



FEATURES OF THE DEFINITION OF THE ATTORNEY – CLIENT PRIVILEGE IN US JUDICIAL PRACTICE

Khakimova Kamola

Lecturer at TSUL

khkamolakh@mail.ru

Article history:	Abstract:
Received: December 8 th 2022 Accepted: January 6 th 2023 Published: February 8 th 2023	In this article, the author, on the basis of a comparative analysis, studied various approaches and doctrines for determining attorney-client privilege in the United States. In addition, the author gives the historical origin of the concept of attorney-client privilege. The judicial precedents related to the definition of the criteria for attorney-client privilege and its limits are analyzed. Based on the results of studying the features and criteria of attorney-client privilege, the author gives a universal definition of this concept.
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An attorney-client privilege, considered as one of the main elements of the provision of legal assistance by a lawyer, the provision of which is guaranteed by the state. The emergence of the institution of attorney-client privilege dates back to the time of the Roman Empire, when Roman lawyers argued that lawyers should not act as witnesses in those cases where they are defenders[1]. Despite this, "lawyer secrecy", in the sense that exists now, began to exist in Anglo-American jurisprudence, as a principle of witness privilege and was firmly established in the 16th century in England, which provided that a lawyer, within the framework of this privilege, was forbidden to give any testimony against his client in court[2]. However, in the course of the development of legal relations, the modern understanding of attorney-client privilege is not limited to this prohibition, and the boundaries of the application of attorney-client privilege are much wider. Different legal families have their own exclusive definitions and signs of attorney-client privilege, but despite this, it is certainly considered common that it is necessary in order to ensure a trusting relationship between a lawyer and a client.

It should be borne in mind that when determining attorney-client privilege, there is a main goal, namely, to provide the principal with the opportunity to receive qualified legal assistance, by fully disclosing all information to the lawyer without a doubt, being convinced that this information will not be the property of third parties. In realizing this goal, an important role is played by the place and conditions for obtaining confidential information, since it depends on the communication of a lawyer with a client. For example, in accordance with US jurisprudence, communication and obtaining advice from a lawyer in a public place in the presence of third parties cannot be protected by attorney-client privilege. Legal relations

are necessary between a lawyer and a third party interested in obtaining legal advice, and these legal relations arise from the moment of direct contact with a lawyer formation and receiving an initial consultation there[3]. Such an order of legal relations between a lawyer and a third party is necessary, since attorney-client secrecy is the possibility that the principal is more likely to provide the lawyer with all relevant information - even information that is not allowed for the principal to discuss with third parties in society. Ensuring the observance of attorney-client privilege guarantees that the lawyer will be provided with full information about the problem, on which the principal will be provided with qualified legal advice. That is, if the place of provision of legal assistance is incorrectly determined, a person may be more circumspect in discussing his issue, since confidentiality will not be provided at an insufficient level.

To define the concept of attorney-client privilege, a correct understanding of confidentiality within the framework of attorney-client privilege is necessary. The question arises what exactly constitutes confidentiality in advocacy. It is established that a message is "confidential" if it is not intended to be disclosed to third parties, other than those to whom the information is disclosed in order to provide professional legal services to the client[4]. That is, it should be borne in mind that this may be the confidentiality of negotiations, the storage of information and the prohibition to transfer information to third parties, as well as the prohibition to request information from third parties. In legal relations between a lawyer and a client, the conditions of lawyer secrecy ensure the safety of information not only when organizing meetings, but also from the point of view of storing information transmitted by various permitted means of communication.



For a detailed consideration of the issue of the preservation of attorney-client privilege, it is also necessary to consider foreign experience. For example, US jurisprudence has provided evidence that calls into question the following points in the process of providing legal assistance by lawyers: "What happens when such information is necessary for obtaining legal assistance, as well as the consultation itself is sent using email accounts that can be accessed third party access or when implementing online consultations? Analyzing this issue, one can come to the conclusion that a misunderstanding of their boundaries can lead to incorrect expectations regarding the possible disclosure of information during litigation, inefficient communication practices in the counseling process, especially with the active digitalization of lawyers. Based on this, it can be assumed that not every information received in the course of contacting a lawyer can be confidential, therefore, attorney-client privilege has its limits. In this case, pursuant to Section 502 of the Massachusetts Manual of Evidence, US jurisprudence provides for a set of rules on attorney-client privilege. In particular, in order to benefit from attorney-client privilege, the client must seek legal advice from or receive legal advice from a lawyer, in addition, the purpose of the request must be related to this legal advice and the communication must be made confidential[5]. Considering these rules within the framework of the norms of the legislation in the Republic of Uzbekistan, the lawyer's secret does not need such details, since the Rules of Professional Ethics of Lawyers of the Republic of Uzbekistan regulate that the attorney-client privilege includes the very fact that a person applies to a lawyer for legal assistance, regardless of the subject of the appeal and places.

Another interesting foreign experience in the definition of attorney-client privilege is that the term attorney-client privilege when translated into English means the privilege of a lawyer with a principal. Attorney-client privilege acts as a privilege that protects communications from the discovery process, that is, from being collected by an adversary for use as evidence in a court of law. However, jurisprudence, in order to guarantee the observance of attorney-client privilege, has provided for a classification of privileges within the framework of advocacy.

Firstly, given the legal regime for respecting attorney-client privilege in the Republic of Uzbekistan, attorney-client secrecy must be ensured even regardless of the number of persons involved, that is, even in the process of negotiations with a group of persons (principals - lawyers and the counterparty). The US Supreme Court distinguishes this feature of

attorney-client privilege as a separate privilege - the privilege of general interest, which applies to negotiations between lawyers representing the interests of one principal and an attorney who does not represent the interests of the principal, but gives advice on a controversial issue.

Secondly, the US Supreme Court, in addition to attorney-client privilege, singles out "the privilege of the work product" as a necessary element in advocacy. This privilege is closely related to the definition of the boundaries of attorney-client privilege. A work product privilege is not an evidentiary privilege, but rather a disclosure rule that provides a qualified defense against disclosure in respect of documents or other written materials prepared "pending litigation"[6]. In our opinion, this should include written documents, research, data, images, surveys or similar products, which, in the activities of lawyers of the Republic of Uzbekistan, are also unconditionally protected by attorney-client privilege. It is noted that this privilege may protect documents prepared by litigants or by third parties involved in the litigation, such as consultants, auditors, other specialists in the case, if the documents were prepared with the expectation that they can be used in a potential judicial process. This privilege is broader than attorney-client privilege, as it protects documents and other materials prepared in anticipation of litigation by a party, an attorney, including a "consultant, guarantor, compensator, insurer or agent"[7]. Comparing these two concepts, attorney-client privilege, in turn, protects confidential communications between the principal and his lawyer, regardless of whether this information will be used by the lawyer in court. The work product privilege is intended to protect the prepared package of documents and written evidence for presentation at trial.

Summarizing everything analyzed above, attorney-client privilege is the exclusive privilege of a lawyer, it applies only to the competent activity directly performed by him and the result of his work. Depending on the complexity of the case, by agreement with the principal, other competent specialists may be involved in the process, in respect of which confidentiality measures should also be applied. This includes written documents, research, data, images, surveys or similar products that are not made by a lawyer but must be kept from disclosure to third parties and may affect the outcome of the case.

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