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Work Product Doctrine Does Not Cover ChatGPT Searches Made By Party's Romantic Partner

In a case of first impression in Massachusetts, Judge Squires-Lee of the Business Litigation Session of the Suffolk Superior Court held that “neither the queries of AI programs for legal assistance by a party’s romantic partner nor the AI output are protected from disclosure under the work product doctrine unless performed at the direction of counsel.”

Shealy v. Seaside Investments involved allegations of breach of a promissory note. After Plaintiff Earl Wade Shealy, Jr. (“Shealy”) received a letter from Defendants alleging default on the note, Shealy sent

the letter and note to his romantic partner, Debbi Fields (“Fields”). Fields then uploaded the documents to ChatGPT, presumably asked some sort of prompt, and e-mailed ChatGPT’s response back to Shealy. Fields did this at Shealy’s direction, not his attorney’s direction. In the course of the litigation, Plaintiffs redacted the ChatGPT e-mails from Fields. Defendants moved to compel unredacted versions. Plaintiffs claimed the ChatGPT documents were created in anticipation of litigation and qualified for work product protection.

The Court disagreed with Plaintiffs. Although the Court agreed that litigation was anticipated at the time of the ChatGPT query, the Court concluded that Fields was not Shealy’s “representative” and, therefore, her searches were not covered by the work product doctrine. The Court stated that the type of individuals whose documents are protected by the work product doctrine are attorneys, consultants, sureties, indemnitors, insurers, and agents. The Court also rejected the contention that ChatGPT itself could be a party’s representative and disagreed that its output constituted opinion work product: “AI is a tool not a person.”

Given the widespread use of AI tools by clients, this case provides an important explanation of the intersection between such tools and the work product doctrine.

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