WHO ARE YOU?
WHO DO YOU WORK FOR?

Senate

House of Representatives
WHO DO YOU WORK FOR?

- Lieutenant Governor

Senate

House of Representatives

31

150
LEGISLATURES ARE UNIQUE
YOUR MILEAGE MAY VARY
WHAT ARE WE TALKING ABOUT?

• Privilege?
WHAT ARE WE NOT TALKING ABOUT?

• Executive / deliberative process privilege

• Legal work product privilege

• Other law
WHAT ARE WE TALKING ABOUT?
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WHAT ARE WE TALKING ABOUT?
“No member shall be questioned in any other place for words spoken in debate in either House.”
LEGISLATIVE PRIVILEGE

Applies to information:
- Given or held in confidence
- Among legislators or staff
- Furtherance of a legislative purpose
- Held by individual legislator
WHAT ARE WE TALKING ABOUT?
IS IT LEGISLATIVE PRIVILEGED?
IS IT LEGISLATIVELY PRIVILEGED?

Giving highly defamatory speech from well of the senate?
IS IT LEGISLATIVELY PRIVILEGED?

Giving highly defamatory speech from well of the senate?
Aide writing a highly defamatory floor speech on behalf of a senator?
IS IT LEGISLATIVELY PRIVILEGED?

Giving highly defamatory speech from well of the senate?
Aide writing a highly defamatory floor speech on behalf of a senator?
Newsletter about that speech?
IS IT LEGISLATIVELY PRIVILEGED?

Giving highly defamatory speech from well of the senate?
Aide writing a highly defamatory floor speech on behalf of a senator?
Newsletter about that speech?
Senator's email discussion with aide regarding contents of a bill?
IS IT LEGISLATIVELY PRIVILEGED?

Giving highly defamatory speech from well of the senate?
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Speaker’s request of a bad parking spot for a disfavored member?
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Legislator communicating with activist regarding legislation?
IS IT LEGISLATIVELY PRIVILEGED?

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Aide writing a highly defamatory floor speech on behalf of a senator?
Newsletter about that speech?
Senator's email discussion with aide regarding contents of a bill?
Records of fraud committed by member against the government?
Speaker’s request of a bad parking spot for a disfavored member?
Legislator communicating with activist regarding legislation?
Knowledge that legislator ducked into a restroom immediately upon seeing a particular constituent?
SO HOW DOES IT WORK?

Waiver
SO HOW DOES IT WORK?

Waiver

• Affirmative
SO HOW DOES IT WORK?

Waiver

- Affirmative
- Agent
SO HOW DOES IT WORK?

- Waiver
  - Affirmative
  - Agent
  - Conduct
SO HOW DOES IT WORK?

State court:
The common law — as interpreted by United States courts in the light of reason and experience — governs a claim of privilege . . . .
SO HOW DOES IT WORK?

Fed. R. Evid. 501

The common law — as interpreted by United States courts in the light of reason and experience — governs a claim of privilege . . . .

QUALIFIED
“BALANCING TEST”

1. the relevance of the evidence sought to be protected;
2. the availability of other evidence;
3. the seriousness of the litigation and the issues involved;
4. the role of the government in the litigation; and
5. the possibility of future timidity by government employees who will be forced to recognize that their secrets are violable.
REMEDY

HEY... WE WON...
MR. STARK, WE WON
REMEDY

• Requestor gets nothing?
• Legislator discloses everything?
REMEDIY

• Requestor gets nothing?
• Legislator discloses everything?
• Review by judge?

HEY... WE WON...
MR. STARK, WE WON
REMEDY

• Requestor gets nothing?
• Legislator discloses everything?
• Review by judge?
• Disclose and invoke
OUTCOME

State court

Federal court
ATTORNEY-CLIENT PRIVILEGE
ATTORNEY-CLIENT PRIVILEGE

Applies to communication:
ATTORNEY-CLIENT PRIVILEGE

Applies to communication:
- Given in confidence
ATTORNEY-CLIENT PRIVILEGE

Applies to communication:
- Given in confidence
- Between attorney & client
ATTORNEY-CLIENT PRIVILEGE

Applies to communication:
- Given in confidence
- Between attorney & client
- LEGAL advice & services
ATTORNEY-CLIENT PRIVILEGE

