

# Attorney client privelege

Government



The attorney-client privilege, which dates back to the reign of Elizabeth I, was originally based on the concept that an attorney should not be required to testify against the client and, thereby, violate a duty of loyalty owed to the client. At that time, it was the lawyer who held the privilege. Today, the privilege is held by the client; while it may be asserted by the lawyer on behalf of the client, only the client can waive the privilege. Silverman, 1997) Although Silverman states that only the client can waive the privilege; he forgot to mention that if a client discloses to his attorney that he plans on committing a crime that would harm someone else, the attorney is then obligated to report it to the authorities. If a client is discussing a matter with their attorney in a public place and someone over hears it; that can be used in court. Only conversations between the attorney-client in private are considered privileged information.

The attorney-client privilege is important to our criminal justice system for the simple fact that a client would be more apt to tell the truth to their attorney. When the attorney does not have all of the facts at hand; they may not be able to represent the client appropriately. If a client knew the information they were disclosing to their attorney wasn't in confidence; they may not tell the attorney what they need to know. Our Constitution protects us from wrongful imprisonment and the US Supreme court upholds the very old legal concept.

If there wasn't attorney-client privilege then the defense would not need to fight for their client in court, thus making it easier for the prosecution to not have to properly present their case. This could result in innocent people going to prison being stripped of their liberty. One of the major concerns

facing attorney-client privilege is e-discovery. With the prevalence of electronic communication, preserving client confidentiality during document production is more challenging than ever. An attorney must track and find all the information that is pertinent to their case. This includes investigating possible electronic information.

If the attorney does not have the same information that the prosecution may have; it can hamper the case. Electronic information is not included under attorney-client privilege. Therefore, the client should privilege the attorney with any information that may be available to the prosecution through e-discovery.

## **Reference**

1. Silverman, A. B. (1997). Silence is Golden- The Attorney-Client Privilege. *Journal of the Minerals, Metals and Materials Society*, 49(6), 62. Retrieved from <http://www.tms.org/pubs/journals/jom/matters-9706.html>
2. *The Courts in Our Criminal Justice System*, by Jon'a F. Meyer and Diana R. Grant. Published by Prentice-Hall.