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**THE SCOPE OF THE ATTORNEY-CLIENT PRIVILEGE  
AND WORK PRODUCT DOCTRINE IN THE  
CORPORATE CONTEXT**

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**I. ATTORNEY-CLIENT PRIVILEGE**

**A. WHAT IS THE BASIS OF THE PRIVILEGE**

1. The attorney client privilege protects confidential communications concerning legal advice between an attorney and client. The privilege exists in order to protect the full and frank communication between attorneys and clients and thus promotes the broad public interest in the observance of the law and the administration of justice. The privilege recognizes that sound legal advice or advocacy serves public ends and that such advice or advocacy depends upon the lawyers being fully informed by the client. *Upjohn Company v. United States*, 449 U.S. 383, 389 (1981); *Trammel v. United States*, 445 U.S. 40, 51 (1980); *United States v. Elkins*, 731 F. 2d 1005, 1008 n. 8 (2d Cir.) *cert. denied*, 469 U.S. 822 (1984); *In re Grand Jury Subpoena Duces Tecum (Dorokee)*, 697 F. 2d 277, 278 (10th Cir. 1983). *See also*, *Swidler v. Berlin and Hamilton*, \_\_U.S.\_\_, 1998 WL 333019, No. 97-1192 (decided June 25, 1998) ( based upon common law, notes of lawyer retained by White House Counsel Vincent Foster are protected by the attorney-client privilege and the privilege survives the client's death.)

2. In order for an attorney-client relationship to exist, the parties to the communications in question must bear the relationship of attorney and client. Further the attorney must have been engaged or consulted by the client for the purpose of obtaining legal services or advice. *Diversified Industries Inc. v. Meredith*, 572 F. 2d 596, 602 (8th Cir. 1977). The attorney-client privilege bars an attorney from disclosing information to anyone other than his clients provided that the information is (1) a communication; (2) made in confidence; (3) between a person who is or about to become a client; (4) an attorney; and (5) for the purpose of obtaining legal advice or assistance. *Upjohn Company v. United States*, 449 U.S. 383, 389 (1981).

3. In order to establish an attorney-client relationship, the parties generally do not have to execute any formal or written agreement and the relationship is not dependent upon payment of fees. *Cole v. Ruidosco Municipal Schools*, 43 F. 3d 1373, 1384 (1994); *Westinghouse Electric Corp. v. Kerr-McGee Corp.*, 580 F. 2d 1311, 1317, *cert. denied*, 439 U.S. 955 (1978). Whether an attorney-client relationship exists for purposes of the privilege may hinge upon the belief that one is consulting a lawyer and his intention is to seek legal advice. *Cole v. Ruidosco Municipal Schools*,

43 F. 3d at 1384; *Wylie v. Marley Co.*, 891 F. 2d 1463, 1471 (10th Cir. 1989); *Westinghouse Electric Co. v. Kerr-McGee Corp.*, 580 F. 2d at 1319. Thus the query on whether a communication imparted to counsel was intended to be confidential focuses on the client's intent. *Upjohn Company v. United States*, 449 U.S. at 387; *In re Sealed Case*, 737 F. 2d 94, 102 (D.C. Cir. 1984). Courts must use a case-by-case analysis in determining whether the privilege applies. *United States v. Gillock*, 445 U.S. 360, 367 (1980).

4. Courts have struggled with the application of the attorney-client privilege in the corporate context. While the Seventh and Tenth Circuits have generally applied a "reasonable belief" standard in both the individual and corporate context, *see Westinghouse Elec. Corp. V. Kerr McGee Corp.*, 580 F. 2d 1311, 1319 (7th Cir. 1978); *United States v. Walters*, 913 F. 2d 388, 392 (7th Cir. 1990); *Wylie v. Marley Co.*, 891 F. 2d 1463, 1471 (10th Cir. 1989), *but see In re Grand Jury Subpoenas, Jane Roe and John Doe*, \_\_\_F.3d \_\_\_, 1998 WL 247705 (10th Cir., Kan, May 15, 1998), the Second and Third Circuits have developed a five-prong test for ascertaining whether the privilege exists between corporate counsel and an individual. *See United States v. Intern. Broth. of Teamsters*, 119 F. 3d 210 (2d Cir. 1997); *Matter of Bevil, Bresler & Schulman*, 805 F. 2d 120 (3rd Cir. 1986) That test includes the following factors: (1) corporate officer must show that he approached counsel for the purpose of seeking legal advice; (2) that he made it clear he was seeking advice in an individual rather than corporate capacity; (3) that counsel saw fit to communicate with the officer in an individual capacity knowing that a possible conflict existed; (4) the officer must prove that conversations with counsel were confidential; and (5) that the substance of the conversations with counsel did not concern matters within the company or the general affairs of the company. *C.f., Innes v. Howell Corp.*, 76 F. 3d 702,712 (6th Cir. 1996) (attorney for corporation does not represent corporate constitutes in their individual capacity unless there is clear consent.); *United States v. Plache*, 913 F. 2d 1375, 1381 (9th Cir. 1990) (no privilege because no claim that officer sought personal legal advice.)