Applies to communication:
- Given in confidence
- Between attorney & client
- LEGAL advice & services
- Familiar to judges
ATTORNEY-CLIENT PRIVILEGE

LIMITS
ATTORNEY-CLIENT PRIVILEGE

LIMITS
• Narrower
ATTORNEY-CLIENT PRIVILEGE

LIMITS
• Narrower
• Purely factual information
• Crime/fraud
ATTORNEY-CLIENT PRIVILEGE

LIMITS

• Narrower
• Purely factual information
• Crime/fraud
• FAR LESS textual basis in federal constitution
ATTORNEY-CLIENT PRIVILEGE

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ATTORNEY-CLIENT PRIVILEGE

LIMITS
• Narrower
• Purely factual information
• Crime/fraud
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REMEDY
• Requestor gets nothing, unless waiver
PRACTICAL CONSIDERATIONS
**DO YOU HAVE THE RESOURCES?**

| TX_00043313 | TX_00043322 | Legislative drafting file documenting confidential communications between attorney and legislative client and other information relating to the production by the attorney of confidential proposed legislation as requested by the legislative client. Reflects legislator thoughts, opinions, or mental impressions on Voter ID. | 3/21/2011 (82nd Legislature) | TLC (LEGAL DIVISION) | Jennifer Jackson (Atty.) | Rep. Zedler |
DO YOU KNOW HOW IT WORKS?

LADIES AND GENTLEMEN OF THE JURY,

I'M JUST A CAVE MAN
WHO DOES YOUR ATTORNEY WORK FOR?

DO

ALL THE THINGS!
DOES YOUR ATTORNEY UNDERSTAND?
DOES YOUR CLIENT UNDERSTAND?
RIGHT STRUCTURE?
Sec. 323.006. POWERS AND DUTIES. (a) The council shall:
(1) study and investigate the functions and problems of state departments, agencies, and officers;
(2) conduct investigations and studies and make reports that may be considered useful to the legislative branch of state government;
(3) gather and disseminate information for the legislature's use;
(4) meet and perform council functions during the legislative interim;
(5) make periodic reports to all members of the legislature and keep the legislature fully informed of all issues that may come before the council, any action taken on an issue, and the progress made on an issue;
(6) report council recommendations to the legislature and, if appropriate, provide drafts of legislation with the report;
(7) assist the legislature in drafting proposed legislation;
(8) provide legal advice and other legal services to the legislature; and
(9) provide data-processing services to aid members and legislative committees in accomplishing their legislative duties.
Sec. 306.008. LEGISLATIVE PRIVILEGE. (a) . . . a communication is confidential and subject to legislative privilege if . . . .

(b) A communication described by Subsection (a) is subject to attorney-client privilege if . . . .
CLEAR RELATIONSHIP?

CLIENT DIRECTIVE REGARDING TEXAS LEGISLATIVE COUNCIL SERVICES

The Texas Legislative Council is within the legislative branch of Texas state government and employs legislative staff who are directed by the council's executive director and governed by a joint committee of the legislature. The legislature established the council under Chapter 323, Government Code, and the council represents and acts as an extension of the office of each individual legislator for the following critical needs of the legislator's office:

- legal services;
- research services;
- information technology services;
- printing services; and
- other legislative services.

Each interaction involving legislative or legal services that my office has with the council is privileged and confidential under the principles of legislative privilege, attorney-client privilege, and deliberative process privilege. In addition, Sections 323.017 and 323.018, Government Code, the Rules of Procedure of the Texas House of Representatives, council rules, and council policies act as expressions of these privileges and impose additional obligations of confidentiality on the council. I direct the council to assert all applicable privileges and obligations of confidentiality on behalf of my office when someone from outside my office requests information maintained by the council that relates to privileged or confidential services provided by the council to my office, unless I provide my consent for disclosure of the information.

In addition, I understand that although the council makes certain information technology resources available to my office at my direction for the purpose of maintaining the records of my office, I am the custodian of those records, and those records are within my possession and control.
GOOD HABITS?
BE OPEN!
BE OPEN!

Notice: The House Redistricting Committee will hold a public hearing on July 17, 2021, with a focus on the Houston area.

