What Level of Protection Does "Opinion" Work Product Deserve?

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In his May 15, 2013 “Privilege Points” release, Tom Spahn discusses protection of “opinion” work product.

Under Fed. R. Civ. P. 26(b)(3)(B), a court concluding that an adversary can overcome a litigant's work product protection "must protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of a party's attorney or other representative concerning the litigation." Some lawyers mistakenly believe that only a lawyer's opinion deserves this protection, despite the rule's literal language to the contrary.


In practice, these differing approaches often make no difference – because opinion work product that is communicated to the client probably also deserves the separate (and absolute) attorney-client privilege protection.