

Privilege Newsletter: Fitting Consultants Within the Attorney-Client Privilege and Work Product Protection – Public Relations Consultants

Publications

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In our last newsletter, we analyzed the reluctance of courts to apply privilege to the work of forensic computer consultants following data breaches. Here, we address often unavailing efforts to fit communications with third-party public relations consultants within the client’s attorney-client privilege.

Consultants’ work may be privileged if the primary purpose of the engagement is to assist counsel with providing legal advice. The *Kovel* doctrine treats consultants as agents of counsel, and within the client’s attorney-client privilege, where the consultant is “necessary, or at least highly useful” to counsel’s forming legal advice and strategy. The core question is whether the primary purpose of the consultant’s work is legal rather than primarily to further business interests. Courts recognize the significant business interests in managing public relations in the wake of a crisis, but many courts are reluctant to treat public relations services as advancing primarily legal interests. Some of these courts, however, do apply work product protections to aspects of PR consultants’ work. Recent case law aligns with the pattern that a majority of, but not all, courts reject application of privilege to PR consultant communications.

[Read the full newsletter here.](#)

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