of the adversary. Thus, subject matter waiver is limited to situations in which a party intentionally puts protected information into the litigation in a selective, misleading and unfair manner. It follows that an inadvertent disclosure of protected information can never result in a subject matter waiver. See Rule b. The rule rejects the result in In re Sealed Case, F. Under both Rules, a party that makes a selective, misleading presentation that is unfair to the adversary opens itself to a more complete and accurate presentation. To assure protection and predictability, the rule provides that if a disclosure is made at the federal level, the federal rule on subject matter waiver governs subsequent state court determinations on the scope of the waiver by that disclosure. Courts are in conflict over whether an inadvertent disclosure of a communication or information protected as privileged or work product constitutes a waiver. A few courts find that a disclosure must be intentional to be a waiver. Most courts find a waiver only if the disclosing party acted carelessly in disclosing the communication or information and failed to request its return in a timely manner. And a few courts hold that any inadvertent disclosure of a communication or information protected under the attorney-client privilege or as work product constitutes a waiver without regard to the protections

taken to avoid such a disclosure. See generally Hopson v. The rule opts for the middle ground: This position is in accord with the majority view on whether inadvertent disclosure is a waiver. Cases such as Lois Sportswear, U. The stated factors none of which is dispositive are the reasonableness of precautions taken, the time taken to rectify the error, the scope of discovery, the extent of disclosure and the overriding issue of fairness. The rule does not explicitly codify that test, because it is really a set of non-determinative guidelines that vary from case to case. The rule is flexible enough to accommodate any of those listed factors. The implementation of an efficient system of records management before litigation may also be relevant. The rule does not require the producing party to engage in a post-production review to determine whether any protected communication or information has been produced by mistake. But the rule does require the producing party to follow up on any obvious indications that a protected communication or information has been produced inadvertently. The rule applies to inadvertent disclosures made to a federal office or agency, including but not limited to an office or agency that is acting in the course of its regulatory, investigative or enforcement authority. The consequences of waiver, and the concomitant costs of pre-production privilege review, can be as great with respect to disclosures to offices and agencies as they are in litigation. Difficult questions can arise when 1 a disclosure of a communication or information protected by the attorney-client privilege or as work product is made in a state proceeding, 2 the communication or information is offered in a subsequent federal proceeding on the ground that the disclosure waived the privilege or protection, and 3 the state and federal laws are in conflict on the question of waiver. The Committee determined that the proper solution for the federal court is to apply the law that is most protective of privilege and work product. If the state law is more protective such as where the state law is that an inadvertent disclosure can never be a waiver , the holder of the privilege or protection may well have relied on that law when making the disclosure in the state proceeding. Moreover, applying a more restrictive federal law of waiver could impair the state objective of preserving the privilege or work-product protection for disclosures made in state proceedings. On the other hand, if the federal law is more protective, applying the state law of waiver to determine admissibility in federal court is likely to undermine the federal objective of limiting the costs of production. The rule does not address the enforceability of a state court confidentiality order in a federal proceeding, as that question is covered both by statutory law and principles of federalism and comity. See also Tucker v. Thus, a state court order finding no waiver in connection with a disclosure made in a state court proceeding is enforceable under existing law in subsequent federal proceedings. Confidentiality orders are becoming increasingly important in limiting the costs of privilege review and retention, especially in cases involving electronic discovery. But the utility of a confidentiality order in reducing discovery costs is substantially diminished if it provides no protection outside the particular litigation in which the order is entered. Parties are unlikely to be able to reduce the costs of pre-production review for privilege and work product if the consequence of disclosure is that the communications or information could be used by non-parties to the litigation. There is some dispute on whether a confidentiality order entered in one case is enforceable in other proceedings. The rule provides that when a confidentiality order governing the consequences of disclosure in that case is entered in a federal proceeding, its terms are enforceable against non-parties in any federal or state proceeding. The rule provides a party with a predictable protection from a court orderâ€”predictability that is needed to allow the party to plan in advance to limit the prohibitive costs of privilege and work product review and retention. Under the rule, a confidentiality order is enforceable whether or not it memorializes an agreement among the parties to the litigation. But subdivision d does not allow the federal court to enter an order determining the waiver effects of a separate disclosure of the same information in other proceedings, state or federal. If a disclosure has been made in a state proceeding and is not the subject of a state-court order on waiver , then subdivision d is inapplicable. Subdivision e codifies the well-established proposition that parties can enter an agreement to limit the effect of waiver by disclosure between or among them. Of course such an agreement can bind only the parties to the agreement. The rule makes clear that if parties want protection against non-parties from a finding of waiver by disclosure, the agreement must be made part of a court order. The protections against waiver provided by Rule must be

applicable when protected communications or information disclosed in federal proceedings are subsequently offered in state proceedings. Otherwise the holders of protected communications and information, and their lawyers, could not rely on the protections provided by the Rule, and the goal of limiting costs in discovery would be substantially undermined. Rule f is intended to resolve any potential tension between the provisions of Rule that apply to state proceedings and the possible limitations on the applicability of the Federal Rules of Evidence otherwise provided by Rules and The rule is intended to apply in all federal court proceedings, including court-annexed and court-ordered arbitrations, without regard to any possible limitations of Rules and This provision is not intended to raise an inference about the applicability of any other rule of evidence in arbitration proceedings more generally. The costs of discovery can be equally high for state and federal causes of action, and the rule seeks to limit those costs in all federal proceedings, regardless of whether the claim arises under state or federal law. Accordingly, the rule applies to state law causes of action brought in federal court. The operation of waiver by disclosure, as applied to other evidentiary privileges, remains a question of federal common law. Nor does the rule purport to apply to the Fifth Amendment privilege against compelled self-incrimination. See In re Cendant Corp. There is no intent to change any result in any ruling on evidence admissibility.

