

PR Supreme Court Holds That CPA-Client Privilege Also Applies to Confidential Communications Among In-House CPAs

ATTORNEYS

- Juan A. Marqués-Díaz
- Rubén Muñiz-Bonilla
- Isis Carballo-Irigoyen
- Leslie Y. Flores-Rodríguez
- Yamary I. González-Berríos
- Maria C. Cartagena-Cancel
- Cecilia M. Suau-Badía
- Britt E. Arrieta-Rivera
- Dalina Sumner
- Rafael Fernández-Suárez

PRACTICE AREAS

- Litigation
- Tax
- Tax Litigation

An McV Tax Litigation Alert

March 11, 2021

McV's Tax Litigation Practice Team secured an important victory when the Puerto Rico Supreme Court ("PRSC") held that the Certified Public Accountant ("CPA")-client privilege, codified under Rule 504 of the Puerto Rico Rules of Evidence ("Rule 504"), also applies to confidential communications among inhouse CPAs. It is the first time that the PRSC has interpreted such privilege under Rule 504.

In [McNeil Healthcare LLC v. Mun. of Las Piedras et al.](#), the Municipality requested the production of all communications between the Assistant Secretary of McNeil, the company's representative in this case who also was its Tax Compliance Director, and his assistant, who is also a CPA. McNeil responded that it had located one such communication and, after providing a brief description of the communication as required by Puerto Rico Civil Procedure Rule 23.3, it invoked the CPA-client privilege, thereby withholding the communication from production. The Municipality argued that because the Assistant Secretary of McNeil also serves as the company's Tax Director, the communication in question could not be considered one between a CPA and a client, but instead should be viewed as a communication between a supervisor and an employee, which, according to the Municipality, would not be subject to the protections provided by the privilege.

The PRSC found that, similar to the applicability of the attorney-client privilege to confidential communications between a corporation and its in-house counsel, there is no exception under Rule 504 to exclude from the privilege any such confidential communications between an in-house CPA and the corporate client that employs the CPA. It rejected the Municipality's argument and made clear that its analysis regarding the communication in question did not depend on whether the company representative was acting as the Tax Director or as the Assistant Secretary for the Company. What mattered was the content of the communication: professional confidential information communicated between the company representative and another CPA on behalf of a client, regardless of whether this CPA was an employee supervised by the company representative.

PR Supreme Court Holds That CPA-Client Privilege Also Applies to Confidential Communications Among In-House CPAs

Furthermore, the PRSC stated that, in evaluating CPA-client privilege questions, it is imperative that courts examine whether a *prima facie* showing of the elements necessary to invoke the privilege has been established by the moving party and that courts exercise their discretion in weighing the interests between producing the requested document, on the one hand, versus the public policy concerns protected by the CPA-client privilege, on the other. The PRSC found that in its response to the Municipality's request for production, McNeil had indeed made a *prima facie* case for invoking the CPA-client privilege.

McV attorneys Juan A. Marqués-Díaz, Rubén Muñiz-Bonilla, Dalina Sumner, Rafael Fernández- Suárez, and Britt Arrieta worked on this important case, which you can read [here](#).

The content of this McV Alert has been prepared for information purposes only. It is not intended as, and does not constitute, either legal advice or solicitation of any prospective client. An attorney-client relationship with McConnell Valdés LLC cannot be formed by reading or responding to this McV Alert. Such a relationship may be formed only by express agreement with McConnell Valdés LLC.