

April 2025

**RAZOR** eNewsletter

FROM



**O'Connor  
Carnathan &  
Mack**

GIVING OUR CLIENTS AN EDGE



***Appeals Court Upholds Attorney-Client Privilege  
with Respect to E-mails Between Town Manager  
and Select Board Members***

The Appeals Court recently issued an opinion containing a detailed discussion of the law concerning application of the attorney-client privilege to communications on which no attorney is copied. In *Kay v.*

*Town of Concord*, the plaintiffs filed a complaint against the Town of Concord under the public records law, seeking unredacted versions of certain e-mail messages sent between the town manager and town select board, but on which no attorney was copied. The lower court had entered summary judgment for the town after reviewing the e-mails in camera and concluding that they were privileged. Plaintiffs appealed, and the Appeals Court concluded that some, but not all, of the e-mails were covered by the attorney-client privilege.

In the course of its decision, the Court declined to impose a per se rule that communications can only be privileged if an attorney is copied on them. The Court explained that such a per se rule would undermine other doctrines, including the doctrine protecting communications made to necessary agents of an attorney or a client (like a translator). The Court explained that the privilege can attach not only to communications with an attorney but also to communications between representatives of a corporate or governmental client (such as a town manager and members of the select board), if such communications are made for the purpose of obtaining legal services. The court stated that, “[w]here a communication does not include an attorney, the ultimate standard for determining whether it was made for the purpose of obtaining legal advice is whether the communication revealed legal advice from, or the intent to request legal advice from, an attorney.”

The Court cautioned, however, that “prior consultation with . . . counsel on a particular subject does not magically cloak all future discussions . . . on that same issue with the attorney-client privilege.” The Court also stated that the privilege “does not guard a person’s expressed thoughts, contemplations and ruminations . . . instead, the privilege protects a specific class of communications only when a person seeks the superior knowledge and skill of an attorney . . . .”

This decision is an important one to review in detail for anyone considering whether communications between client representatives, not copying an attorney, are covered by the attorney client privilege.

---

## About OCM

OCM is boutique litigation firm based in Burlington, Massachusetts, whose clients include Fortune 500 companies as well as closely held businesses and astute individuals. OCM’s attorneys help their clients

not only resolve disputes but also avoid them altogether. Whether you are facing a courtroom battle, arbitration, mediation, or negotiation, OCM can help.





---

[View Our Website](#)

[Unsubscribe](#)

OCM Law 10 Burlington Mall Road Suite 301 Burlington, Massachusetts 01803 United States (781) 359-9000