

# Understanding Attorney-Client Privilege

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**Attorney-client privilege. Most people have heard of it, and most have a general idea of what it means.**

But what, exactly, is attorney-client privilege? What's its purpose? What does it cover? When does it begin and end? Can it ever be lost?

Most people think of attorney-client privilege as an attorney's duty to keep a client's secrets. In general terms, that's right; the privilege protects a person's confidential communications with his attorney.

Attorney-client privilege has been recognized as a foundational legal principle for centuries. The ability to have "full and frank" confidential conversations enables lawyers to represent their clients best and enables clients to consider their past conduct and remedy problems. It also encourages people to seek legal advice in the first place, as they can have the comfort in knowing that their honest conversations will allow them to receive better assistance rather than incriminate them.

In that vein, an attorney's duty to maintain the confidentiality of a client's information begins even before the formation of a formal attorney-client relationship, when the client is merely a *prospective* client. And the privilege lasts beyond the end of the formal attorney-client relationship.

But not all information that a client shares with his attorney is confidential; information does not become privileged merely because a client gives it to his attorney. To be clear, the privilege applies only to *confidential communications*, meaning communications that the client did not intend to be disclosed to third parties unless the disclosure furthers the attorney's provision of legal services. A client, for example, cannot hide documents or other tangible evidence with his attorney and claim that they are protected by privilege. Or, if other people are aware of the information, the client cannot claim privilege simply because he talked to his attorney about it.

The North Carolina Bar's Rule of Professional Conduct 1.6 describes a lawyer's duty to maintain the confidentiality of clients' information. It says that lawyers generally must "not reveal information acquired during the professional relationship with a client." But, there are several exceptions to the rule. A lawyer may disclose certain information:

- that the client expressly consents to disclose;
- that the client impliedly authorizes the lawyer to disclose so that the lawyer can carry out his representation of the client;

- to comply with the law, a court order, or the Rules of Professional Conduct;
- to prevent the client's commission of a crime;
- to prevent reasonably certain death or bodily harm;

An attorney may also disclose client information in limited circumstances to protect himself and his ethical obligations. For example, the attorney may obtain legal advice of his own regarding the representation of the client to ensure the attorney's compliance with his duties under the Rules of Professional Conduct. The attorney likewise may disclose a client's confidential communications to respond to a client's allegations that the attorney failed to properly represent him, or otherwise to establish a claim or defense against the client if a dispute arises between them. Or, if a client uses the attorney's services to commit a crime or fraudulent act, the attorney may disclose the information he reasonably believes is necessary to prevent, mitigate, or rectify the consequences of the client's conduct.

Lastly, the privilege belongs to the client, and only the client can waive it. Clients may waive the privilege by sharing with others their conversations with their attorneys. Even the most innocent of intentions—such as confiding in a friend or family member for support or to process a hard situation that is the center of litigation—can remove the confidential nature of the client's communication with his attorney.

In short, attorney-client privilege is most effective when the public has confidence that the privilege will be protected and upheld. Attorneys should be well-versed in their obligations and cautious in dealing with their clients' information. And they should be upfront with their clients about what information isn't protected. Clients should likewise be cautious, and when in doubt, ask their attorneys first before sharing information with others outside the attorney-client relationship.

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