GRAMA Attorney Client Privilege

Prior Code

“records prepared by or on behalf of a governmental agency solely in anticipation of litigation that are not available under the rules of discovery.” -305(16)

“records disclosing an attorney’s work product, including the mental impressions or legal theories of an attorney or other representative of a governmental entity concerning litigation.” -305(17)

“records of communications between a governmental entity and an attorney representing, retained, or employed by the governmental entity if the communications would be privileged as provided in Section 78B–1–137.” -305(18)

Work Product (Gold Standard/SUWA) -305(16)

1) documents and tangible things otherwise discoverable, 2) prepared in anticipation of litigation or for trial, 3) by or

for another party or by or for that party’s representative

Opinion Work Product (Gold Standard/SUWA) -305(17)

also codifies the work-product doctrine, but focuses on the second tier of work product—opinion work product

Attorney Client Privilege (Gold Standard/SUWA) -305(18)

The attorney-client privilege protects information given by a client to an attorney that is “necessary to obtain informed legal advice—which might not have been made absent the privilege. Thus to rely on the attorney-client privilege, a party must establish: (1) an attorney-client relationship, (2) the transfer of confidential information, and (3) the purpose of the transfer was to obtain legal advice. (SUWA) Core or opinion work product receives greater protection than ordinary work product and is discoverable only upon a showing of rare and exceptional circumstances.

Schroeder

The first tier covers “work prepared in anticipation of litigation by an attorney or his agent.”[50](#co_footnote_B051502036956143_1) The second tier protects “core or opinion work product that encompasses the mental impressions, conclusions, opinion, or legal theories of an attorney or other representative of a party concerning the litigation.”[51](#co_footnote_B052512036956143_1)

Work Product

documents “produced in the ordinary course of business” or “created pursuant to routine procedures or public requirements unrelated to litigation” do not qualify as attorney work product. The purpose of work product protections is to “provid[e] attorneys with a zone of privacy permitting effective client advocacy.”

Current Code

(17) records that are subject to the attorney client privilege;

(18) records prepared for or by an attorney, consultant, surety, indemnitor, insurer, employee, or agent of a governmental entity for, or in anticipation of, litigation or a judicial, quasi-judicial, or administrative proceeding;

**Attorney Work Product** protects documents and tangible things that are prepared in anticipation of litigation, trial, or administrative proceedings. The purpose of the work product doctrine is to provide attorneys with a zone of privacy permitting effective client advocacy. It does not include documents produced in the ordinary course of business or created pursuant to routine procedures or public requirements unrelated to litigation.

**Attorney Client Privilege** protects information given to a client by an attorney that is necessary to obtain informed legal advice, which might not have been made absent the privilege. In order to rely on the attorney client privilege, a party must establish: (1) An attorney-client relationship; (2) The transfer of confidential information, and (3) The purpose of the transfer was to obtain legal advice. Core or opinion work product receives greater protection than ordinary work product and is discoverable only upon a showing of rare and exceptional circumstances.