

# Requests from on High: Keeping In-House Counsel Out of Hot Water

Joel M. Cohen

5 May 2023

1

## Introduction

- **In-house counsel face particular challenges to their legal practice as they must wear two hats: legal advisor and business advisor**
- **Navigating attorney-client privilege is complicated for all lawyers—but even more so for in-house counsel**
- **It is crucial that both in-house counsel and company employees understand the scope of attorney-client privilege, to protect the best interests of the company, handle government investigations effectively, and manage emerging issues in the regulatory compliance space**

2

2



The challenges that in-house counsel face are more pertinent now than ever, as regulators and litigation adversaries are more willing to challenge the confidentiality of in-house relationships or threaten to include them in controversies.

3

3

## Overview

- **Understanding the Scope of Attorney-Client Privilege**
- **Managing Third-Party Privilege Risks**
- **Handling Government Investigations Effectively**
- **Emerging Issues for In-House Counsel**

4

4

# Understanding the Scope of Attorney-Client Privilege

5

## The Role of Attorney-Client Privilege

- Attorney-client privilege protects the ability for attorneys and their clients to communicate in a “full and frank manner”<sup>1</sup>
  - The privilege belongs to the client
  - Protections are enumerated in both statutes and common law
  - The rules of privilege can differ between federal courts, state courts, and even different countries
- There are four basic elements necessary to establish its existence:
  - a communication;
  - made between privileged persons;
  - in confidence;
  - for the purpose of seeking, obtaining or providing legal assistance to the client

<sup>1</sup>*Upjohn Co. v. United States*, 449 U.S. 383, 389 (1981).

6

6

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

## Title search: Requests from on High: Keeping In-House Counsel Out of Hot Water

First appeared as part of the conference materials for the  
45<sup>th</sup> Annual Corporate Counsel Institute session

"Requests from on High: Keeping In-House Counsel Out of Hot Water "