

What's an Attorney-Client Relationship?

By Sarah O'Keefe

Understanding the attorney-client relationship is vital to protecting yourself, especially in the corporate context. Certain communications during an attorney-client relationship are privileged and protected from disclosure. Understanding how this relationship forms, the benefits, and implications of attorney-client relationship is essential when engaging an attorney.

How an Attorney-Client Relationship Forms

An attorney-client relationship forms when there is an expressed verbal or written representation agreement. A casual conversation at a social event wouldn't typically be included, but asking for help with a legal matter and seeking representation would. This agreement can take many forms –some examples include:

- A verbal agreement regarding representation
- A signed contract for representation
- A retainer or payment made for the purpose of securing representation

An attorney-client relationship may also form if the client *believes* the attorney is representing him or her, asks for advice, or receives advice. Some examples of this type of relationship formation include:

- The client furnishing information and seeking legal advice
- Frequent contact regarding a legal matter
- Statements made from either the attorney or client that there is a relationship
- Past representation of the client by the attorney

Benefits of the Attorney-Client Relationship

The primary benefit of an attorney-client relationship is confidentiality of information. As part of his or her professional responsibility, an attorney cannot reveal information regarding the representation of a client unless that client gives informed consent, the sharing of information is implied as part of the representation, or as other specific situations may apply.

What do each of these three exceptions mean? First, informed consent means that the client must give consent for information to be released, and must be fully aware and informed of the agreement and the consequences it could have. This avoids confusion, misleading information, or simple ignorance.

Secondly, if the sharing of information is implied as part of the representation, then the attorney may share that information. This means discussing specific information, witnesses, evidence, and connections that will help you win your case. Sharing this type of information is essential **for** the attorney representing you.

Finally, there are specific other situations that may allow an attorney to share certain information. For example, an attorney may share information:

- To prevent reasonably certain death or bodily harm

- To prevent the client from committing a crime or fraud in the future that is reasonably certain to result in substantial damage to the interests of another
- To prevent, rectify, or mitigate substantial damage to the interests of another that is reasonably certain to result from, or has resulted from, the client's commission of a crime or fraud
- To secure legal advice about the attorney's compliance with confidentiality rules
- To establish a claim or defense on behalf of the attorney in a legal dispute between the attorney and client
- To comply with another law or court order
- To detect and resolve conflicts of interest that may arise from changes in the ownership of the law firm or changes in the attorney's employment

In general, this means that the attorney cannot share what a client tells him or her in confidence, including admissions of guilt and sharing details of a past crime. However, if the client tells or indicates to the attorney that he or she is planning to cause harm to someone or something else, then the attorney may share the information to prevent the future crime.

Implications of an Attorney-Client Relationship

There are many obligations you should understand that are involved in an attorney-client relationship, but two are essential. The first is the prohibition of a conflict of interest, and the second are the attorney's obligations to you once your case is complete.

Regarding conflicts of interest, an attorney cannot represent a client if the representation causes a conflict of interest. Generally a conflict of interest occurs when:

1. The representation of one client is directly adverse to the representation of another, for instance, the representation of both the accused and the victim regarding the same criminal matter.

Or

2. There is a significant risk that representing one or more clients will materially limit the attorney's duties to another client, a former client, another person, or a personal interest of the client. For example, a conflict exists when an attorney represents a victim of a company in which the attorney holds significant stock.

In essence, an attorney cannot take on a case that negatively impacts his or her ability to fully and competently represent existing clients.

As for duties to former clients, an attorney who has represented a client in a legal matter previously cannot later represent another person in the same or substantially related matter in which that new client's interests are materially adverse to the interests of the former client, unless the former client gives informed consent confirmed in writing.

For example, an attorney cannot represent the plaintiffs in a class action lawsuit against a company and then later represent that company in combating the same or a similar charge, unless the prior plaintiffs provide informed consent in writing.

Understanding the full scope of an attorney-client relationship is vital to having a productive and successful relationship with your attorney. If you understand how an attorney-client relationship forms, the privileges of that relationship, and what duties the attorney has to you, then you are far better prepared to hire the right attorney, protect your legal rights in the process, and successfully assist your attorney in achieving a favorable result.

This article is for informational purposes only and should not be considered legal advice. Consult an attorney from your jurisdiction for questions or advice.

About the Author



Sarah O'Keefe joined Burch & Cracchiolo in 2013 after completing an appellate clerkship for The Honorable Patricia K. Norris of Division One of the Arizona Court of Appeals. During her clerkship, Sarah researched and analyzed novel issues in many areas of law including civil, criminal, family, unemployment, workers compensation, and juvenile to advise and recommend the resolution of appellate cases to rotating three-judge panels. You can read more about Sarah on our [website](#).