Chapter 5 : ATTORNEY CLIENT PRIVILEGE & WORK PRODUCT DOCTRINE

The work-product doctrine, like the attorney-client privilege, derives from common law origin. In contrast to the attorney-client privilege, which may be asserted only by the client, either the attorney or the client may invoke the work-product doctrine.

Attorney-client Privilege versus Work Product: They are often the primary means for preventing the disclosure of highly sensitive and potentially damaging documents in litigation. The attorney-client privilege and work product doctrine share many similarities. However, as highlighted in the chart below, there are also significant differences between the two. Attorneys should keep these differences in mind as they consider whether and when to assert these protections in federal litigation. Work Product Doctrine What laws and rules apply? Federal law generally governs privilege determinations in federal court. However, state law governs the privilege regarding a claim or defense for which state law supplies the rule of decision FRE FRCP 26 b 3 governs work product determinations in federal court regardless of whether the underlying claims are state or federal in nature. To qualify for privilege protection, a communication generally must either be made by the: Client to her attorney. Attorney to her client. Note that communications transmitted through certain agents of the client or the lawyer may also qualify for privilege protection. The client and any of its representatives whether or not lawyers can create work product. Is a communication required? Uncommunicated thoughts such as file memos are generally not protected unless they relate to an attorney-client communication. File memos and other uncommunicated documents may qualify for work product protection if they were prepared in anticipation of litigation, and their creation was motivated by the litigation. Must the communication or document relate to legal advice? The scope of the privilege is generally confined to: Work product protection does not depend on the substantive nature of the materials to be protected. The key issue is whether the materials were prepared in anticipation of litigation and were created because of the litigation. The attorney-client privilege covers any type of legal advice, whether or not it relates to litigation. Therefore, advice given in a purely transactional setting may qualify for privilege protection. Only materials that were prepared in anticipation of litigation, and whose creation was motivated by the litigation, may qualify for work product protection. Can it be waived? The attorney-client privilege is very fragile. Note that Federal Rule of Evidence potentially softens the waiver rules when privileged documents are inadvertently disclosed in litigation. However, in contrast to the attorney-client privilege, disclosing work product to "friendly" third parties even those who do not qualify as agents of the attorney or client usually does not waive the protection. The privilege is absolute. A litigation adversary cannot overcome the privilege by claiming it needs access to privileged communications to adequately prepare for trial. Does the crime-fraud exception apply? The privilege does not attach to communications that were made in furtherance of a crime or fraud. For example, work product protection may extend to documents that were created by an innocent lawyer, even if the client was perpetrating a crime or fraud. How long does it last? The privilege generally lasts forever, unless it is later waived. Some but not all courts hold that work product protection ends with the termination of the litigation for which it was created. No claim to original U.

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Chapter 6 : Attorney-client Privilege versus Work Product: Whatâ€™s the Difference? | Practical Law

The work product doctrine is different than the attorney-client privilege. The purpose of the attorney-client privilege is "to encourage clients to make full disclosures to their attorneys.".

Confidentiality is perhaps the hallmark of the client-lawyer relationship. Under the Rules of Professional Conduct, a lawyer must not reveal information relating to the representation of a client unless the client gives informed consent or the disclosure is otherwise permitted or required. So what happens when a lawyer is called as a witness or otherwise required to produce evidence concerning a client? What happens when a client himself shares protected information with a spouse? Here we detail how South Carolina courts apply the attorney-client privilege and work product protection in judicial and other proceedings. Application and Protection The attorney-client privilege has long been recognized in the state of South Carolina. When raised, the privilege excludes from evidence confidential communications of a professional nature between an attorney and her client. In order to protect a communication on the grounds of attorney-client privilege, it must appear that the attorney was acting, at the time of the communication, as a legal advisor, and that the communication was of a confidential nature. It also prevents any other person from disclosing confidential communications that the client made to a counsel relative to a legal matter. Ordinarily, the attorney-client privilege does not protect communications with non-clients. The advice or assistance must be sought with a view to employing the attorney professionally whether or not actual employment occurs. Marshall â€" sought custody of their two minor children. Marshall inadvertently left a letter from her attorney, addressed to her, in Mr. Marshall to her father, Mr. Marshall into evidence on the basis of the attorney-client privilege. Marshall argued the letters from Mrs. Marshall from her attorney were relevant to the issue of child custody. Marshall did not waive the privilege by mistakenly leaving one of the letters in Mr. Marshall in his truck, and found that there was nothing in the letter that would reflect on the custody determination; therefore, while the attorney-client privilege may have been waived, it was still inadmissible on relevance grounds. While family members may be close to you and have an interest in the outcome of litigation, disclosure of privileged communications would likely be deemed to waive the attorney-client privilege as to all communications on the same subject. When privileged communications are disclosed to a family member, the court must then decide whether the family member also became a client of the attorney. If they did not, as in Marshall, the information contained in the communication could be admissible in evidence if it is relevant. What information is not protected by the privilege? Not every communication within the attorney-client relationship is privileged. The documents falling within this classification are clothed with a qualified immunity that is grounded on the proprietary aspect of the work. Murray Sheet Metal Co. National Union appealed to the Fourth Circuit. If they were not prepared in anticipation of litigation, they would be discoverable. If they were found to be prepared in anticipation of litigation, the court would have to decide whether the requesting party demonstrated a substantial need for them. We can provide you the legal information you need on attorney-client privilege, the work product doctrine, and more. Give us a call today. Generally, the party asserting the privilege must raise it. Medical University of South Carolina, S.

