



The proposed solution will also potentially apply to a number of relevant scenarios.

### I. THE ATTORNEY-CLIENT PRIVILEGE

The attorney-client privilege has been a permanent part of American jurisprudence since early common law and constitutes the foundation of the attorney-client relationship.<sup>2</sup> Initially, the privilege was created to “encourage full and frank communication between attorneys and their clients and thereby promote broader public interests in observance of the law and administration of justice.”<sup>3</sup> The policy underlying the privilege seeks to encourage “frank and candid disclosure” of all applicable information by the client, so that a lawyer is able to provide adequate advice.<sup>4</sup> The renowned evidence scholar, Professor John Wigmore, defines the attorney-client privilege as applying to anyone (1) seeking any kind of legal advice (2) from a professional, involving (3) communications that took place for that purpose, (4) confidentially (5) by the client, thereby subjecting such communications to (6) permanent protection (7) from disclosure by the legal adviser (8) except if confidentiality had been waived.<sup>5</sup>

Contrary to popular belief, the attorney-client privilege is not absolute and may be waived by the client.<sup>6</sup> This waiver gives the lawyer a right to reveal confidential information, sometimes without express permission of the client.<sup>7</sup> There are two defined categories of

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2. See 4 RONALD E. MALLIN & JEFFREY M. SMITH, L