5. Internal communications between in-house counsel and corporate employees may be covered by the privilege if the communications concern matters within the scope of the employees' corporate duties and the employees are sufficiently aware that questions posed to them by in house counsel are in order for the corporation to obtain legal advice. *Upjohn Company v. United States*, 449 U.S. 383, 395 (1981). In *Upjohn*, the Supreme Court rejected the "control group" analysis for determining applicability of the privilege in the corporate context, finding that such an analysis frustrates the very purpose of the privilege by discouraging communications of relevant information by the employees of the client corporation to the attorneys seeking to render legal advice to the corporation. The Court found, however, that the privilege

extends only to communications and not to facts. Thus client cannot be compelled to answer a question related to “what was communicated to the attorney” but may be required to disclose a relevant fact within his knowledge, regardless of whether it was communicated to the attorney.

## **B. WHO MAY CLAIM THE PRIVILEGE AND WHAT DOES IT COVER**

1. The attorney-client privilege belongs to a client and only a client is authorized to waive the privilege, although either the client or the client’s attorney can claim the privilege and resist disclosure. *In re Grand Jury Subpoena*, 831 F. 2d 225, 226 (11th Cir. 1987); *In re Sealed Cases*, 676 F. 2d 793, 812 (D.C. Cir. 1982); *S.E.C. v. First Sec. Bank of Utah*, 447 F. 2d 166, 167 (10th Cir. 1981), *cert. denied*, 404 U.S. 1038 (1972).

2. The attorney-client privilege extends to corporate clients. *United States v. Louisville & Nashville R.R.*, 236 U.S. 318 (1914); *Grant v. United States*, 227 U.S. 74 (1913); *Upjohn Company v. United States*, 449 U.S. 383 (1981).

3. Communications by individuals on behalf of the corporation will create an attorney-client relationship and the subsequent privilege on behalf of the corporation. *CFTC v. Weintraub*, 471 U.S. 343 (1985); *In re Boileau*, 736 F. 2d 503 (9th Cir. 1984); *Citibank v. Andros*, 666 F. 2d 1192 (8th Cir. 1981). Generally, the privilege belongs to the corporation and the individual cannot himself assert the attorney-client privilege and prevent disclosure of communications between himself and the corporation’s counsel if the corporation has waived the privilege. *Diversified Industries v. Meredith*, 572 F. 2d at 611, n. 5; *Rosman v. Shapiro*, 653 F. Supp. 1441, 1445 (S.D.N.Y. 1987); *In re Grand Jury Investigations*, 575 F. Supp. 777 (N.D. Ga. 1983). However, the Seventh Circuit found in *United States v. Walters* 913 F. 2d 388, 392 (7th Cir. 1990) that when lawyers provided both individual and corporate advice to corporate employees and officers, that a waiver could only occur if jointly agreed upon; that to do otherwise would violate an individual privilege.

4. Circumstances may reveal that an employee of a corporation sought legal advice from the corporation’s counsel for himself or that counsel acted as a joint attorney. In such circumstances, dual representation may exist and the employee may likewise, invoke the privilege. *Diversified Industries v. Meredith*, 572 F. 2d at 611, n.5; *In re Grand Jury Investigation*, 575 F. Supp 777, 780 (N.D. Ga. 1983); *In re Grand Jury Proceedings*, 434 F. Supp. 648 (E. D. Mich. 1977), *aff’d*, 570 F.2d 562 (6th Cir. 1978).

