

Insights

Florida Law Update: Slack Messages May Be Privileged Communication

Article

Lowndes

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Florida's Sixth District Court of Appeal (6th DCA), which considers appeals from trial courts in an area running from Orange County down to Collier County, recently confirmed that discovery privileges apply to communications exchanged through corporate messaging systems like Slack.

Case Details: *Benescott v. Toptal, LLC*

The case, *Benescott v. Toptal, LLC*, ___ So. 3d ___, Case No. 6D2023-3769 (Fla. 6th DCA April 17, 2025), involved an underlying interstate discovery action to enforce a Nevada non-party subpoena. The appellant had produced approximately 10,000 documents in the underlying action and claimed privileged as to 750 documents. These documents included Slack^[1] communications between the appellant, the CEO of a non-party company, and the owner of the non-party company regarding legal advice given to the owner by attorneys representing him in other litigation with appellee Toptal, LLC.

Attorney-Client Privilege

The 6th DCA explained the general rule that the attorney-client privilege applies to confidential communications exchanged between a lawyer and client during the course of legal representation. The privilege also covers communications to third parties where disclosure is in furtherance of the legal representation of the client and those reasonably necessary to facilitate the communication. Importantly, the privilege covers internal communications between corporate counsel and corporate employees.

Work-Product Doctrine

A related but different privilege, the work-product doctrine, protects documents prepared in anticipation of litigation by or for a party, including a party's attorney, consultant, or agent. Work product material is subdivided into fact work product, which is sometimes discoverable upon a showing of sufficient need and undue hardship, and opinion work

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product, which is generally always protected from disclosure. Opinion work product includes such things as mental impressions, conclusions, opinions, or legal theories of an attorney or other party representative. Work product protection can extend to information gathered in anticipation of potential future litigation before any adverse claims actually ripen.

Court's Decision and Implications

The trial court initially overruled the appellant's privilege objections because the subject documents and communications were generated before the underlying lawsuit and did not involve legal representation in the dispute at hand. However, the 6th DCA determined that the documents very well could be privileged under the rules explained above and required the trial court to look at each document to determine whether a privilege applies. The 6th DCA specifically held that communications between the new company's owner and CEO about legal advice previously received by the owner may be privileged. Also, communications concerning a rival company that has a long-running dispute with the new company's owner and prior disputes with the CEO may be protected as work product if they involve some event that could foreseeably turn into litigation in the future.

Key Takeaway

The important takeaway is that internal corporate communications may be privileged in future litigation, including communications exchanged on new and emerging communication and collaboration platforms like Slack. Companies should be careful to restrict access to sensitive and possibly privileged communications to avoid waiving the privilege and should carefully review any document requests or subpoenas to determine whether a privilege may apply.

[1] According to its website, Slack is a corporate communication and collaboration tool.