

Sixth Circuit Shields Internal Investigation Materials From Discovery

September 10, 2025

In a closely watched case, the US Court of Appeals for the Sixth Circuit recently took a significant step to protect the attorney-client privilege over materials produced during internal investigations by companies. On August 7, 2025, [the Sixth Circuit stayed a district court order](#) compelling production of documents generated by outside counsel during an internal investigation. In granting the stay, the Sixth Circuit found that, contrary to the district court's ruling, the internal investigation materials are likely protected by both the attorney-client privilege and the work-product doctrine. The court was also persuaded by the "strong public interest in preserving the attorney-client privilege and work-product doctrine," as evidenced by "numerous amici" that filed briefs supporting the company. (Cooley joined dozens of law firms in signing [one of those amicus briefs](#).)

Background

This case arose from a high-profile bribery scandal involving FirstEnergy and former Ohio House Speaker Larry Householder, who was eventually [sentenced to 20 years in prison](#). In response to a Department of Justice subpoena – which was quickly followed by investigations by other state and federal regulators and eight lawsuits relating to the bribery allegations – FirstEnergy and its board hired two outside law firms to conduct internal investigations.

During discovery in a related securities class action, the plaintiffs moved to compel FirstEnergy to produce all materials related to the internal investigations, claiming that those materials were not entitled to attorney-client privilege or work-product protection because they were meant to serve "business purposes." The district court – affirming a special master's conclusions – granted the plaintiffs' motion to compel, finding that FirstEnergy had not shown that the internal investigations were conducted in anticipation, or as a result, of litigation rather than for business or employment-related purposes.

FirstEnergy petitioned the Sixth Circuit to overturn the district court's decision and to stay the discovery order pending the resolution of its mandamus petition. Thirty-nine leading law firms, 11 corporate and ethics scholars, and several legal and business groups filed amicus briefs in support of FirstEnergy.

Sixth Circuit granted discovery stay

In a significant victory for FirstEnergy, the Sixth Circuit granted the discovery stay pending a decision on the company's mandamus petition, in a decision that is highly relevant for companies concerned about the disclosure of privileged materials. The Sixth Circuit held that FirstEnergy demonstrated that the internal investigation materials are likely privileged because FirstEnergy retained the two law firms in the wake of government investigations and civil lawsuits, and that FirstEnergy "sought and received its counsels' advice through the investigations." Accordingly, the court concluded that the law firms' work "resulted in precisely the kinds of communications" that would be protected by attorney-client privilege under [Upjohn v. United States](#). The Sixth Circuit agreed with FirstEnergy and the amici that the district court erred in focusing on FirstEnergy's dual motivation for retaining the two law firms and the fact that the company "also used advice for business purposes." Characterizing the district court's reasoning as "backwards," the Sixth Circuit held that, "hat matters for attorney-client privilege is not **what** a company does with its legal advice, but simply **whether** a company seeks legal advice." As the court pointed out, "a corporation could hardly justify expending resources on legal advice that **wasn't** business-related."

The Sixth Circuit likewise held that the internal investigations were likely protected by the work-product doctrine. The court rejected the district court's reasoning that the internal investigations were not "performed in anticipation of litigation" and would have occurred in "substantially the same manner for business purposes," pointing to the "onslaught of civil and criminal investigations" that prompted the company's actions.

Key takeaways

- The Sixth Circuit's order, though temporary pending resolution of the mandamus petition, suggests that the Sixth

Circuit will continue to allow the attorney-client privilege and work-product protections to apply to documents and communications generated in the course of an internal investigation.

- The court clarified that the motivation for initiating an internal investigation is irrelevant to the determination of privilege – what matters is whether the company sought legal advice.
- The court also affirmed the application of the work-product doctrine to dual-purpose documents – i.e., those that were created in anticipation of litigation and also served business purposes.

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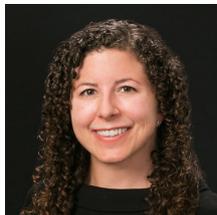
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