

New research analyzes the corporate attorney-client privilege

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Due to the evolutionary legal landscape, corporate lawyers now find themselves relying on information and guidance from non-legal advisors like accountants, investment bankers, and public relations professionals. This aids the lawyer in providing well-rounded legal advice to their clients. In response to this trend, federal courts currently disagree on the appropriate measurement to analyze the attorney-client privilege when communications involve outside consultants.

University of Miami Law Professor Michele DeStefano Beardslee has recently conducted research titled, "The Corporate Attorney-Client Privilege: Third Rate Doctrine for Third Party Consultants" that examines instances in which communications with third party consultations should be protected.

It is informed, in part, by some empirical studies conducted on attorneys' communications with external public relations consultants. Professor Beardslee argues that exchanges between attorneys and third party consultants should be protected in certain circumstances. As a means to achieve that protection, her research recommends the attorney-client privilege protect these exchanges when there is a strong nexus between the consultant's service and the legal advice provided to the client. It also proposes that the proponent show that communication with the third party is necessary to provide legal advice or services.

The research is being published by the Southern Methodist University Law Review, and is available now. The paper explores the use of

attorneys as shields for non-privileged communications and proposes to help the court determine that the primary purpose of the exchange was for legal (as opposed to business) advice.

Beardslee's paper further suggests that courts also take into account: 1) whether the lawyers were not skilled in the area in which they sought expert assistance; 2) the way the communication was conducted or distributed; 3) contemporaneous documentary support e.g., a separate retainer agreement; and 4) the substance of the [law](#) involved. The researcher's recommendations aim to simplify the current practice and make it more conventional.

Source: University of Miami ([news](#) : [web](#))

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