

ITEM 10.00 | CHAPTER INTRO

Confidential lawyer-client communications are, by statute, privileged, and therefore not discoverable.¹ A communication is “confidential” if it is not intended to be disclosed to third persons other than those to whom disclosure is in furtherance of the rendition of legal services to the client, and those reasonably necessary for the transmission of the communication.² However, the privilege can be waived, intentionally or unintentionally, thus subjecting the communication to discovery. A waiver by the client of part of the privileged communications, serves as a waiver as to the remainder of the communications about the same subject.³

In *Southern Bell Tel. & Tel. Co. v. Deason*,⁴ the Florida Supreme Court set forth the following criteria to judge whether a corporation’s communications are protected by the attorney-client privilege:

- (1) the communication would not have been made but for the contemplation of legal services;
- (2) the employee making the communication did so at the direction of his or her corporate superior;
- (3) the superior made the request of the employee as part of the corporation’s effort to secure legal advice or services;
- (4) the content of the communication relates to the legal services being rendered, within the scope of the employee’s duties; and
- (5) the communication is not disseminated beyond those persons who, because of the corporate structure, need to know its contents.

Trial Lawyers Section of the Florida Bar
Conference of Circuit Court Judges
Conference of County Court Judges



Footnotes

¹ Fla. Stat. § 90.502; Fla. R. Civ. P. 1.280(b)(1).

² Fla. Stat. § 90.502.

³ *International Tel. & Tel. Corp v. United Tel. Co. of Florida*, 60 F.R.D. 177 (M.D. Fla. 1973).

⁴ 632 So. 2d 1377 (Fla. 1994).

