



Boardroom Fundamentals 301

Module 4: Attorney Client Privilege

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Attorney Client Privilege

Attorney client privilege:

- Protects confidential communications between a client and an attorney

Attorney work product privilege:

- Protects an attorney's investigation, preparation and evaluation of a potential claim or actual lawsuit

Both privileges are designed to permit attorneys to obtain a complete understanding of all relevant facts so that the attorney can properly advise the client. The privileges apply to both natural persons and corporate entities.

Attorney Client Privilege

The privilege applies in situations involving:

- A communication
- Made in confidence
- From or to a client
- With an attorney
- For the purpose of seeking legal advice



Attorney Client Privilege

In the corporate setting, the client may include:

- The Board of Directors or Board committee
- Executive management
- Supervisory personnel
- Other employees who have relevant information

Caveat: The corporation's attorney is not the personal attorney of board members, the CEO or other C-suite executives. The attorney represents the corporate entity only.

Attorney Client Privilege

Waiving the Privilege

Since the attorney client privilege belongs to the client, the client can decide to waive the privilege if it is in its best interests to do so. Inadvertent waivers may occur and should be guarded against. Waiver can occur in the following circumstances:

- Sharing confidential information with an attorney in the presence of third parties who are not needed for the legal consultation
- Persons “without a need to know” are copied on an email to the attorney
 - Merely copying an attorney on an email or memo does not make it privileged
 - Communication must be for the purpose of obtaining legal advice
- Advice given by the attorney is shared between employees without the attorney being present or consulted
- Distribution of privileged documents to outside parties, including when done in error or unintentionally
- Privileged conversations are overheard in a setting where confidentiality would not be expected (e.g., in an elevator)

Attorney Client Privilege



Attorney client privilege is an **important** corporate asset. Rules surrounding the privilege are numerous and complex. When in doubt, consult the corporation's counsel, which may be outside counsel or the company's general counsel.

Questions?

Contact Linda via email → lindaiannone35@gmail.com

End of Module 4



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