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Arizona Court Expands Scope of Attorney-Client Privilege for Employers

Published Date: March 15, 2012
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Published Date: March 15, 2012

In a very recent decision, the Arizona Court of Appeals interpreted the attorney-client privilege broadly in favor of corporations and other entities using corporate counsel. The court in *The Salvation Army v. Bryson* (not yet published) held that A.R.S. § 12-2234, which codifies the attorney-client privilege in Arizona, covers any communication between a corporate lawyer and corporate employees when the communication is made “for the purpose of obtaining information in order to provide legal advice” to the entity, employer or employee. This decision confirmed that the Arizona legislature intentionally expanded the privilege beyond the Arizona Supreme Court’s prior holding in *Samaritan Foundation v. Goodfarb*, 176 Ariz. 497, 501 (1993) (“Samaritan II”). *Samaritan II* held that the scope of the attorney-client privilege was limited to communications between corporate counsel and corporate employees regarding the employee’s “own conduct in the scope of their employment.” This limitation excluded communications between corporate counsel and employees who were not personally involved in, but may have been witnesses to, events about which corporate counsel was advising the employer.

The *Salvation Army* decision arose out of a special action after the trial court ordered the Salvation Army to disclose in discovery summaries of employee interviews drafted by corporate counsel’s investigator. As a result of its legal holding, the Court of Appeals found that the interview summaries at issue were indeed privileged and not subject to disclosure. Consequently, the trial court abused its discretion by ordering their disclosure.

This protection of communications between corporate counsel and corporate employees will assist employers in many ways, including improving the effectiveness of their investigations and other fact-gathering efforts in Arizona State court proceedings. However, it is important to note that federal courts are not bound by A.R.S. § 12-2234’s definition of privileged attorney-client communications. This leaves open the possibility of less favorable treatment for such corporate counsel communications in federal court.

If you have any questions regarding the impact of this holding, contact the Ogletree Deakins attorney with whom you normally work or the Client Services Department at 866-287-2576 or via email at clientservices@ogletreedeakins.com.

Note: this article was published in the March 15 2012 issue of the *Arizona eAuthority*.

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