**Ethics: Managing Conflicts of Interest, Attorney Client Privilege, and Other Thorny Issues when Serving as Foundation Legal Counsel or Working with Your Campus Foundation**

Lawrence White  
Special Counsel  
University System of New Hampshire

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**Assumptions for this session:**

1. Your college or university has an affiliated foundation.

2. The foundation is separately incorporated. It operates as a “supporting organization” under Section 509 of the Internal Revenue Code, meaning that it exists solely to support the purposes and functions of the university with which it is affiliated.

3. You serve as counsel to the supported university, the supporting foundation, or both. (This session is really directed to those of you who represent both.)

4. In the jurisdiction in which you practice, the American Bar Association’s Model Rules of Professional Conduct apply. Please beware of this assumption. The rules in your jurisdiction may depart in substantial and pertinent respects from the model rules analyzed in this outline.

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1. From this point on, I’ll use “university” as a shorthand for referring to any college, university, academic medical center, or other independently operated tax-exempt, charitable, accredited entity that offers higher education degrees or certificates.


I. CONFLICT-OF-INTEREST CONSIDERATIONS ASSOCIATED WITH CONCURRENT REPRESENTATION OF UNIVERSITY AND AFFILIATED FOUNDATION

A. Assume for purposes of this part of the outline that you serve as counsel to a university. Do you also, by virtue of your status as corporate counsel, serve as counsel to all the university’s subsidiaries and affiliates—including a separately incorporated supporting foundation?

Obviously, if the university’s lawyer is not the foundation’s lawyer, then there’s no conflict possibility to analyze. But if corporate or ethical or other precepts assign to that lawyer the responsibility for corporate subsidiaries and affiliates, there might be if the corporation and its affiliate are adverse to one another. So the follow-up question is whether, if the university’s lawyer does function as counsel to the foundation, there is a potential conflict. Under what circumstances? How can a putative conflict be managed or mitigated?

B. Starting point: Rule 1.13,4 “Organization as Client.”

1. Rule 1.13 prescribes special ethical rules for lawyers who represent an organization, e.g. a university: “A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.” Rule 13(a). The key concept is the organizational “constituent.” A lawyer representing an organizational client must be careful not to put the interests of constituents ahead of the interests of the organization itself; and that lawyer owes an ethical obligation to explain to a constituent that he or she (the lawyer) is not necessarily that constituent’s counsel.

2. But the term “constituents” in Rule 1.13 does not extend to corporate affiliates. “An organizational client is a legal entity, but it cannot act except through its officers, directors, employees, shareholders and other constituents. Officers, directors, employees and shareholders are the constituents of the corporate organizational client.” Comment 1 [Emphasis added.] In other words, “Rule 1.13 does not directly address the question of when an affiliate of a corporate client is also a client, for the thrust of the Rule is to require the lawyer to distinguish between the corporation or other organization, which is his client, and the human representatives of the corporation, with whom the lawyer works and often forms personal relationships.” ABA Formal Opinion 95-390.

C. Next stop: Rule 1.7, “Conflict of Interest: Current Clients.” Rule 1.7 prohibits a lawyer from representing a client if the representation would involve a concurrent conflict of interest. Before we drill down and deconstruct the language in Rule 1.7 (the text of which appears on page 4 of this outline), let’s consider a preliminary

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4 All references to a “Rule” in this outline are to the ABA MODEL RULES OF PROFESSIONAL CONDUCT. See n. 3, supra. To repeat the prior warning: the applicable rule in your jurisdiction corresponding to the model rule cited in this outline may differ substantially and materially. Check the ethics rules that apply in your jurisdiction.
question generated by the use of the word “client.” Is there a presumption that “client” includes, not just the university, but all the university’s affiliated organizations, including the separately incorporated foundation?

Nope. The presumption actually operates in the other direction: “A lawyer who represents a corporation or other organization does not, by virtue of that representation, necessarily represent any constituent or affiliated organization, such as a parent or subsidiary.” Rule 1.7, Comment 34. Just because a foundation is affiliated does not mean that an attorney-client relationship arises between corporate counsel and affiliated foundation. That relationship would have to be formalized, either through practice or by reference to the facts of corporate governance.