5. The attorney-client privilege covers verbal statements, documents and tangible objects conveyed by the client to an attorney in confidence for the purpose of legal advice. Further the privilege applies to both oral and written confidential communications, either originating from the client or from the lawyer in response to a client's inquiries. *Upjohn Company v. United States*, 449 U.S. at 389; *Haines v. Liggett Group*, 975 F. 2d 81, 90 (3d Cir. 1992);

6. Communications with an attorney for purposes such as business, which do not relate directly to the rendering of legal advice, may not constitute confidential communications. *United States v. Abrahams*, 905 F. 2d 1276, 1283 (9th Cir. 1990); *In re Kidder Peabody Securities Litigation*, 168 F.R.D. 459, 462 (S.D. N.Y. 1996). Courts have held that communications outside the privilege include communications to third parties as part of business transactions, legal advice rendered for tax opinions which were ultimately used for tax returns, opinions used to solicit investors, and when legal advice was used in private placement memorandum. *United States v. Bernard*, 877 F. 2d 1463, 1465 (10th Cir. 1989); *United States v. Cote*, 456 F. 2d 142, 144 (8th Cir. 1972).

### **C. CONFIDENTIALITY AND WAIVER OF THE PRIVILEGE**

1. The primary requirement of the attorney-client privilege is confidentiality of communications. Thus the existence of an attorney-client relationship does not, in and of itself, create a presumption of confidentiality. The client must intend that the communication with the attorney remain confidential. If the client intended that the information be published or imparted to others, the privilege will not apply. *In re Grand Jury Proceedings*, 727 F. 2d 1352, 1355 (4th Cir. 1984). However, advocacy on the behalf of a client does not waive the confidentiality of a legal position to a third party. *Natta v. Hogan*, 322 F. 2d 686, 692 (10th Cir. 1968); *Solomon v. Scientific American, Inc.*, 125 F.R.D. 34, 38 (S.D. N.Y. 1988).

2. The attorney-client privilege belongs to the client and only the client is authorized to waive the privilege. *S.E.C. v. First Sec. Bank of Utah*, 447 F. 2d 166, 167 (10th Cir. 1971), *cert. denied*, 404 U.S. 1038 (1972). In order for a waiver to occur, the client must intentionally waive the privilege. *Smith v. Armour Pharmaceutical Co.*, 838 F. Supp 1573, 1576 (S.D. Fla. 1993).

3. Disclosures may not constitute waiver if the common interest doctrine applies. An attorney-client privilege may exist and is not deemed waived, even when the communications are made in the presence of third parties or disclosed to third parties, if the client and third parties share a common interest and the communications are considered confidential. *United States v. Schwimmer*, 892 F. 2d 237, 243 (2d Cir.

1989); *Eureka Inv. Corp. v. Chicago Title Ins. Co.*, 743 F. 2d 932, 936 (D.C. Cir. 1984); *In re Grand Jury Subpoenas Duces Tecum Dated November 16, 1974*, 406 F. Supp. 381, 388 (S.D.N.Y. 1975). The common interest or joint defense privilege applies if: (1) a communication occurred; (2) between clients with separate counsel either at the direction of or with the assent of counsel; (3) in the presence of or at the direction of counsel; (4) concerning matters of common legal interest. *In re Grand Jury Subpoenas*, 902 F. 2d 244 (4th Cir. 1990); *Eisenberg v. Gagnon*, 766 F. 2d 770, 787 (3d Cir. 1985); *United States v. McPartlin*, 595 F. 2d 1321, 1336 (7th Cir. 1979). No written agreement is necessary to memorialize the existence of a common interest privilege. *In re Grand Jury Subpoenas*, 902 F. 2d at 248; *Sheet Metal Workers Int'l Ass'n v. Sweeney*, 29 F. 3d 120 (4th Cir. 1994). The common interest privilege does not require actual litigation. *SCM Corp. v. Xerox Corp.*, 70 F.R.D. 508, 513 (D. Conn. 1976).

## II. WORK PRODUCT DOCTRINE

### A. APPLICATION OF THE DOCTRINE

1. The work product doctrine complements the confidentiality protections afforded by the attorney-client privilege. The doctrine allows an attorney or his or her client to withhold production of statements and any other type of information possessed by the attorney, whether written or unwritten, gathered in anticipation of litigation. *Hickman v. Taylor*, 329 U.S. 495, 508 (1947); *In re Special Grand Jury Proceedings*, 33 F. 3d 342, 348 (4th Cir. 1994); *Hamel v. General Motors, Corp.*, 128 F.R.D. 281, 282 (D. Kan. 1989). Materials may be covered under both the attorney-client privilege and work product doctrine. *Upjohn Company v. United States*, 499 U.S. at 398.