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Chapter 7 : Attorney-Client Privilege and Work Product Doctrine Toolkit | Practical Law

With regard to attorney-client privilege the underlying purpose of the doctrine is to encourage the client to communicate freely with the attorney. Work product protection on the other hand encourages careful and thorough preparation by the attorney.

General requirements under United States law[edit] Although there are minor variations, the elements necessary to establish the attorney client privilege generally are: The asserted holder of the privilege is or sought to become a client; and The person to whom the communication was made: A corollary to the attorneyâ€"client privilege is the joint defense privilege , which is also called the common interest rule. When the privilege may not apply[edit] When an attorney is not acting primarily as an attorney but, for instance, as a business advisor, member of the Board of Directors, or in another non-legal role, then the privilege generally does not apply. For instance, if a client has previously disclosed confidential information to a third party who is not an attorney, and then gives the same information to an attorney, the attorneyâ€"client privilege will still protect the communication to the attorney, but will not protect the communication with the third party. The privilege may be waived if the confidential communications are disclosed to third parties. Other limits to the privilege may apply depending on the situation being adjudicated. Disclosure in case of a crime, tort, or fraud[edit] The crime-fraud exception can render the privilege moot when communications between an attorney and client are themselves used to further a crime, tort , or fraud. United States, the US Supreme Court stated that "A client who consults an attorney for advice that will serve him in the commission of a fraud will have no help from the law. He must let the truth be told. This is justified on policy grounds. If lawyers were unable to disclose such information, many would undertake legal work only where payment is made in advance. Lawyers may also breach the duty where they are defending themselves against disciplinary or legal proceedings. A client who initiates proceedings against a lawyer effectively waives rights to confidentiality. This is justified on grounds of procedural fairnessâ€"a lawyer unable to reveal information relating to the retainer would be unable to defend themselves against such action. Disclosure for the purpose of probate[edit] See also: Previously confidential communications between the lawyer and testator may be disclosed in order to prove that a will represented the intent of the now deceased decedent. In certain cases, the client may desire or consent to revelation of personal or family secrets only after his or her death; for example, the will may leave a legacy to a paramour or a natural child. Tax practice[edit] In the United States, communications between accountants and their clients are usually not privileged. A person who is worried about accusations of questionable accounting, such as tax evasion , may decide to work only with an attorney or only with an accountant who is also an attorney; some or all of the resulting communications may be privileged provided that all the requirements for the attorneyâ€"client privilege are met. The mere fact that the practitioner is an attorney will not create a valid attorneyâ€"client privilege with respect to a communication, for example, that involves business or accounting advice rather than legal advice. Under Federal tax law in the United States, for communications on or after July 22, , there is a limited Federally authorized accountantâ€"client privilege that may apply to certain communications with nonâ€"attorneys. In the federal courts[edit] If a case arises in the federal court system, the federal court will apply Rule of the Federal Rules of Evidence to determine whether to apply the privilege law of the relevant state or federal common law. If the case is brought to the federal court under diversity jurisdiction , the law of the relevant state will be used to apply the privilege. If the case involves a federal question , the federal court will apply the federal common law of attorneyâ€"client privilege; however, Rule grants flexibility to the federal courts, allowing them to construe the privilege "in light of experience and reason".

Chapter 8 : The Attorney-Client Privilege and the Work-Product Doctrine

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The Panel will compare the Attorney-Client Privilege and Work Product Doctrine to the relevant lawyer confidentiality ethics rules, describe Joint Defense Agreements and the Common Interest Doctrine in context with recent case law, and review exceptions, waivers.

Chapter 9 : Work-product doctrine - Wikipedia

However, the statutory privileges, such as, attorney client privilege (Evidence Code) and attorney work-product privilege (CCP) do apply. The attorney-client privilege confers a privilege on a client to refuse to disclose and to prevent another from disclosing confidential communications between client and lawyer.