

By Mr. DiMasi of Boston, petition of Salvatore F. DiMasi and others for legislation to establish certain privileges for attorneys and clients. The Judiciary.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-Two.

AN ACT TO ESTABLISH AN ATTORNEY-CLIENT PRIVILEGE.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Chapter 233 of the General Laws is hereby amended by inserting
2 section 20L after section 20K:

3 a) In construing this section, the following words shall have the
4 meanings herein given unless a contrary intention clearly appears:

5 First, "attorney" shall mean any member in good standing of
6 the Massachusetts Bar in compliance with the rules of the
7 Supreme Judicial Court and sections thirty-eight and forty-two
8 of Chapter 221 or any person that the client reasonably believed
9 to be authorized to practice law in the Commonwealth of
10 Massachusetts.

11 Second, "client" shall mean any person, body politic,
12 government subdivision or their authorized representative, who
13 consults or employs an attorney for the purpose of securing the
14 attorney's legal advice.

15 Third, "work product" shall mean all information and
16 communications, oral or written, which arise out of and in the
17 course of any attorney-client relationship and is related to the
18 reasons for the attorney's employment, including, but not limited
19 to: reports, records, working papers, memoranda, and legal
20 advice.

21 Fourth, "legal advice" shall mean any opinion, interpretation,
22 decision, or basis for any opinion, interpretation, or decision made
23 by an attorney or his staff construing or relating to any rule,
24 regulation, statute, or caselaw.

25 Fifth, "Holder of the privilege" shall mean;

26 (i) the client,

27 (ii) the client's guardian or conservator,

28 (iii) the personal representative of the client, if the client is
29 deceased or,

30 (iv) a successor, assign, trustee in dissolution or any similar
31 representative of a firm, association, organization, partnership,
32 business trust, corporation, or public entity that is no longer in
33 existence.

34 b) Except as otherwise provided for in this chapter, the holder
35 of the privilege, whether or not a party, shall have the absolute
36 privilege to refuse to disclose, and prevent another from
37 disclosing, work product in any court, legislative, or administra-
38 tive proceeding. An attorney shall not, without the prior consent
39 of the holder of the privilege or their authorized representative,
40 disclose any work product. The relationship of attorney-client
41 shall exist between a state, county or municipal body and any
42 attorney that such governmental body may employ. The term
43 "attorney" as used in this subsection shall include, but is not
44 limited to, 1) a city solicitor as that term is defined in section seven
45 of Chapter four and his staff; 2) the Attorney General of
46 Massachusetts and his legal staff; 3) any corporation counsel,
47 general counsel or other legal counsel and their staff employed
48 by a federal, state, county, municipal, or town, government
49 subdivision, authorities, commissions or boards.

50 c) No adverse inferences or rulings may be drawn in any court
51 or administrative hearing from the exercise of the privilege
52 granted by this section.

53 d) The privilege in this section shall not extend to:

54 1) communications concerning a proposed commission of a
55 crime or fraud.

56 2) any communication, documents, or legal advice when the
57 client sues or files a grievance with the appropriate authority,
58 against the attorney, arising out of services rendered by the
59 attorney during the course of the attorney-client relationship.

60 3) communication relevant to an issue concerning the intention
61 or competence of a client, now deceased, with respect to a deed
62 of conveyance, will or executing an attested document.

63 e) Where two or more clients have retained or consulted a
64 lawyer upon a matter of common interest, none of them, nor the
65 successor in interest of any of them, may claim a privilege under
66 this chapter as to a communication made in the course of that
67 relationship when such communication is offered in a civil
68 proceeding between one of such clients and another such clients.

69 f) Nothing in this statute shall be construed to limit or prohibit
70 the Supreme Judicial Court or the Board of Bar Overseers from
71 investigating and obtaining documents under rules regarding bar
72 discipline and clients' security protection.

