

# Judge Limits Application Of Privilege For PR Consultant

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**F**ollowing on the heels of *In Re Grand Jury Subpoenas*, 2003 WL 212622645 (6/01/03), in which Southern District Judge Lewis Kaplan extended the attorney-client privilege to a public relations firm hired to influence a grand jury investigation (NYPRR July 2003, p. 1), Judge Denise Cote has refused to extend the privilege to a public relations consultant because the communications involved were not made for the purpose of obtaining legal advice. *Haugh v. Schroder Investment Management North America, Inc.*, S.D.N.Y., No. 02 Civ. 7955 (8/25/03). Plaintiff Haugh had served as chairman of Schroder, a prominent international investment firm. News of her termination received public notice in the industry press. Haugh sued Schroder, alleging unlawful age discrimination.

Haugh's attorneys retained Laura Murray, a public relations consultant, for the stated purpose of assisting the attorneys in providing legal services. In addition to her work in public relations, Murray is a lawyer admitted to practice in Texas. In the course of discovery by Schroder's lawyers, Haugh's lawyers claimed the attorney-client privilege with respect to 15 letters that Haugh had sent to Murray and one that Murray had sent to Haugh. Judge Cote reviewed the documents in camera and determined that none of the documents contained a request for legal advice.

Judge Cote discussed the general judicial disposition to extend the attorney-client privilege to communications between a lawyer and other persons who help the lawyer in the representation of a client. In *United States v. Kovel*, 296 F.2d 918 (2d Cir. 1961), for example, the privilege was extended to communications between a law firm and a former IRS agent and accountant who worked for the law firm. But before the privilege can apply, the party asserting the privilege must show that the communication was made to enable the client to get legal advice from her lawyer.

## No Tie to Legal Services

In *Haugh*, there was no proof that the communications at issue were necessary to the provision of legal advice. They were merely part of a public relations campaign to influence press treatment of Haugh's termination. *In re Grand Jury Subpoenas* did not apply to *Haugh* because she had failed to point to any legal issue that required the help of a public relations consultant (as, for example, help in drafting the complaint or in preparation for trial). Judge Cote said; ...

A media campaign is not a litigation strategy.

Since Haugh has failed to show that the communications were made for the purpose of obtaining legal advice from her attorney as opposed to public relations advice from Murray, the communications are not protected by the attorney-client privilege.

However, Judge Cote accepted Haugh's argument that the documents were protected as work product under the federal rules because they were prepared by the client, or her agent or attorney, in anticipation of litigation.

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