

*< If relevant, this heading and instruction may be inserted in the "Evaluating the Evidence" section of the Civil Master Template >*

### **Adverse Inference Regarding Attorney-Client Privilege.**

The attorney-client privilege allows a person not to disclose confidential oral and written communications with the person's attorney. The communications must be for the purpose of seeking and obtaining legal advice.<sup>1</sup> Sometimes, a person asserts the attorney-client privilege for communications which would be relevant to a particular issue in a case. If that happens, you may, but are not required, to conclude that the privileged information was adverse or unfavorable to PLF/DFT. In other words, you may find that PLF/DFT chose not to reveal the communication because he/she/it thought the information would be harmful to his/her/its' position in this case<sup>2</sup>.

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<sup>1</sup> Mass. G. Evid. § 502 (2020); 20A Mass. Prac. Annotated Guide to Mass. Evid. § 502(a), (b) (2020 ed.).

<sup>2</sup> See *Phillips v. Chase*, 201 Mass. 444, 450 (1909); *McCooe v. Dighton* 173 Mass. 117, 119 (1899); see also *Eldridge v. Provident Cos., Inc.*, No. 97-1294, 2001 WL 262937 (Mass. Super. Ct. Mar. 13, 2001) (Toomey, J.); Mass. G. Evid. § 525(a) (2020).