

A plaintiff sued a defendant in connection with the dissolution of a partnership they had formed to run a parcel delivery service. They had relied on a business attorney in establishing the business. After the business failed, the plaintiff and the defendant disagreed about their respective obligations.

At trial, both have hired new counsel. The plaintiff calls the business attorney to testify to representations the defendant made in meetings she had with the plaintiff and the business attorney. The defendant objects to the business attorney's testimony, invoking the attorney-client privilege.

Should the court uphold the defendant's privilege claim?

- A. No, because the business attorney's professional relationship with the plaintiff and the defendant has ended.
- B. No, because the plaintiff and the defendant consulted the business attorney jointly.
- C. Yes, because either the plaintiff or the defendant may block disclosure of statements made during such meetings.
- D. Yes, because either the plaintiff or the defendant may claim the privilege on behalf of the partnership.

**Explanation:**

**Common exceptions to attorney-client privilege**

<b>Exception</b>	<b>Use of attorney-client communication</b>	<b>Disclosure compelled by</b>
<b>Crime-fraud</b>	Made to further ongoing or future crime/fraud	Party seeking to discover information about crime/fraud
<b>Deceased client</b>	Resolves dispute over deceased client's testamentary intent	Attorney
<b>Self-defense</b>	Used to defend against client's malpractice or ethical claim against attorney	Attorney
<b>Fiduciary</b>	Constitutes legal advice between corporate fiduciaries & corporation's attorney	Stockholders
<b>Joint representation</b>	Made during attorney's prior representation of joint clients	Any joint client in subsequent litigation between joint clients

The **attorney-client privilege** bars the disclosure of communications between an attorney and client that were:

made for the purpose of obtaining or providing legal assistance for the client *and* intended to be and remained confidential.

This privilege continues even after the attorney-client relationship ends or the client dies—with limited exceptions **(Choice A)**. One such **exception** allows an attorney to disclose confidential communications with **jointly represented clients** in **subsequent litigation between those clients**.

Here, the plaintiff and the defendant *jointly* consulted the business attorney, so the attorney can testify to representations made during those consultations in this subsequent suit between the parties. As a result, the court should reject the defendant's privilege claim.

**(Choice C)** Jointly represented individuals may block disclosure of statements made during meetings with their attorney *except* when those communications are relevant to a subsequent action between them (as seen here).

**(Choice D)** The attorney was hired to help the parties establish their business—not to represent the partnership. Therefore, no attorney-client privilege exists between the partnership and the attorney.

**Educational objective:**

Attorney-client communications are privileged when (1) made to obtain or provide legal assistance for the client and (2) intended to be and kept confidential. But an attorney may disclose communications with jointly represented clients in subsequent litigation between those clients.

**References**

Fed. R. Evid. 501 (federal common law privileges).

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