

Attorney Client Privilege Policy

The purpose of this policy is to familiarize you with the basic principles regarding confidentiality of information shared between an attorney and a client. We feel that fully informing you about which communications may or may not be confidential is necessary to ensure our proper representation of you.

This policy is a summary of the client's and the attorney's duties regarding confidentiality. It would be impossible to cover every detail regarding confidentiality in this policy without writing a book, but it is important that certain points be provided to you in writing as a source of reference.



The Attorney-Client Privilege

The attorney-client privilege applies in judicial proceedings in which the attorney is a witness or in which the attorney is required to produce evidence regarding a client. The privilege attaches to communications from the attorney to the client, as well as to communications to the attorney from the client.

The attorney-client privilege is afforded only to confidential communications between the attorney and the client. To be confidential, the communication must not be intended to be disclosed to a third person other than those to whom the disclosure is made in order to provide legal services to the client, such as the attorney's associates and other staff. If a communication between an attorney and a client is made in the presence of an outsider, then it would not be considered to be confidential. Likewise, communications between an attorney and a client that are made in a public place would not normally be intended to be confidential, and therefore generally do not fall under the privilege.

Accordingly, you should be warned that you should not allow others to see any mail or email that we send to you because it might no longer be considered a confidential communication between you and your attorney. Once your professional relationship was established with this firm, your general conversations about your case should be limited to discussions with us. By intending to disclose any confidential communication from us to a third person, you might be considered to have waived the attorney-client privilege regarding that communication.

The privilege belongs to you, the client, who may prevent an attorney's disclosure of confidential information or documents. No privilege attaches to communications between an attorney and a client where:

1. Such communication is in furtherance of the commission of a crime or fraud.
2. Two or more persons are claiming the privilege on behalf of a deceased client.
3. Issues of breach of duty arising in a dispute between the attorney and the client.
4. The communication is regarding a document attested as a witness by the attorney.
5. The communication was relevant to joint clients, and it is being offered in a legal action between the joint clients.



Rule of Confidentiality

This ethical duty of confidentiality applies to all other situations than those covered above where evidence is sought from an attorney through compulsion of law. An attorney may not disclose confidential client information except as authorized by the client, or as required under the Rules of Professional Conduct. This ethical duty exists no matter who else knows the information that is confidential. Information that should not be disclosed includes that which the attorney has reason to believe may be detrimental to a client, or which the client has requested not be disclosed. This duty exists even after an attorney's representation of a client has ended.

Authorized disclosures of otherwise confidential information are implied under the rules where they are necessary to carry out the representation of a client. This implied waiver of disclosure of confidential information is covered in our attorney-client fee agreement with you, wherein our clients acknowledge that the attorneys and staff of this law firm will be required to investigate matters by contacting witnesses, issuing subpoenas, and exchanging information regarding cases. This waiver means that at times the attorneys and staff may reveal information about the client that may ordinarily be privileged. The contract also states that the client waives confidentiality rules and the attorney-client privilege in order to allow the attorney to perform the requested legal work properly. Any exceptions to this waiver must be stated by a client in writing.

Furthermore, under the Rules an attorney may disclose information by admitting a fact that cannot be properly disputed, or in settlement negotiations where disclosure may be necessary to facilitate a satisfactory conclusion. The rules also allow lawyers and staff within a firm to disclose confidential information regarding a client to each other.

There are limited exceptions to the ethical rules regarding an attorney's duty to keep certain information confidential:

1. An attorney may not counsel or assist a client in conduct that is criminal or fraudulent.
2. Confidential information may be used by an attorney to establish a claim or defense on his or her own behalf in a controversy between the attorney and the client, in a civil or criminal matter involving the attorney for conduct in which the client was involved, or in response to allegations in any proceeding concerning the attorney's representation of the client.
3. An attorney may reveal confidential information regarding a client to the extent required by law or court order. (There are other exceptions to this ethical rule regarding matters within the bar membership that do not normally apply to an attorney-client relationship.)

The above-listed exceptions to confidentiality rules allude to the companion Rule which prevents attorneys from using false evidence. For example, if an attorney has knowledge that information in a client's answer to discovery is fraudulent, the attorney may not allow the client to respond to the discovery in a fraudulent manner. Neither may attorneys allow a client or other witness to testify falsely (that would be suborning perjury) or otherwise knowingly present false evidence at a trial or any stage of litigation. The upshot of this rule is that, if you disclose something to your attorneys and such information is requested in a legitimate discovery response, the privilege does not apply and the information must be provided. For example, if a client were to confess to his lawyer that his income was really much greater than represented, the attorney must disclose the correct information; the attorney may not allow a lie or misinformation to take place in response to an appropriate request.

Moreover, if a lawyer has offered evidence of material importance that is later learned to be false, the attorney must take reasonable measures to remedy the situation. Such remedial action should include attempting to persuade a client to take suitable action or, failing that, to seek to withdraw from further representation of the client in the matter.

We know all of this information may have your head swimming, but it is critical information. We believe in taking all reasonable steps to arm our clients with the information they need to properly assist us in their representation. Please contact me if you have any questions or concerns regarding the confidentiality of information shared with this firm at any point during our representation of you.