2. Information gathered by an attorney in anticipation of litigation is entitled to work product protection. *Matter of Grand Jury Subpoenas Dated Oct. 22, 1991 and Nov. 1, 1991*, 959 F. 2d 1158, 1166 (2d Cir. 1992); *Thompson v. United States*, 532 F. 2d 734, 738 (10th Cir. 1976). Non-attorneys or clients may be involved in the creation of work product. *Hickman v. Taylor*, 329 U.S. at 508; *United Coal Cos. v. Powell Construction Co.*, 833 F. 2d 958 (3d Cir. 1988); *Diversified Industries, Inc. v. Meredith*, 572 F. 2d at 603. Work product protection may apply to information received before an action is filed as long as there is a possibility of litigation in the future. *Upjohn Co. v. United States*, 449 U.S. at 386; *In re Special September 1978 Grand Jury (II)*, 640 F. 2d 49, 61 (7th Cir. 1980); *In re Grand Jury Proceedings*, 601 F. 2d 162, 171 (5th Cir. 1979). In fact, litigation need not be imminent at the time the attorney receives information protected under the doctrine. *In re Sealed Case*, 29 F. 3d at 718 (D.C. Cir. 1994).

3. In *Upjohn Company v. United States*, 449 U.S. 383, 396 (1981), the Supreme Court held that questionnaires and notes of interviews gathered during the course of an internal investigation by the company were protected by the work-product doctrine. However, the Court cautioned that only communications and not facts are protected by the privilege.

4. Both the attorney and/or the client may assert the work product doctrine. *In re Sealed Case*, 676 F. 2d 792 (D.C. Cir. 1982); *In re Grand Jury Proceedings*, 604 F. 2d 798 (3d Cir. 1979).

5. Where the work product doctrine is shared by parties under a common interest doctrine, one of the parties may not unilaterally waive the privilege. *In re Grand Jury Subpoenas*, 902 F. 2d 244, 250 (4th Cir. 1990); *John Morrell & Co. v. Local Union 304A*, 913 F. 2d 544, 566 (8th Cir. 1990); *In re Sealed Case*, 676 F. 2d at 899. Likewise, a joint defense privilege preserves the confidentiality of communications between parties and their counsel who are engaged in a joint defense effort. *See Metro Wastewater Reclamation District v. Continental Casualty Co.*, 142 F.R.D. 471, 478 (D. Co. 1992). Waiver of a joint defense privilege requires the consent of all parties participating in the joint defense. *John Morrell Co. v. Local Union 304A*, 913 F. 2d 544 (8th Cir. 1990).

### **III. CRIME-FRAUD EXCEPTION**

#### **A. WHAT IS THE EXCEPTION**

1. The crime-fraud exception to the attorney-client privilege and work product doctrine provides that if an attorney is retained to further present or intended illegal activity, the privileges will not survive. *United States v. Neal*, 27 F. 3d 1035, 1048 (5th Cir. 1994), *cert. denied*, 130 L.Ed. 1120 (1995); *In re Grand Jury Proceedings (Company X)*, 857 F. 2d 710, 712 (10th Cir. 1988). However, communications about past or completed crimes are protected by the privilege. *In re Grand Jury Subpoena 92-1*, 31 F. 3d 826, 829 (9th Cir. 1994). The purpose of the crime-fraud exception is to assure that the seal of secrecy between an attorney and client does not extend to communications made for the purpose of getting advice for the commission of a fraud or crime. *United States v. Zolin*, 491 U.S. 554 (1989); *In re Antitrust Grand Jury*, 805 F. 2d 155, 160 (6th Cir. 1986).

2. To invoke the crime-fraud exception, the party proponent must convince the court that there is *prima facie* evidence that the attorney's services were used in the furtherance of a crime or fraud. *Motley v. Marathon Oil Co.*, 71 F. 3d 1547, 1551 (10th Cir. 1995); *In re Grand Jury Investigation*, 974 F. 2d 1068, 1071 (9th Cir.

