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Overriding the Attorney-Client Privilege in Nonlegal Malpractice Cases, Westlaw

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While the attorney-client privilege is usually waived when a former client sues an attorney for malpractice, there are also circumstances in which nonclients seek to pierce the privilege. This sometimes occurs in connection with the defense against professional negligence claims even though the attorney involved in the underlying events has not been sued by the client.

This expert analysis will examine scenarios and provide guidance where professionals such as insurance producers, certified public accounts, architects or engineers may seek to compel the production of relevant information contained in privileged communications between an attorney and the plaintiff suing them.

New Jersey's rules — and legal authority on the issue of implicit and explicit waiver — serve as a guide. The manner in which New Jersey courts address this topic may differ from how it is addressed in other jurisdictions.

Nearly all courts, however, provide for judicial review where a party seeks to compel disclosure of attorney-client privileged information by asserting that the privilege has been waived.

Importantly, many jurisdictions recognize some form of implicit waiver when a party has placed attorney-client privileged communications "at issue" in litigation.(1)

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