D. So when does a corporation’s lawyer represent corporate affiliates and subsidiaries? The turns out in many cases to be murky. According to the Restatement (3d) of the Law Governing Lawyers: “Whether a lawyer represents affiliated organizations as clients is a question of fact ….” [§ 131, Comment d.] One solution is to have a “policy on affiliated entities” that assigns responsibility for legal services or including that assignment in the memorandum of understanding between university and foundation or other policy document that sets forth the structure of the university-foundation relationship. “Clearly, the best solution to the problems that may arise by reason of clients’ corporate affiliations is to have a clear understanding between lawyer and client, at the very start of the representation, as to which entity or entities in the corporate family are to be the lawyer’s clients, or are to be so treated for conflicts purposes.” ABA Formal Opinion 95-390.

- One good example is this sentence from the web page of the University of Florida’s General Counsel: “The chief lawyers for … UF affiliates that employ their own lawyers—University of Florida's affiliated hospitals and the University of Florida Foundation, Inc.—report directly to both a senior official of the affiliate and the UF General Counsel in her role on behalf of the affiliates.”

- In reality, however, many such policies and charters are less than helpful in this respect. See, e.g., The Ohio State University, Policy on Affiliated Entities, downloadable at http://legal.osu.edu/topics/affiliated-entity-policy: “Depending on the circumstances and the degree of separateness of the entity, legal representation with respect to the preparation of organizational documents may be provided by the University, the Office of the Attorney General, outside counsel to the University, or private counsel retained on behalf of the entity.” Many of the policies on affiliated organizations I reviewed online were less than clear on the allocation of responsibility for the provision of legal services.

So imagine that institutional policies are silent on legal representation for an affiliated foundation. Absent a written blueprint that establishes conclusively whether the
The university’s lawyer is responsible as well for the legal affairs of the affiliated foundation, the facts that bear on that question might include such facts as these:

- Is there a history of university counsel’s serving in that capacity for the foundation?
- Does the foundation pay a fee to the university for legal counsel?
- How independently—or dependently—is the foundation operated? Does it occupy its own (unsubsidized) space? Does it have its own human resources, financial, record storage, information technology, and other operations, or is it reliant on the university’s?

D. We come, then, to the second strand of our analysis. Assume that one lawyer represents both university and foundation. Under what circumstances does that “concurrent representation,” to use the nomenclature in Rule 1.7, give rise to potential conflicts of interest? And how can conflicts be mitigated?

Let’s examine the text of Rule 1.7, with some annotations:

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**Rule 1.7 Conflict of Interest: Current Clients**

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

1. the representation of one client will be directly adverse to another client; or
2. there is a significant risk that the representation of one or more clients will be materially limited by the lawyer’s responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

1. the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
2. the representation is not prohibited by law;
3. the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
4. each affected client gives informed consent, confirmed in writing.

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A narrower constraint than you might think. See Rule 7, Comment 6: “[S]imultaneous representation in unrelated matters of clients whose interests are only economically adverse, such as representation of competing economic enterprises in unrelated litigation, does not ordinarily constitute a conflict of interest and thus may not require consent of the respective clients.”

All four preconditions must be satisfied (but only the fourth is really important).

Simple to do.
E. **Bottom line:** Although there are situations in which the university’s counsel might not be able to serve concurrently as counsel to the foundation, those situations will be infrequent (because the interests of the two organizations will rarely be adverse) and easy to mitgate (through mutual written waiver of any potential conflict).

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**Hypothetical Problems**

1. You are counsel to University. University is affiliated with a separately incorporated support organization, University Foundation, which leases space in a building owned by University and pays commercially reasonable rent for the space. The chief financial officer of University Foundation comes to see you about the lease. The CFO explains that the foundation has located more reasonably priced space off campus and would like to terminate the lease early. The lease contains a liquidated damages clause for breach. The chief financial officer asks you to advise on the potential legal consequences of vacating the space before the end of the term, and asks for advice on how to broach the lease issue with University facilities officials. How should you respond to the CFO’s request for assistance?