1992). The prima facie showing must indicate that (1) the party alleging the privilege was engaged in or was planning criminal or fraudulent conduct when it sought the advice of counsel; and (2) that the advice of counsel was sought for the purpose of furthering the criminal or fraudulent acts. *United States v. Zolin*, 491 U.S. at 562-63.

3. The exception may apply regardless of whether the attorney knows his client's true motivations. *United States v. Chen*, 99 F. 3d 1495, 1504 (9th Cir. 1996); *In re Grand Jury (G.J. No. 87-03-A)*, 845 F. 2d 896, 897 (11th Cir. 1988). However the exception will only apply if the party proponent can demonstrate that the client claiming the privilege knew or should have known that the advice was sought for a wrongful purpose. *In re International Systems*, 693 F. 2d 1235 (5th Cir. 1982); *In re Grand Jury Proceedings,(FMC)*, 604 F. 2d 798 (3d Cir. 1979).

4. The attorney-client privilege ceases whenever an attorney becomes the accomplice or an unwitting tool in a continuing crime. *United States v. Ballard*, 779 F. 2d 287, 292 (5th Cir. 1986).

## **B. TWO PRONG TEST TO DEMONSTRATE THE EXCEPTION**

1. In order for the Government or other proponent of the crime-fraud exception to meet its burden, it must present *prima facie* evidence that (1) the client asserting the privilege was engaged in criminal conduct when he sought advice of counsel, or that he was planning such conduct when counsel was sought, or that he committed the criminal act subsequent to receiving the benefit of counsel's advice; and (2) that the attorney's assistance was obtained in furtherance of the criminal activity or closely related to it. *United States v. Zolin*, 491 U.S. 554 (1989); *In re Grand Jury Investigation*, 842 F. 2d 1223, 1226 (11th Cir. 1987). The *prima facie* showing must be by competent evidence. *United States v. Dyer*, 722 F. 2d 174, 178 (5th Cir. 1983).

2. The burden of proof has been articulated as more than suspicion but less than a preponderance of evidence. *United States v. Chen* 99 F. 3d 1495, 1504 (9th Cir. 1996). The Supreme Court did not address the issue in *Zolin*.

3. The Tenth Circuit has held that the "in furtherance" requirement may be met by merely showing that the crime occurred during the attorney's representation. *Grand Jury Proceedings (Company X)*, 857 F. 2d 710, 712 (10th Cir. 1988).

## **C. MUST THE COURT HOLD A HEARING OR PERMIT REBUTTAL**

1. The Supreme Court in *Zolin* left open the question of whether or not due process requires the court to hold a hearing as to the applicability of the crime-fraud exception or whether a party asserting the privilege has the right to present rebuttal

evidence. The Court in *Zolin* did state that a threshold showing of a factual basis, adequate to support a good faith belief by a reasonable person, is required to be made by the party proponent of the exception. *United States v. Zolin*, 491 U. S. at 572. The threshold showing must be without the use of privileged communications. *Id.* at 575. Generally the threshold showing is *in camera*.

2. The question of whether rebuttal evidence was permitted was left open by the Court in *Zolin*. However, the Court gave the district courts broad discretion in the application of the threshold showing as well as the ultimate decision of *in camera* review. The Ninth Circuit has held *In re Grand Jury Subpoena*, 31 F. 3d 826 (9th Cir. 1994) that a district court has authority to permit rebuttal or countervailing evidence.

3. Disclosure of the Government's Good Faith Statement seeking a ruling on the crime-fraud exception may be subject to Fed. R. Evid. 6(e). *Douglas Oil Co. v. Petrol Stops Northwest*, 441 U.S. 211 (1979). However, disclosure may be permitted under the theory of "particularized need." *United States v. Proctor & Gamble Co.*, 356 U.S. 677, 681 (1958).

4. The court may grant *in camera* review only upon its discretion based upon (1) the amount of material the court is asked to review; (2) the importance of the alleged privileged information; and (3) the likelihood that *in camera* review, when combined with other evidence, will establish the crime-fraud exception. *United States v. Zolin*, 491 U.S. at 572.

