

**NJ SUPREME COURT: COMPANY EMAIL MONITORING POLICY IS TRUMPED BY
ATTORNEY-CLIENT PRIVILEGE**

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The New Jersey Supreme Court unanimously held in *Stengart v. Loving Care Agency, Inc.*, A-16-09, that emails sent by an employee to her attorney on her work computer using her private Yahoo! account were subject to the attorney-client privilege. The court reasoned that an employee sending an email from a web-based, password-protected, email account has a reasonable expectation that those emails will be private, even if sent from a computer owned by the employer.

The holding in *Stengart* appears to be limited to emails sent from private, web-based accounts. Other jurisdictions have held that using work computers to send emails to an attorney constitutes a waiver of the privilege. It is not clear from the facts of *Stengart* whether the privilege would be waived if an employee uses their work email address to send attorney communications. Indeed, the court noted in its opinion, ..."courts might treat e-mails transmitted via an employer's e-mail account differently than they would web-based e-mails sent on the same company computer."

Another item to note is that while the attorney-client privilege is intact when an employee emails their attorney from a work computer using a web-based email account, the employee may still be subject to discipline by the employer for sending the email, particular where accessing the web-based account is itself a violation of an internet use policy.

The *Stengart* decision is an significant one because it bolsters employee privacy rights in the workplace and reemphasizes the strong policy considerations in favor of the attorney-client privilege. Nonetheless, employees still need to exercise caution in their use of company-owned computers for personal uses.