

# Attorney-Client Confidentiality

## Confidential Communications with Your Attorney

Communications between your attorney and you are confidential unless you want your attorney to share the information.

“Confidential” means that your attorney and their legal staff will not share information about you or your case with anyone unless you say they may. A law or court order could require your attorney to share your information, but that rarely happens.<sup>1</sup>

“Communications” include email, phone calls, and in-person conversations.

When you go to court, a hearing, or a deposition, for example, your lawyer might be asked for information about your case. Your lawyer will not share your confidential information unless you agree they may share it.

### Communications are probably confidential if:

- You speak with your lawyer by yourself.
- You speak with your lawyer where other people can't hear the conversation.
- You don't tell anyone about what your lawyer and you discuss.
- You don't include others with email, texts, or similar communications that you have with your lawyer.
- You speak with your lawyer with someone else present, but they are only there to help your lawyer and you communicate (for example, an interpreter).

### Communications are probably NOT confidential if:

- You speak with your lawyer when someone who isn't present to help your lawyer and you communicate is present.

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<sup>1</sup> If you are practicing in a jurisdiction where attorneys have a higher than usual need to share otherwise confidential information, change the language here to reflect that.

- You speak with your lawyer in a public place, like an elevator, bus, or café, when others can hear the conversation.
- You tell other people what your attorney and you discussed.
- You share emails, notes, or other communications between your lawyer and you with a third party.

Please ask your attorney any questions about how confidentiality works.

## Attorney-Client Privilege

Attorney-client privilege is a rule about what client information can be shared in court or other legal proceedings and what information must stay private – even if a judge, hearing officer, or another party asks for it. The privilege rule means that your lawyer will not share with anyone else what you talk about or write to each other unless you give them permission. Privilege applies to a hearing, trial, or similar proceeding.

Your lawyer can tell you about any exceptions to the privilege rule.

Privilege only protects confidential communications. Confidential communications include the discussions, notes, and other communications you and your lawyer have about your case.

If someone can show that you didn't intend to keep a conversation, email, text, or other communication with your lawyer private, then it's not confidential. Even if you did mean to keep it private, but you accidentally shared the information with someone, it might not be confidential anymore. Talk with your lawyer if you ever share information when you didn't mean to.

You can usually prove that a communication is confidential by showing that you did not intentionally share it with others or did not allow others to be present during the communication.

If you need someone with you when you communicate with your lawyer, please tell your lawyer first. Your lawyer can tell you about the legal requirements for confidentiality and whether the third person could affect your attorney-client privilege.

See our information sheets about attorney-client confidentiality and having someone with you when you meet or talk with your lawyer for more information.

## May I Bring Someone with Me When I Talk with My Lawyer?

Communications with your lawyer are privileged only if they are confidential. (Please see our explanations of attorney-client confidentiality and privilege for more information.)

One way you can keep your communications confidential is to not speak with your lawyer when other people are present. (The presence of your lawyer's legal staff does not compromise the privilege.)

There is an exception to the rule of not having a third person present when you talk with your lawyer. Usually, you can still have a confidential communication with your lawyer when someone else is present if they are "reasonably necessary" for the communication.<sup>2</sup> This means the person will make the communications with your attorney possible. A person could be reasonably necessary for the communication if they need to interpret it, for example.

Some ways that a person might not be reasonably necessary are:

- They are present for their convenience. For instance, they drove you to the law office and did not want to wait in the car.
- They are present because they are curious about what you are doing with your lawyer.
- You can communicate effectively without them.

Please ask your attorney any questions about having someone with you when you talk with them.

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<sup>2</sup> Adapt this assertion to the laws in your jurisdiction about third parties being present during communications.