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Communications with In-House Counsel: Protected by the Attorney-Client Privilege?

Tyler Tarney and Zach Pyers – January 11, 2017

Imagine the following situation: A client calls your office and is upset with you and the attorneys in your firm who have been working on a project for the client. Sensing the disdain and frustration coming from the other end, you hang up and email your firm's in-house counsel. You inform in-house counsel of what took place as well as your belief that the client may file a malpractice claim. After exchanging several emails, including emails with candid assessments of potential malpractice liability, you collectively articulate a strategy to handle the issue. Then the client files suit. In discovery, the client asks for the email exchanges with in-house counsel. These communications may be discoverable in certain jurisdictions; however, courts are increasingly finding that these critical communications are protected by the attorney-client privilege.