



IMHOFF & ASSOCIATES PC

AI CHATS ARE NOT PRIVILEGED: A WARNING FOR CRIMINAL DEFENSE CLIENTS

UNITED STATES V. HEPPNER, --- F.SUPP.3D ---, 2026 WL 436479 (S.D.N.Y. FEB. 10, 2026)

BY SHANNON DORVALL

Background

In a matter of first impression, U.S. District Judge Jed S. Rakoff (S.D.N.Y.) ruled that a criminal defendant's written exchanges with the AI platform Claude were protected by neither the attorney-client privilege nor the work product doctrine. Defendant Benjamin Heppner was charged with securities fraud and related offenses stemming from his role at GWG Holdings, Inc. After FBI agents executed a search warrant at his home, approximately thirty-one documents memorializing Heppner's Claude sessions were seized. Defense counsel argued the documents were privileged because Heppner had created them to assist in preparing his defense and had shared them with counsel. Counsel conceded, however, that Heppner used Claude on his own initiative, without any direction from counsel to do so.

The Court's Ruling

The court rejected the attorney-client privilege on three grounds: (1) Claude is not an attorney; (2) Anthropic's privacy policy—which users consent to—reserves the right to collect inputs and outputs and disclose them to third parties, including government authorities, eliminating any reasonable expectation of confidentiality; and (3) Claude disclaims providing legal advice, so Heppner could not have sought legal advice from it. The court reaffirmed that transmitting non-privileged materials to counsel does not retroactively create privilege.

The work product doctrine also failed. Even assuming the documents were prepared in anticipation of litigation, they were not prepared at counsel's direction and did not reflect counsel's strategy—both requirements under Second Circuit precedent.

Practice Tips & Client Warnings

- Advise clients in writing, at the outset of representation, not to input any sensitive facts, legal theories, or defense strategy into any AI platform without prior approval from counsel.
- If directing a client to use AI as part of case preparation, do so in writing. Attorney direction is a prerequisite to any work product argument.
- Review the privacy policy of any AI platform before use. Consumer-facing platforms routinely retain user data and may disclose it to government agencies without a subpoena.
- Remind clients that AI-generated documents stored on personal devices are subject to seizure under a search warrant—not just subpoena to the AI company.
- Sharing AI outputs with counsel after the fact does not cure the absence of privilege. Protection must exist at the time of creation.



GREAT RESULTS



Client was charged with six felonies, 3 counts of Assault with a Deadly Weapon and 3 counts of Threats of Violence - Reckless Disregard following an alleged road rage incident. Client maintained his innocence. **MN Resident Partner Shawn Betts** challenged the evidence during a three-day jury trial and client was found NOT GUILTY of all six felony charges!

Client was charged with Assault following an altercation with her adult son which allegedly resulted in a red mark on his neck. **VA Associate Fred Young** fought the case and after the matter was set for trial he secured a dismissal from the State!

Client was charged with Battery after she allegedly struck a neighbor with her cane during a verbal altercation. **LA Associate Leslie Richard Chambers** set the case for trial and successfully secured a dismissal of the charge before the trial began!

Client was charged with Resisting Arrest after she allegedly interfered with officers attempting to execute a search warrant and resisted being taken into custody. **WI Associate Michael Forella** got the case dismissed, preserving the client's ability to pursue a civil rights violation due to the officer's conduct.

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