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WORKING REMOTELY: COMMUNICATING WITH LEGAL COUNSEL

By John D. Parsons

In these strange and challenging times, many of you may find yourself working from home – perhaps for the first time. The advancement of technology facilitates our ability to work outside of the office, but doing so may invite a number of potential issues. In particular, you should consider a couple of key points whenever you communicate with legal counsel, especially when in a shared space.

A. Maintain Your Distance When Making Calls

It may seem simple. Yet, it can be easy to forget that the attorney/client privilege you enjoy with legal counsel endures only if you take steps to keep those conversations and information private. We caution every client that statements like, “My attorney told me...” are sure signs that you’re wandering close to waiving that privilege.

However, with the effects of Governor Brown’s Executive Order 20-12 being felt statewide, we know that many of our clients and friends are working remotely as they endeavor to maintain business operations. (Just like the attorneys and staff at Parsons Farnell & Grein.)

Under these close-quarters conditions, please take note that as you communicate with legal counsel – whether by telephone or some form of video conference – you should take steps to ensure that no one else in your location can overhear these conversations.

As you likely know, the presence of a third party with the ability to overhear the conversation forfeits the attorney/client privilege. Although you may not think of a child or a spouse as a “third party,” when it comes to the attorney/client privilege, a child older than an infant and a spouse who is not the co-owner of a business would each qualify.

In light of the above, we urge you to take steps to ensure privacy when speaking with legal counsel so that you do not unintentionally lose the attorney/client privilege. It’s likely as easy as moving to another room where you can shut the door. If you have children in the home who require supervision, please let us know – we can schedule calls for a time that will allow you to hold a private conversation. We know this is challenging. We’re here to make the process easier however we can.

B. Turn Off Voice Assistants

So you've moved into another room. You've shut the door. Great. Keep in mind there may be other, less visible, third parties listening. If you have Alexa (Amazon Echo), Google Assistant (Google Home), Siri (Apple), or a similar voice assistant for home or mobile devices, it, too, may serve to unwittingly forfeit the attorney/client privilege given the listening construct of such devices. To be cautious, we recommend that you turn voice assistant devices off or be well out of their range when communicating with counsel.

This may all feel overwhelming, and we know it comes at a time when news and other concerns demand your attention at a seemingly constant rate. But these few changes can be instrumental in ensuring that our counsel to you remains confidential and protected – they are best practices that will remain in your arsenal even once you emerge from your home office.

Stay with it. Call on us when you need help. Together, we will press forward.

“In the realm of ideas everything depends on enthusiasm ... in the real world all rests on perseverance.” Johann Wolfgang von Goethe