2. You are counsel to University. You have never been called upon to provide counsel to University Foundation, which is separately incorporated, has its own board, and hires its own outside counsel when needed. University Foundation’s chief executive officer comes to see you and tells you that the foundation’s legal expenses are going up and the foundation wants to explore the possibility of contracting with University to obtain legal services from your office. What’s your response?

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II. **Attorney-Client Privilege Issues Associated with Concurrent Representation of Both University and Affiliated Foundation**

A. **Introduction.** The comments to Rule 1.7 contain these sobering words about the applicability of attorney-client privilege in the concurrent-representation context:

   A particularly important factor in determining the appropriateness of common representation is the effect on client-lawyer confidentiality and the attorney-client privilege. With regard to the attorney-client privilege, *the prevailing rule is that, as between commonly represented clients, the privilege does not attach.*

   Rule 1.7, Comment 30, [http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_7_conflict_of_interest_current_clients/comment_on_rule_1_7.html](http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_7_conflict_of_interest_current_clients/comment_on_rule_1_7.html).

So how worried should counsel be that concurrent representation of both university and foundation might vitiate the privilege?
B. *A primer on the attorney-client privilege.*

1. The fundamental takeaway from this portion of the outline: *the attorney-client privilege is narrower than you think and may not protect against disclosure of as many communications as you imagine.*

2. *What the attorney-client privilege is.* “The attorney-client privilege is a rule of evidence that protects the confidentiality of communications between an attorney and client. Its underlying purpose is to encourage persons to seek legal advice freely and to communicate candidly during consultations with their attorneys without fear that the information will be revealed to others.” American Bar Association, Presidential Task Force on the Attorney-Client Privilege, *Task Force Report to the ABA House of Delegates*, apps.americanbar.org/buslaw/attorneyclient/materials/hod/report.pdf (2005).

3. Three preconditions must exist in order for communications between lawyer and client to be protected by the attorney-client privilege:

   (a) The communication must be between *privileged persons* (a lawyer providing legal advice and a qualified client);

   (b) It must be made *in confidence*; and

   (c) It must be made in connection with the provision of *legal assistance* to the client.

4. *The First Precondition: The Communication “Must Be Between Privileged Persons”—a Lawyer and a Client*

   a. Only persons engaged or employed by a client to provide legal services are “lawyers” entitled to invoke the attorney-client privilege. The university may employ people in non-lawyer capacities who happen to be lawyers. Their communications with colleagues will rarely if ever be privileged. *If you as a foundation official happen to be a lawyer, your communications are not necessarily privileged just by virtue of that fact.*

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I want to mention an excellent teaching tool for those of you who wish to explore in more detail the topics addressed in this portion of the outline. In 2015 the American Bar Association asked Thomas E. Spahn, an attorney at McGuireWoods LLP, to prepare a detailed instructional manual titled *Ethics Issues Facing Corporate Counsel: Hypotheticals and Analyses*. This monumental 325-page publication contains helpful, lucid introductory material on many ethical and practical issues associated with the representation of affiliated corporate clients. The manual takes the form of short hypothetical questions followed by lengthy analyses keyed to the provisions in the ABA Model Rules. Copies of the manual can be downloaded at [http://media.mcguirewoods.com/publications/Ethics-Programs/8103470.pdf](http://media.mcguirewoods.com/publications/Ethics-Programs/8103470.pdf). Portions of this outline were inspired by and closely track to McGuireWoods manual.
b. When the lawyer’s client is an institution rather than an individual—in our case, a university—how many of the organization’s officials and employees are “clients” for the purpose of determining whether communications with them are protected by the privilege? Answer: not as many as you think. The privilege clearly applies to communications between a lawyer and an institutional decision-maker, such as a trustee, the president, the deans, etc. In dealing with any university employee below the rank of actual decision-maker, communications between that employee and the institution’s lawyers are protected only to the extent that the employee making the communication is doing so at the request or direction of a senior employee on a subject that is connected to his or her responsibilities within the institution. How that test applies in practice is amorphous and beyond the scope of an introductory presentation: the point we want to stress is that conversations between the lawyer and you are privileged, but conversations between the lawyer and your direct reports—or persons reporting to your direct reports—may not be.

