
LEGAL UPDATE

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IOWA SUPREME COURT DECISION — ATTORNEY-CLIENT PRIVILEGE

Purpose. Legal updates are prepared by the nonpartisan Legal Services Division of the Legislative Services Agency. A legal update is intended to provide legislators, legislative staff, and other persons interested in legislative matters with summaries of recent meetings, court decisions, Attorney General Opinions, regulatory actions, federal actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. Although an update may identify issues for consideration by the General Assembly, it should not be interpreted as advocating any particular course of action.

City of Davenport v. Office of Auditor of State

Decided April 17, 2026

No. 24-1160

www.iowacourts.gov/courtcases/26028/embed/SupremeCourtOpinion

Factual and Procedural Background. The City of Davenport (City) publicly approved the settlement of three harassment claims from city employees for \$1.9 million in December 2023. Upon the allegation that the City had reached the settlements prior to the election in November and had delayed the announcement, the Auditor of State (Auditor) reaudited the City and served a subpoena seeking documents related to the settlements. Under Iowa Code section 11.41, the Auditor has the right to “full access to all papers, books, records, and documents of any officers or employees” while conducting an audit. Iowa Code section 11.41 explicitly excludes work product from what the Auditor has access to, but does not address privileged material.

The City objected to providing certain documents on the basis of attorney-client privilege and sought modification of the subpoena in the Scott County District Court. The court, based on Iowa Code chapter 11, found that the Auditor did have the right to subpoena material protected by the attorney-client privilege and ordered an evidentiary hearing and in camera review to determine which evidence was protected by attorney-client privilege. The City filed an interlocutory appeal, and the Iowa Supreme Court (Court) granted review.

Issue. Whether attorney-client privilege is an exception to the Auditor's subpoena authority under Iowa Code section 11.41.

Holding. The Court held that Iowa Code section 11.41 did not abrogate the attorney-client privilege and reversed and remanded for further proceedings.

Analysis. A case is ripe when there is “an actual, present controversy.” *Planned Parenthood of the Heartland, Inc. v. Reynolds ex rel. State*, 9 N.W.3d 37, 54 (Iowa 2024) (quoting *Barker v. Iowa Dep't of Pub. Safety*, 922 N.W.2d 581, 590 (Iowa 2019)). In this case, the controversy is created by the dispute over privileged material. While this dispute could be negated by later events, the Court held that the case was still ripe because, as a question of law, the issue was sufficiently developed to be decided and because the City would suffer a hardship from delaying a decision by having the evidentiary hearing conducted on the assumption that the privilege does not apply.

The attorney-client privilege is a very old privilege established both by statute and common law that protects a client's ability to receive legal advice by guaranteeing that "[a]ny confidential communication between an attorney and the attorney's client is absolutely privileged from disclosure against the will of the client." *Konchar v. Pins*, 989 N.W.2d 150, 159 (Iowa 2023) (quoting *Keefe v. Bernard*, 774 N.W.2d 663, 669 (Iowa 2009)). Due to the age and nature of the privilege, the Court requires any statutory curtailment of the attorney-client privilege to be explicitly stated by the Legislature. The Court has previously construed Iowa Code section 22.7 (Open Records Act) to not abrogate the attorney-client privilege. *Horsfield Materials, Inc. v. City of Dyersville*, 834 N.W.2d 444, 463 (Iowa 2013). Similarly, Iowa Code section 11.41 gives the Auditor access to confidential documents, but does not mention privilege. While all privileged documents are confidential, not all confidential documents are privileged. This distinction highlights the exclusion of attorney-client privileged material from the items which the Auditor has access to and indicates that the privilege has not been abrogated. The Court further stated that it would be "odd" to allow the Auditor to breach the attorney-client privilege absent explicit statutory language, because the only exceptions to the privilege are based on the client's own choices, and even in criminal investigations, the attorney general is unable to infringe on the privilege.

The interpretation of Iowa Code section 11.41 is also supported by the rules authorizing the Auditor to apply to the district court for the enforcement of a subpoena. Under Iowa Code section 11.52, the Auditor may apply for a subpoena's enforcement "as provided by law in the matter of taking depositions," which is governed by Iowa R. Civ. P. 1.517(1)(b)(2). Discovery under this rule is limited to materials that are "not privileged." See Iowa R. Civ. P. 1.503(1).

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