DistrictViewer | Data | Who Represents Me?
<table>
<thead>
<tr>
<th>Plan ID</th>
<th>Description</th>
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<tbody>
<tr>
<td>PLANC121</td>
<td>REF. VEAZEY (SEN. WEST SD F2)(ST SB)(H2-F10) PLANC149</td>
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<td>PLANC142</td>
<td>REF. ALONSO STWD SUBSTITUTE (H2-F1) PLANC149</td>
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<td>PLANC149</td>
<td>C.S.S.B. 4, HOUSE COMMITTEE REPORT</td>
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<tr>
<td>PLANC152</td>
<td>REF. HUGHES DIST. 1,5 AMEND (H2-F4) PLANC149</td>
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<td>PLANC153</td>
<td>REF. RIDDEL DIST. 2, 8 AMEND (H2-F5) PLANC149</td>
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<td>PLANC155</td>
<td>REF. TURNER, Y. DAVIS STWD SUB 2 (H2-F12) PLANC149</td>
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<tr>
<td>PLANC157</td>
<td>REF. JOHNSON DIST. 5,30,32 AMEND (H2-F18) PLANC149</td>
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<td>PLANC161</td>
<td>REF. HILDERBERAN STWD SUBSTITUTE (H2-F18) PLANC149</td>
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<td>PLANC163</td>
<td>REF. MARTINEZ FISCHER STWD SUB 2 (H2-F12) PLANC149</td>
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<td>PLANC166</td>
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BE OPEN!
## District Population Analysis with County Subtotals

### HOUSE DISTRICTS - PLANH342

<table>
<thead>
<tr>
<th>Deviation</th>
<th>Total</th>
<th>Anglo</th>
<th>Black</th>
<th>Hisp</th>
<th>B+H</th>
<th>Other</th>
<th>%A</th>
<th>%B</th>
<th>%H</th>
<th>%BH</th>
<th>%O</th>
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<tbody>
<tr>
<td><strong>DISTRICT 90</strong></td>
<td></td>
<td></td>
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<td></td>
<td></td>
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<tr>
<td>-7.953</td>
<td>159,684</td>
<td>19,535</td>
<td>17,936</td>
<td>120,611</td>
<td>137,444</td>
<td>2,705</td>
<td>12.2</td>
<td>11.2</td>
<td>75.5</td>
<td>86.1</td>
<td>1.7</td>
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<tr>
<td>-4.74 %</td>
<td>105,664</td>
<td>16,636</td>
<td>12,768</td>
<td>74,752</td>
<td>87,005</td>
<td>2,023</td>
<td>15.7</td>
<td>12.1</td>
<td>70.7</td>
<td>82.3</td>
<td>1.9</td>
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<tr>
<td>Tarrant (9%)</td>
<td>159,684</td>
<td>19,535</td>
<td>17,936</td>
<td>120,611</td>
<td>137,444</td>
<td>2,705</td>
<td>12.2</td>
<td>11.2</td>
<td>75.5</td>
<td>86.1</td>
<td>1.7</td>
</tr>
<tr>
<td><strong>DISTRICT 97</strong></td>
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<tr>
<td>1,232</td>
<td>168,869</td>
<td>106,809</td>
<td>23,580</td>
<td>32,085</td>
<td>54,771</td>
<td>7,289</td>
<td>63.2</td>
<td>14.0</td>
<td>19.0</td>
<td>32.4</td>
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<td>0.73 %</td>
<td>131,311</td>
<td>89,613</td>
<td>15,828</td>
<td>20,652</td>
<td>36,075</td>
<td>5,623</td>
<td>68.2</td>
<td>12.1</td>
<td>15.7</td>
<td>27.5</td>
<td>4.3</td>
</tr>
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<td>19.0</td>
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<tr>
<td><strong>DISTRICT 99</strong></td>
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<tr>
<td>2,836</td>
<td>170,473</td>
<td>113,829</td>
<td>9,312</td>
<td>41,302</td>
<td>49,986</td>
<td>6,658</td>
<td>66.8</td>
<td>5.5</td>
<td>24.2</td>
<td>29.3</td>
<td>3.9</td>
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<tr>
<td>1.69 %</td>
<td>125,722</td>
<td>89,724</td>
<td>5,980</td>
<td>25,328</td>
<td>31,052</td>
<td>4,946</td>
<td>71.4</td>
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<td>20.1</td>
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FOLLOW THE RULES!
MORE RESOURCES

Kae Warnock
(303) 364-7700