5. The Second Precondition: The Communication “Must Be Made in Confidence”

a. If confidence is not preserved, the privilege disappears. The presence of a third party at a meeting where privileged matters are discussed or the sharing of a privileged communication with a third party who is not entitled to invoke the privilege can vitiate confidence and destroy the privilege.

_Hypothetical:_ A lawsuit is filed against the foundation for breach of a contract to lease function space at a local hotel. Lawyer meets with the foundation’s business officer and communicates confidential information about the lawsuit. Business officer goes back to the foundation’s chief executive officer and discloses what lawyer said. The privilege may conceivably be vitiated with respect to everything said at the meeting between lawyer and business officer.

b. A communication intended for a (non-privileged) third party cannot come within the privilege merely by copying it to counsel or writing “privileged” on the face of the communication.

_Hypothetical:_ University official, infuriated at the way in which foundation has handled a personnel matter, sends foundation CEO a blistering memorandum: “You idiot! Your incompetence will almost certainly lead to a lawsuit. I’m copying Lawyer so we can ready our defense.” The communication is not privileged, even though it arguably communicates otherwise privileged client beliefs.
6. **The Third Precondition: The Communication “Must Be Made in Connection with the Provision of Legal Assistance to the Client.”**

   a. A lawyer’s communication to a client is protected only if that communication constitutes the giving of legal advice to the client in response to a confidential communication from client to lawyer. If a lawyer gives business advice, public relations advice, or other forms of advice that do not relate to legal matters, then the privilege will not apply.

   A famous example from recent history: During the Clinton administration Independent Counsel Kenneth Starr sought to compel Bruce Lindsey’s testimony before a specially constituted grand jury investigating possible perjury and obstruction of justice by President Clinton in connection with the President’s testimony in a civil lawsuit brought by Paula Jones. Lindsey moved to quash the grand jury subpoena on the ground (among others) that he was a lawyer (he worked, in fact, in the White House Counsel’s Office) and had a privileged attorney-client relationship with the President. The court rejected the privilege claim on the ground that President Clinton obtained from Mr. Lindsey, not legal advice, but “advice on political, strategic, or policy issues, [which,] valuable as it may have been, would not be shielded from disclosure by the attorney-client privilege.” *In re Lindsey*, 158 F. 3d 1263, 1270 (D.C. Cir. 1998).

   b. For lawyers representing complex institutions like universities, there is always the danger that courts will characterize their advice as something other than the advice of a lawyer to a client—as policy advice, or advice rendered as a member of the president’s circle of senior advisors rather than the institution’s lawyer. If it can be so characterized, then the privilege associated with communications could be jeopardized.

   c. There are circumstances in which the lawyer serves an ambiguous role that may not be characterized by a court as a legal role:

      i. When a lawyer conducts an internal investigation.

      ii. When the lawyer prepares an internal report that is shared with a regulatory agency.

      iii. When the lawyer serves as a member of a search committee or other committee the purpose of which is not the provision of legal advice to a client.

7. Special complications ensue when the client is an organizational entity rather than a person—a college or university, for example. How many of the organization’s officials and employees are “clients” for the purpose of
determining whether communications with them are protected by the privilege? This, it turns out, is a complicated topic, well treated by Lori Fox in her 1998 outline for the National Association of College and University Attorneys on this subject and by other legal ethics experts over the years.\(^6\) At the risk of oversimplifying a complex body of law, jurisdictions apply one of two tests to determine whether a corporate employee is entitled to the protections of the attorney-client privilege:

a. The control group test. This test “focuses on the status of the employee within the corporate hierarchy. ... [A]n employee whose advisory role to top management in a particular area is such that a decision would not normally be made without his advice or opinion, and whose opinion in fact forms the basis of any final decision by those with actual authority, is properly within the control group” and is entitled to the protection of the attorney-client privilege. *Consolidation Coal Co. v. Bucyrus-Erie Co.*, 432 N.E. 2d 250, 255, 258 (Ill. 1982) (emphasis added).

