

Privilege Newsletter: United States Supreme Court to Review the Scope of the Attorney-Client Privilege

Publications

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On October 3, 2022, the U.S. Supreme Court granted review in a federal grand jury proceeding that may result in the Court expanding the scope of the attorney-client privilege for dual-purpose business communications. Petitioner argues that the Court should adopt the test articulated in two decisions by the U.S. Court of Appeals for the D.C. Circuit, which were authored by then Judge Brett Kavanaugh.

Petitioner is a law firm that provided tax advice and prepared tax returns for the target of a criminal investigation. The grand jury subpoenaed Petitioner for production of documents relating to the preparation of the client's tax returns. Petitioner produced some documents, but invoked the attorney-client privilege over communications that had the dual purposes of enabling Petitioner to provide legal advice and to prepare client's tax returns.

Petitioner explains that, in the tax context, courts distinguish between two types of work performed by an attorney. Advice regarding tax planning and controversy is treated as legal, and communications for that purpose are privileged. Preparation of tax returns is deemed a non-legal function, and communications for that purpose are not privileged. Where a lawyer provides legal advice and prepares tax returns, inevitably there will be communications with mixed business and legal purposes.

Read the full newsletter [here](#).

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