#### **IV. ETHICAL DUTIES OF THE ATTORNEY REPRESENTING A CLIENT WHO MAY HAVE COMMUNICATED CRIMES OR FRAUDS**

1. ABA Published Opinion 92-366: an attorney must withdraw from any representation that directly or indirectly would have the effect of assisting the client's continuing or intended future fraud. Further the attorney may disavow work product to prevent its use in the continuing or intended future fraud, even though this may lead to inferential or direct disclosure of a client's confidences. If the client's fraud is completed and the attorney does not know or reasonably believe the client intends to continue the fraud or commit future fraud, the attorney may withdraw but need not disaffirm work product. An attorney whose services were used in the past to perpetrate a crime or fraud need not, but should consider, completely severing the relationship with the client.

2. Model Rule 1.6 does not provide for disclosure of client fraud to defrauded third parties and specifically prohibits the disclosure of the client confidence to third parties. The ABA ethics committee found that nothing in Rule 1.6 prohibited the attorney from disaffirming work product, but the attorney must decline to discuss

or reveal anything about the disaffirmed work product other than to no longer stand behind it.

3. ABA Opinion No. 93-375 the duty to disclose which arises from the crime-fraud exception takes precedence over the duty to keep client confidences only within the context of an “adjudicative proceeding” before a tribunal. Model Rule 3.3. It may apply to a nonadjudicative proceeding as defined In Model Rule 3.9.

4. Opinion 93-375 also held that if an attorney learns of an ongoing fraud or crime, the attorney’s sole duty is to avoid assisting the client in the fraud, including coverup. The attorney is under an obligation to ensure that the work product does not assist the client’s fraud.

5. The Fifth Circuit In *United States v. Cavin*, 39 F. 3d 1299, 1308 (5th Cir. 1994), the court found a conflict between ABA Opinion 366 and 375; that Opinion 366 required withdraw and disaffirmance of work product while Opinion 375 found that disclosure was not required. The *Cavin* court found that exclusion of an expert’s opinion as to an attorney’s ethical duties was reversible error. *Id.* at 1308. See also, *United States v. Kelly*, 888 F. 2d 732 (11th Cir. 1989).

## V. FIFTH AMENDMENT ISSUES

In *In Re Grand Jury Subpoenas, Jane Roe and John Doe*, \_\_\_F.3d \_\_\_, 1998 WL 247705 (10th Cir., Kan, May 15, 1998), the court held that the client cannot insist that the attorney invoke the client’s Fifth Amendment rights to preclude voluntary statements made by the client because such voluntary statements do not implicate the Fifth Amendment’s protection of the client against compulsory self-incrimination. Although the statements might be protected by the attorney-client privilege, where the crime fraud exception applies, no such privilege exists and the Fifth Amendment will not bar the attorney from relating what the client said to the attorney. The court did state, however, the following: “In certain circumstances, where an attorney is being compelled to produce documents that his or her client could personally bar from production under the Fifth Amendment, the attorney to whom they are delivered for purpose of obtaining legal advice should also be immune from subpoena.” (p. 10).

To protect the attorney from criminal prosecution, the attorney may assert the Fifth Amendment privilege as to his personal papers so as to preclude the production of documents in his/her possession. If the documents in the attorney’s possession are internal financial or corporate files, same are the property of a partnership, corporation, or other collective entity, and no such claim or privilege can be made. *See In Re Kennedy*, 442 A.2d 79 (Del.1982) (no claim or privileges in client files); *Bellis v. United States*, 417 U.S. 85 (1974) (no privilege for office files, a three-person law

partnership); *Hale v. Hinkel*, 201 U.S. 43, 75 (1906) (corporation has no Fifth Amendment privilege). Where a document is personal rather than corporate in nature, the courts have allowed custodians to assert their privilege against self-incrimination. *In Re Grand Jury Proceedings*, 632 F.2d 1033, 1042 (3d Cir. 1980). In determining whether a document is personal or business related, the courts look to several factors including who prepared the document, the nature of its contents, its purpose or use, who maintained possession and who had access to it, whether the corporation requires the preparation, or whether its existence was necessary to the conduct of the corporation's business. *In Re Three Grand Jury Subpoenas, dated January 5, 1998*, 847 F.2d 1024, 1030 (2d Cir. 1988); *In Re Grand Jury Proceedings*, 55 F.3d 1012, 1014 (5th Cir. 1995).

A corporate attorney could thus be faced with the prospect that his own personal notes could be found to be a corporate document and the corporate attorney could be required to turn over such notes to the government with the result that those same notes may be used to prosecute the attorney.