b. The subject matter test. Courts and legal commentators criticized the control group test on the ground that it posed a “Hobson’s choice” for a corporate lawyer seeking to protect the privilege: “If he interviews employees not having ‘the very highest authority’, their communications to him will not be privileged. If, on the other hand, he interviews only those with ‘the very highest authority’, he may find it extremely difficult, if not impossible, to determine what happened.” Alan J. Weinschel, *Corporate Employee Interviews and the Attorney-Client Privilege*, 12 B.C. Ind. & Comm. L. Rev. 873, 876 (1970), quoted in *Diversified Industries, Inc. v. Meredith*, 572 F. 2d 596, 609 (8th Cir. 1977). The subject matter test is generally recognized as a “broader approach” that allows the attorney-client privilege to be invoked more often and under a wider array of circumstances. *Consolidation Coal Co., supra*, 432 N.E. 2d at 255. Instead of using the status of the employee as the determinant, the subject matter test focuses on the reason for the communication between employee and lawyer. The subject matter test confers a privilege when “the employee makes the communication at the direction of his superiors in the corporation and where the subject matter [of the communication] ... is the performance by the employee of the duties of his employment.” *Harper & Row Publishers v. Decker*, 423 F.2d 487, 491-92 (7th Cir. 1970) (emphasis added), aff’d per curiam by an equally divided court, 400 U.S. 348 (1971).

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Today, the subject matter test applies in federal (non-diversity) litigation, thanks to the Supreme Court’s adoption of the test in *Upjohn Co. v. United States*, 449 U.S. 383 (1981). You will have to ascertain on a state-by-state basis whether the subject matter test, the control group test, or some amalgamated test applies to state-court litigation in the jurisdictions in which you practice. Regardless, you should heed this simple rule of thumb: *In dealing with any university employee below the rank of actual decision-maker, be careful with respect to client confidences entrusted to your care. Those confidences are protected by the attorney-client privilege only to the extent that the employee communicating the confidence is entitled to invoke the privilege—and that's not necessarily everyone employed at your institution.*

8. This is perhaps the place to mention an evidentiary privilege closely related to the attorney-client privilege, the work product privilege. The so-called “work product doctrine” is intended to protect the work that a lawyer does in preparing a case for litigation (“protect” in the sense of making it unavailable to the other side through discovery or other means). The doctrine emanates from *Hickman v. Taylor*, 329 U.S. 495 (1947), which established, first, that material prepared by or for counsel in the course of preparation for possible litigation is subject to a qualified privilege against disclosure; and, second, that material describing a lawyer’s thought processes, analyses, mental impressions, and theories deserves the greatest protection. In federal litigation, the *Hickman* rules are reflected in a work product privilege in Rule 26(b)(3) of the Federal Rules of Civil Procedure:

> ... A party may obtain discovery of documents and tangible things prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including the other party's attorney ...) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the party’s case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.


The privilege applies only to papers prepared “in anticipation of litigation.” A perennial issue in work-product cases is the meaning of the “anticipation of
litigation” requirement. In general, courts interpret the requirement fairly broadly to encompass any material generated when litigation can reasonably be anticipated, not just when it has been commenced or even overtly threatened. In *Upjohn Co. v. United States*, 449 U.S. 383, 386-87, 397-402 (1981), for example, the privilege was found to apply to a lawyer’s pre-litigation investigatory material—even though no proceedings were threatened at the time the investigation was performed—because the corporation represented by the lawyer could appropriately have expected litigation under the circumstances. “In anticipation of litigation” means only that the primary motivating purpose behind the creation of the document was to aid in possible future litigation. Documents meeting these criteria are presumed to be privileged.” *Smith v. Texaco, Inc.*, 186 F.R.D. 354, 357 (E.D. Tex. 1999) (emphasis added). As long as material is prepared for reasons relating to anticipated litigation, and not “assembled in the ordinary course of business,” *United States v. El Paso Co.*, 682 F.2d 530, 542 (5th Cir. 1982), it is protected from discovery even if it was not prepared primarily or exclusively for litigation purposes.


