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Christopher S. Ruhland

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Preface

The attorney-client privilege is the oldest privilege in the common law. It is critical to our legal system, which relies heavily on lawyers to advise their clients and advocate on their behalf. The attorney-client privilege encourages clients to be candid and forthcoming with lawyers, and it thereby increases the utilization of lawyers and assists lawyers in performing their duties. On the other hand, as a rule that excludes relevant evidence in judicial proceedings, the attorney-client privilege can undermine the search for the truth. It is this tension between fundamental legal policies that has generated a large and often inconsistent volume of attorney-client privilege law.

Unfortunately, the attorney-client privilege is often not well understood, either by lawyers or clients. Lawyers and clients tend to believe that the privilege is broader and more secure than it is. This is especially problematic in the age of immense electronic discovery, in which lawyers have a diminished capacity to review and analyze each communication for privilege. In addition, as corporations increasingly have relied on sophisticated in-house lawyers to do more of their legal work, as well as provide business advice, courts have taken a more skeptical view toward claims of in-house attorney-client privilege. Thus, privilege questions are becoming more complicated and the answers more uncertain.

This book aims to assist lawyers and clients by answering common and practical questions about the attorney-client privilege. Privilege law is deep and diverse among federal courts and the fifty states, and in many situations the reader will need to dig further in a particular jurisdiction. But it is my hope that this book provides a useful reference and starting point.

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