Global Privilege and Professional Secrecy Guide - Philippines

03 - Scope of privilege

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# Is attorney-client communication only privileged as long as it remains in the lawyer's possession, or is a copy held by the client also protected?

The law protects clients from the effect of disclosures made by them to their attorneys in the confidence of the legal relationship. Thus, whether the attorney-client communication remains in the lawyer’s possession or a copy is held by the client, the same remains protected.

However, a distinction should be made between a copy held by a client and a copy that lands in the possession of third parties. There is jurisprudence in the Philippines to the effect that a copy of such communication that falls into the hands of third parties, whether legally or illegally obtained, is not covered by privilege.

# Are in-house lawyers treated in the same way as external lawyers for determining privilege?

Philippine law does not distinguish between external or internal counsel in the application of privilege.

However, with respect to internal counsel, since they frequently perform both a business and a legal function for their employer, only internal counsel's communications in their legal role may be subject to the protection of attorney-client privilege. In one case, the Philippine Supreme Court held that attorney-client privilege cannot be extended to communications made to a corporate secretary and general counsel in the absence of evidence as to which "hat" they are wearing at the time the communications are received. The privilege also does not apply where legal services are so intertwined with business activities that a clearer distinction between the two is impossible to discern.

# Does privilege extend to internal communications between in-house lawyers?

Philippine law does not distinguish between external or internal counsel in the application of the privilege. Thus, privilege would also extend to internal communications between in-house lawyers, provided each lawyer has an attorney-client relationship with the employer client and the communication is made for the purpose of providing legal advice to that client or clients. There is no difference between in-house lawyers and external lawyers in this regard.

# Are foreign lawyers recognized for the purposes of privilege?

The client may invoke the attorney-client privilege rule when their foreign lawyer is asked to testify on matters covered by privilege. This is consistent with the purpose of the rule of encouraging clients to make full disclosure to their attorneys, and to place unrestricted confidence in them in matters affecting their rights and obligations.

# Does privilege extend to nonlegal professionals who may from time to time advise on legal issues relating to their field, e.g., accountants or tax consultants advising on tax law?

The Philippine Rules of Court are specific as to who may be covered by privilege, making particular reference to attorneys. As such, nonlawyers such as accountants and tax consultants providing legal advice are not covered. Indeed, in the case of accountants, there is legislation to the effect that accountants may be compelled to disclose confidential information when legally required to do so.

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