9. Seven things to remember about the attorney-client and work product privileges:

   a. The attorney-client privilege serves an important function. It allows a client to speak frankly with a lawyer, promotes the lawyer’s understanding of what happens, and allows the lawyer to give well-informed counsel. You don’t want to do anything that will waive the privilege.

   b. The attorney-client privilege is narrower than you think.

   c. It probably does not apply to conversations between the lawyer and lawyer-members of a client’s staff.

   d. It may not apply with equal force to every corporate employee with whom the lawyer speaks.

   e. The privilege is easy to waive inadvertently by sharing the contents of a privileged communication with a third party not entitled to invoke the privilege.
f. It may not apply to communications a client has with a lawyer who is acting, not as legal counsel, but as business advisor, tactician, mediator, or sounding board.


g. The work product privilege applies only to documents generated in anticipation of litigation—a significant restriction on the reach of the privilege.

C. Attorney-client privilege issues in the context of concurrent representation of university and foundation.

1. The general rule: In general, as recited on page 5 of this outline, “the prevailing rule is that, as between commonly represented clients, the privilege does not attach.” Rule 1.7, Comment 30. There is an exception to the general rule, however, for clients concurrently represented by the same lawyer under a co-client or joint-client arrangement. As explained in a leading case:

   It is often expedient for two or more people to consult a single attorney. The rules of professional conduct allow a lawyer to serve multiple clients on the same matter so long as all clients consent, and there is no substantial risk of the lawyer being unable to fulfill her duties to them all. [In re Teleglobe Communications Corp., 493 F.3d 345, 362 (3d Cir. 2007).]

2. As this quotation suggests, a modicum of formality goes into the formation of a joint-client arrangement. To be safe and serene, the arrangement should be described in a written engagement memorandum or letter explicitly indicating that both clients consent:

   a. “The best solution to the problems that may arise by reason of clients' corporate affiliations is to have a clear understanding between lawyer and client, at the very start of the representation, as to which entity or entities in the corporate family are to be the lawyer's clients, or are to be so treated for conflicts purposes.” ABA Formal Opinion 95–390.

   b. “[C]orporate-family conflicts may be averted by ... an engagement letter ... that delineates which affiliates, if any, of a corporate client the [lawyer] represents....” Ass'n of the Bar of the City of New York Comm. on Professional and Judicial Ethics, Formal Opinion 2007–3.

3. If one lawyer represents university and foundation under the terms of a joint-client arrangement, must the lawyer fret about the privileged nature of communication received from one client vis-à-vis the other client? This turns out to be a convoluted problem. Here’s a good expression of the general rule from a leading court case:
Communications between employees of a subsidiary corporation and counsel for the parent corporation, like communications between former employees and corporate counsel, would be privileged if [a] the employee possesses information critical to the representation of the parent company and [b] the communications concern matters within the scope of employment. [Admiral Insurance Co. v. U.S. Dist. Court for the Dist. of Arizona, 881 F.2d 1486, 1493 (9th Cir. 1989) (emphasis added).]


D. Bottom line: It probably doesn’t occur to many lawyers who serve as university counsel and, as part of their duties, provide legal advice to the university’s supporting foundation that their communications with foundation employees may not necessarily be privileged under either the attorney-client privilege or the work-product privilege. To safeguard the privileged status of such communication, it’s not a bad idea to formalize a joint-client arrangement through the execution of an appropriate instrument. The Internet teems with samples; here’s one good one:


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Hypothetical Problem

3. You serve as counsel to both University and University Foundation, a separately incorporated affiliate. You are contacted by University’s chief human resources officer, who provides HR services to the foundation under a joint services agreement. She shows you a letter from a former foundation employee. In the letter, the former employee alleges she was fired on account of her race and threatens to file a charge with the state human relations commission if she isn’t reinstated or paid damages. The chief human resources officer asks you to investigate and provide advice on how to respond to the letter. You interview the letter writer’s former colleagues, who are still employed at the foundation. One of them tells you he witnessed inappropriate exchanges between the letter writer and her superior that could be characterized, in his judgment, as manifestations of racial bias. You reference the interview in written notes. Months later, the human relations commission, which is processing a discrimination charge from the former employee, asks you to produce all documents relating to the investigation you conducted. Do you produce your interview notes?