

How to draft a privilege Log:

According to American Records Management Association, more than 90% records created today are in electronic format. The 2005 Litigation Trends Survey conducted by Fulbright & Jaworski L.L.P., states 90 percent of U.S. corporations are engaged in some type of litigation.

Drafting a privilege log is not an easier thing. It requires the adequate knowledge of all the laws concerning privileged and non privileged documents. This document aims to provide basic information on a drafting of Privileged Logs.

What is a privilege log?

Privileged logs are list of documents the plaintiff and defendant (Parties in a Case) believes that the privileged and immune from turned over to the other side or production before the court.

Laws concerning privilege logs:

- Federal Rules of Civil Procedure (2009) and Federal Rules of Evidence
- Respective State Civil procedure Rules and State rules of Evidence

Laws concerning privileged logs are governed by both the state and federal laws in USA. Federal rules apply to the cases filed before the federal courts and the state rule applies to the cases filed before the federal courts.

Rule 26(b)(1)¹ of Federal Rules of Civil Procedure states: Parties may obtain discovery regarding any non privileged matter that is relevant to any party's claim or defense — including the existence, description, nature, custody, condition, and location of any documents or other tangible things and the identity and location of persons who know of any discoverable matter. Hence the rule specifically excludes the documents which are privileged from the scope of the discovery.

Even many states of the USA have its own law concerning electronic discovery and privileged logs.

In Florida, Florida Rules of Civil Procedure § 1.280(b)(5), states a privilege log must be submitted when a party withholds information otherwise discoverable under the rules by claiming that it is privileged or subject to protection as trial preparation material.

Similarly many states have adopted their own law concerning drafting and filing of privileged logs.

Burden of Proof:

All the documents drafted as privileged logs are not said to be privileged unless the producing party proves that it is privileged. Hence, the party withholding document or information bears the burden of establishment that such document are privileged.

Time limits for production of privilege logs:

Rule 34(b) (2) (A) states, the party to whom the request is directed must respond in writing within 30 days after being served² and a shorter or longer time may be stipulated to under Rule or be ordered by the court.

What are privilege logs?

¹ <http://www.law.cornell.edu/rules/frcp/Rule26.htm>

² http://www.law.cornell.edu/rules/frcp/Rule34.htm#Rule26_b

1. Attorney client privilege: such as communication between attorney.
2. Privacy laws: Such as persons right to privacy under the constitution or any law enacted by the government.
3. Work Product: Such as the trial preparation documents, Reports, statements, correspondence, memoranda or other documents prepared in anticipation of litigation by the client
4. Trade secrets Such as the formula, practice, process, design, instrument, pattern, or compilation of information which is not generally known or reasonably ascertainable, by which a business can obtain an economic advantage over competitors or customers.

Contents/description of privilege log:

1. type of document for which the privilege is claimed
2. The name and designation or capacity of the provider/ author of the document;
3. The name and designation or capacity of each recipient
4. The date of the information was learned or the document was prepared/ sent or shared
5. The title and/or description of the information or document;
6. The subject matter addressed in the information or document;
7. The purpose(s) for which it was prepared or communicated;
8. privilege claimed

E.g. of privilege log:

Document No.(Sl.No.)	Bates No.	Document type	Date of Document	Author and affiliation/ from / designation / capacity	Recipient and affiliation/ To	Copy and affiliation / other persons having access to document and their capacity	Subject matter	Category of privilege
1.	32479 - 32482	Mail	9/28/2006	ATSR LLC	BTSR LLP	None		Attorney-client privilege
2.	35892 - 35921	letter	9/30/2006	ATSR LLC	KTSR LLP	BTSR LLP		Trade Secret