



I've Got A Secret....

Recently, I was at a dinner party and I was asked about how a fairly high profile divorce where I represent the wife was going. I responded with a basic "Well, it's pretty nasty." A vague but true answer since there had been several temporary relief hearings (which are public in Minnesota) as well as close to 200 pages of pleadings that had been filed in the case and are public. The person I was speaking to was shocked, his eyes got big and he said "How can you tell me that? It's attorney client privilege!?" It wasn't and I don't think he understands what that means, which is what prompted this post.

Attorney Client Privilege

When you speak to an attorney you usually expect a level of confidentiality, but it's not carte blanche as there are some rules that go along with attorney client privilege. Luckily, we as lawyers like rules and we have a rule on point, specifically Minnesota Rule of Professional Conduct 1.6. which says "...a lawyer shall not knowingly reveal information relating to the representation of a client. " However, as there always is in the law, there are exceptions such as:

- Client gives consent.
- The client has not requested it be held in confidence and the disclosure would not embarrass the client.
- It is impliedly authorized in order to carry out the representation.
- Disclosure is necessary to prevent the commission of a fraud if it will result in substantial financial injury.
- There are 5 others that don't usually apply in divorce cases...

Key Concept

One of the key concepts is that privileged information is between the attorney and the client, if another person is in the room or it's in a public courtroom then it is not privileged. This is sometimes difficult for clients to understand. To look at my example I started the blog off with, the legal documents submitted to a court are public. This means, all of those 200+ pages that accused each party of well, very unpleasant things, are open to the public and the attorney client privilege is very limited in this respect.

To give an example, if my client is a cocaine user, has been convicted of cocaine use and is in treatment (and proof has been submitted to the court) then there would be no reason why I could not discuss that. What I could not discuss, for example, would be that not only is he currently using cocaine but he is selling it on the side (assuming this was told to me in confidence).

So, if you wonder what your lawyer can talk about, they should limit the details only to either public facts or very generally comments. With most ethical Minnesota Divorce lawyers you do not need to worry your secrets are being disclosed as there are very specific (and strict) rules which govern this area.

If you have any comments or questions feel free to email at Jkohlmeyer@rokolaw.com or call 507-625-5000.

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