

## Attorney Client Privilege is Not Dead – At Least Not in Pennsylvania

Articles April 17, 2018

Confidential information that you give to your attorney is still protected in Pennsylvania. The duty to keep your information confidential is known as the attorney-client privilege. The duty is called a “privilege” because it is the client’s privilege to keep communications with his/her lawyer private.

Privileged communications or information that you give to your attorney must be kept confidential. This obligation on the attorney is rooted in the common law and in the Rules of Professional Conduct which govern the conduct of lawyers in Pennsylvania. The rule regarding the duty of a lawyer to keep information obtained from a client confidential says that “a lawyer shall not reveal information relating to representation of a client”.

You should be aware that there are exceptions to the rule of confidentiality. The primary exception is where you have revealed this confidential information to other non-lawyers. If you have told your neighbor, the information may no longer be confidential. Similarly, if you have consented to the disclosure of the confidential information by your lawyer, the duty to keep it secret may no longer apply.

In other circumstances, disclosure of your confidential information is impliedly authorized. An example of a situation where a lawyer is permitted to reveal confidential information is where the disclosure of the information is necessary to prevent death or substantial bodily harm to others, or where the disclosure is necessary to prevent a criminal act that is likely to result in substantial financial loss to a person. Similarly, if you have filed disciplinary charges against your lawyer, you may have also impliedly authorized him/her to reveal confidential information to the extent that the disclosure is needed for her/him to defend themselves in the disciplinary proceedings.

Preserving the confidentiality of your communications with your lawyer requires that you take steps to make sure that the information is not shared with others. In addition, the protection is only available if the confidential communications were made in the context of an attorney-client relationship. Case law in Pennsylvania has held that “The attorney client privilege protects disclosure of professional advice by an attorney to a client or of communications by a client to an attorney to enable the attorney to render sound professional advice.”

The attorney-client privilege is intended to enhance the administration of justice which depends on frank and open client-attorney communications. Recent events where the sanctity of the attorney-client privilege has been called into question are not expected to change the application of this privilege in Pennsylvania.

For additional information contact Jon McAnney.