



Attorney-Client Privilege Policy

Policy #	Origination Date	Responsible Office	Status	Approval Date
09-05-02	12/08/08	Office of Legal Affairs	FINAL	05-04-09

Policy Statement

The Office of Legal Affairs is committed to providing proactive legal services that are relevant, timely and cost-effective to support the University's mission and program initiatives in an ethical and professional manner. To that end, we strive to (1) be involved early with our internal clients in the planning and structuring of program initiatives and resolution of disputes, (2) solve problems creatively, identifying legal risks and formulating alternatives to achieve our clients' business objectives, (3) communicate effectively with our clients, and (4) foster a climate of mutual respect and a team approach to meeting our clients' needs.

Reason for Policy/Purpose

The purpose of this policy is to promote efficiency and accountability in the provision of legal services.

Who Needs to Know This Policy

All units of the University.

Policy/Procedures

Why is the attorney-client privilege important?

The attorney-client privilege serves to exempt from production in litigation communications between counsel and an individual or entity seeking legal guidance. Such communications may be written or oral.

University clients rely on the protection of the attorney-client privilege for confidential communications with in-house and outside counsel, both in extraordinary matters such as internal investigations and in such everyday legal matters as employment decisions and contract negotiations. The privilege permits the University's attorney to learn in confidence all facts-both good and bad-about a legal matter so that the attorney can provide legal advice to the University

without worrying that the communication will be used against the University in a later litigation or dispute.

When does the privilege apply?

Specifically, the attorney-client privilege applies to:

- i. communications made in confidence
- ii. from or to a client
- iii. with an attorney for the purpose of seeking legal advice where
- iv. the confidentiality of the communication has not been waived.

In the University setting, “client” denotes a person or entity, who directly or through an authorized representative, consults a lawyer for advice. It includes current as well as former employees seeking advice while acting in the scope of their employment. The attorney-client privilege applies to communications with in-house counsel as well as outside counsel retained by the University.

The advice sought must be for the purpose of securing either an opinion on law, legal services, or assistance with a legal proceeding. Where a communication neither invites nor expresses a legal opinion, but rather involves merely soliciting or providing general business advice, it will not be considered privileged. This is similar and related to, but not exactly the same as, the attorney work-product privilege, which protects the factual investigations, legal research, mental impressions, evaluations and opinions of an attorney made in anticipation of or preparation for litigation.

Marking and Limiting Distribution of Attorney-Client Communications

A communication is only protected from disclosure in litigation if the client intends that the communication be confidential, and takes steps to ensure that it remains so. All documents that may be subject to the privilege should be clearly marked as such.

Disclosure to third parties, common availability, general distribution, or improper segregation of confidential materials greatly increases the likelihood that a court will determine this important privilege to have been waived. If an attorney-client communication occurs in the presence of, or is sent to, third parties (either within the company or external) not necessary for the purpose of the legal consultation, the essential element of confidentiality will be destroyed. An inadvertent waiver of the privilege may occur when privileged conversations take place where they can be overheard (such as in elevator or hallway), in the presence of outsiders or bystanders, or simply by misdirecting or improperly distributing e-mail, faxes or letters.

DETAIL:

The following procedures should be followed in order to safeguard the attorney-client privilege on all communications to and from internal and external attorneys for the purpose of securing legal advice:

Mailing and Distribution:

- 1.) Do not copy (cc) or blind copy (bcc) individuals who are not required to be included in the communication, and do not distribute a legal memo or communication to others who are not listed as intended addresses. The privilege will be deemed waived with respect to documents distributed beyond a “need-to-know” and supervisory group of involved parties.
- 2.) Identify yourself by name as well as title when authoring documents, and whenever possible, name any recipients individually (i.e. not just “The Audit Committee”). The privilege has been considered waived in instances where documents were authored by or addressed to individuals identified only by their title (i.e., “business manager”) or to a generic group.

Content and Designation:

- 1.) Always clearly identify communications with in-house or outside counsel specifically seeking or relating to the provision of legal advice as “Privileged Attorney-Client Communication.” This notation should be incorporated, where possible, as a header or footer, a “RE” line for an email, or in a similar, clearly visible location. This includes, but it not limited to, marking emails, faxes, memos, and handwritten notes memorializing meetings or conversations with counsel.
- 2.) However, don’t stamp EVERY document sent to an attorney “confidential”, particularly if it does not specifically seek or relate to the provision of legal advice. Inappropriate “over-classification” of documents may be interpreted as an attempt to shield potentially harmful documents from discovery and may lead to a judicial review of all documents so designated. Merely including an attorney on a list of recipients of a document will not make that document privileged.
- 3.) Use legal titles in all correspondence and memoranda addressed to counsel, and identify by his or her title the lawyer participating in a conversation, in meeting notes, and memoranda.
- 4.) Make a specific request for legal advice in communications with counsel. Documents seeking or providing legal advice should refer to legal subjects alone and should not become memoranda of general business decisions. Where a document contains both legal advice and general business information, the court may consider it impossible to separate the two and privilege will not be afforded.
- 5.) Under no circumstances should you repeat the content of any legal communications relating to the University to anyone outside the University without specific prior authorization from the Office of Legal Affairs. This includes bankers, auditors, accountants, and others whose services may have been retained by the University.
- 6.) Avoid restating or discussing legal advice in internal company memos or in meetings. If legal advice must be repeated, it should only be done with the prior authorization of the Office of Legal Affairs. A member of the Office of Legal Affairs may wish to attend such meeting or draft any related memoranda.

Saving/Filing/Retention:

- 1.) Save and maintain all privileged documents in a “legal/privileged and confidential” documents folder or, in the case of hard copy documents, in separate, designated “legal” or “privileged” files to which access is limited. To avoid inadvertent waiver, it is essential that privileged documents not be mixed in and/or stored with other types of documents.
- 2.) Documents marked or designated as subject to the attorney-client privilege should not be destroyed under University Document Retention Policy without the advice and consent of the General Counsel and Vice President of Legal Affairs.

When doubt exists as to the proper status of any communication or class of documents, please seek a determination from the General Counsel and Vice President of Legal Affairs.

Questions regarding this policy and related procedures may be addresses to General Counsel and Vice President of Legal Affairs at (504) 816-4546 or dwallace@dillard.edu

Website Address(es) for this Policy

<http://www.dillard.edu/>

Contact(s)

For questions about this policy contact:

Office of Legal Affairs
(504) 816-4546

Brendan M. Greene, J. D.
General Counsel
bgreene@dillard.edu

Rachel W. Mercadel
Executive Assistant
rmercadel@dillard.edu

Related Information

Not Applicable

Who Approved this Policy

Senior Cabinet Members

History/Revision Dates

Origination Date: 12/8/2008

Approval Date: 05/04/2009

Updated: 08/30/2019

Revised:

Next Review Date: 08/2021