FOR WHAT IT'S WORTH
By: Chester E. Brost

One of the most important, yet often misunderstood or misapplied, principles is the attorney client privilege, and it is much more fragile than you probably realize. Issues involving the attorney-client privilege pervade every aspect of the practice of law. In litigation, cases are won or lost every day because the privilege has not been properly created or, once created, has been lost. And, it is important that you understand the attorney-client privilege because it is almost exclusively the lawyer's, and not the client's, responsibility. In other words, a lawyer that neglects the privilege can expose himself to malpractice liability, which, depending upon the amount of damage done to your case, can result in thousands of dollars in restitution to you.

The attorney-client privilege dates from at least the 1500's. The purpose of the privilege was and is to foster the resolution of disputes among members of society by assuring that clients can freely communicate with their lawyers, lawyers being those on whom society has placed the burden of resolving those disputes. However, the societal benefit has a cost: the privilege hampers the search for truth by concealing undeniably relevant communications. This tension has always been apparent, and thus the attorney-client privilege has always been construed narrowly.

The source of the privilege varies by state. Some jurisdictions have codified the privilege, while others continue to rely on common law.

The most common formulations of the attorney-client privilege can be summarized as follows: The attorney-client privilege protects from disclosure: Communications for a client (you); Communications to his lawyer or his lawyer's agent; Communications relating to the lawyer's rendering of legal advice; Communications made with the expectation of confidentiality; Communications not in furtherance of a future crime or tort; And as long as the privilege has not been waived.

Perhaps the most common mistakes made by lawyers today is not taking the time to analyze each component of the attorney-client privilege. The privilege is very specific and limited. For instance, the existence of an attorney-client relationship does not mean that every communication is privileged. It does not protect every correspondence or document in the lawyers possession.

Communication from a client to a lawyer is an important factor, since the privilege belongs to the client and not the lawyer. As the client's agent, the lawyer must be sure to properly create and take care not to waive the privilege on all occasions.

The term "client" is expansively defined. Communications to lawyer from a prospective client are privileged even if the client never hires the lawyer. Moreover, the privilege lingers long after the attorney-client relationship ends. The lawyer's obligation to keep his client's confidences secret last forever.

Technically, however, the privilege only protects communications from the client to the lawyer and not from disclosure of communications from the lawyer to the client, unless they would reveal what the client told the lawyer.

Communications relating to the rendering of legal advice, in most cases, is easy to apply; however, some instances are not so easily interpreted. Lawyers play many roles, business advisors, draftsmen, marriage counselors, and similar roles. Only the rendering of legal advice gives rise to the privilege. To the extent that there may be a dispute, a smart attorney will be careful to disclose within each communication to his client that he is indeed rendering legal advice.

Communications with the expectation of privacy only exists if the client and the lawyer expect their communication to remain a secret. If the client knows that his attorney-client communication will be revealed to, say a third party, then the privilege never arises.

Communications not in furtherance of a future crime or tort, on first consideration, would seem to preclude a criminal defendant from safely communicating with his lawyer. But the key is the word "future". A defendant can freely discuss past crimes or torts with his lawyer. But to the extent that the client communicates with his lawyer about future crimes (including threats of bodily injury to the lawyer for losing your case), society does not permit the privilege to cloak the discussion in secrecy.

The most important component of the privilege to lawyers is if the privilege has not been waived. Mistakes are easy to make and can have appalling consequences to all parties.

An express waiver occurs if a client or his lawyer voluntarily reveals a privileged communication. An implied waiver occurs when other societal or legal considerations outweigh the need for secrecy. The two most common forms of implied waiver demonstrate this principle.

First, the lawyer is not bound by the privilege if his client attacks him. I know what your thinking, but I mean in a malpractice action. The client cannot challenge the lawyer and then prevent the lawyer from defending himself. Second, an implied waiver occurs if the client or lawyer injects the lawyer's advice into the litigation. The most common example is a malicious prosecution case, in which the client (a cop) can escape liability by proving that he initiated criminal process on his lawyer's advice.

Pretty convenient if you're a cop. This just FOR WHAT IT'S WORTH.

Ride safe,
Chuck

Here is an issue that a lot of communities face. Another way Big Brother is stepping in our lives.
Smoking ban on ballet in Stevens Point

Stevens Point has once again put a proposed smoking ban on the ballet. I personally don't smoke and detest smoking. But I believe we have enough government in our lives already. Non smoking buildings such as government offices, hospitals, doctors offices are understandable but to force your desires and beliefs down the private sectors throat is like living under the Taliban's thumb. If you work in a factory you probably can't smoke inside or at least only in designated areas. Again that is a decision made by the owner or management not the government. If this ban is not stopped where will government control end in our lives?

The effects it will have on our economy will be dramatic. The bars in the city limits where the ban will take place will lose their business to the bars in the county just out of the city or to Plover. The term trickle down economics will come to haunt the politicians that support this bill in the form of lost tax revenue , businesses that move out of the city, more empty buildings making Stevens point a less desirable place to live and less appealing for new business to relocate here.

The people that support this ban obviously do not frequent bars so why should it matter if people smoke there? How about we put a ban on farting in public or blowing your nose in a restaurant where others are eating next to you? Smokers on the other hand should show a little courtesy to a person sitting at the bar next to them eating and wait till there finished. But again that's up to the individual and the amount of class they have or lack. If you don't like smoking it is just like the T.V. show you don't like you don't have to watch it. So you can leave the establishment you're at and find one more desirable or suited to your likes. Or better yet go find your self a environmental bubble community to live in.

Some of the bar owners that this ban will affect cannot vote on the ban because they live out of the city limits but pay taxes in the city where the ban will hurt there business. How unfair! And who's going to enforce this ban? Are you going to hire a complete smoking ban police force? Or are you going to be "whistle blower" other wise known in my circle of friends as a "snitch"? The cost of enforcing this ban will far exceed the fines it will generate. It's a no win situation.

Can the ban.
Captain Ron