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

* 1. 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.[[1]](#footnote-1) 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[[2]](#footnote-2).

1. Mass. G. Evid. § 502 (2020); 20A Mass. Prac. Annotated Guide to Mass. Evid. § 502(a), (b) (2020 ed.). [↑](#footnote-ref-1)
2. 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). [↑](#footnote-ref-2)