Emails to Your Personal Attorney May Not Be Privileged If Sent or Received on a Work-Provided Email Address

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Emails with your personal attorney may not be confidential and protected by the attorney-client privilege if sent from or received at a work-provided email address, according to a recent decision by the Michigan Court of Appeals. While the court's ruling does not apply in all cases, you should consider using your personal email address whenever you communicate with your personal attorney. Don't assume that an email you send or receive at work will be protected against disclosure and use in a lawsuit.

To be protected by the attorney-client privilege, courts have always required that an individual have a reasonable expectation that communications with his or her attorney will be private and confidential. The setting in which communications take place is an important consideration. In-person conferences, phone calls, and letters are generally protected; conversations in a public place may not be.

Nowadays, clients and attorneys frequently communicate by email and text. Sending a quick email to an attorney from work is so common that most people don't think about whether the message is confidential and will be privileged. The problem is that many employers have technology-use policies restricting personal use of electronic communication systems and allowing the employer to monitor and review emails and voicemails. In Michigan, the consequence may be that emails with a personal attorney sent or received at work may not be protected by the attorney-client privilege.

The issue considered by the Michigan Court of Appeals in *Stavale v Stavale*, was whether there is a reasonable expectation of privacy when emails are sent or received by an individual through a work-provided email address. In a divorce case, the wife sent a subpoena to the husband's employer requesting emails that he sent to his personal attorney through an employer-provided email address. The employer had a technology-use policy in an employee handbook stating that its

electronic communication systems were intended for business use. Employees were told not to use the systems for personal, confidential, or privileged communications because the employer reserved the right to monitor all system usage. The policy was clear: employees should not have a reasonable expectation of privacy when using the employer's systems to communicate with outside parties.

The Court of Appeals developed a standard to determine whether emails between employees and their personal attorneys on employer-provided email systems are privileged. A court must consider (1) whether the employer maintains a policy governing the use of its electronic communication systems and (2) whether the employee was notified or knew about the employer's policies and practices for computer privacy and monitoring. Because it was not clear whether the employee was informed about the policy, the case was sent back to the trial court to decide whether the employee's emails to his divorce attorney should be disclosed in response to his wife's subpoena.

The safest way to protect the confidentiality of emails with your attorney is to use your personal email address and your personal computer or device. While it may not be as easy as emailing from work, it is much better than having your communications with your attorney disclosed and used against you in a lawsuit.

If you have further questions regarding this article and maintaining attorney-client privilege, please contact:

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