Politely Telling Clients "Stop Sending Emails to Third Parties About the Case"

How do you explain, politely, to clients who should know better, that they should not communicate by email, Facebook, or otherwise, with anyone about their case, lest their communications be discovered and be made subject to deposition questioning of the client and the third parties?

I mean, really.

I put it in the fee agreement, but it seems that more is needed. How do you do it?

I beleive you call them into the office, tell them what you just said to us, and then follow it up with a written letter.

After they have been warned, well the onyl thing you can pretty much do is say this is why I told you not to do this

Erin M. Schmidt, Ohio

A scolding letter to the client if a phone call or two does not remedy the problem. I try to have clients take down all social media during the case.

Robert "Robby" W. Hughes, Jr., Georgia

That's tough. Some people are simply blabbermouths. They let everyone know their business.

I emphasize to clients that anything I communicate to them with some exceptions, is subject to confidentiality; generally anything I tell them or anything they tell me cannot be asked about in court or a deposition.

Then I talk about the exceptions, and I tell them a little story. I was involved in a breach of contract case, long story short is property seller went to his attorney along with property owners "fiancé" (they got a 20 year old kid together; man, if you've been engaged for 20 years you aren't a fiancé you're something else). Anyhow, attorney has both of them in the room (fiancé is not on title to property) and they discuss the case.

So, I wanted to know what the attorney originally told seller about the ownership of the property; what he knew and when he knew it. I established at trial, that he had met with attorney in presence of third party who was not part of litigation; established that they were not married, so no marital privilege applied and then turned to the judge and said "I move to question defendant about what he told his lawyer and what his lawyer told him at that first meeting; I do believe any attorney client privilege has been waived due to presence of third party at the interview". Opposing counsel looked like she was going to throw up, judge kind of pursed her lips and squinted her eyes, waited a few seconds and said, motion granted. And I got to ask him about what was said (he answered, I don't remember). But I tell that story to clients; do not talk about the case with anyone, don't tell people what you told lawyer or what lawyer said to you. Sometimes the lesson sticks, sometimes it doesn't but that's about the best thing I have found, telling good, concrete horror story.

Ronald Jones, Florida

I had a client where we took over his Facebook Account for the duration.
Then again it was a very serious case.

John Davidson, Pennsylvania

We have withdrawn from disability cases because when we checked the person's Facebook page it was telling us a complete different story then the client.

It is kind of hard to tell us you can't lift over 10lbs when there are current pictures of you at the gym bench pressing about 200...

Erin M. Schmidt

Don't be polite. Call the client, pitch a hissy fit, and state bluntly that they'll still have to pay you even if the case goes into the dumper because of their big mouth.

If the fee is contingent, threaten once to withdraw and if it happens again, do it.

Polite does NOT cut it.

Good luck.

Russ Carmichael

Agree. Don't be polite. Be forceful, unequivocal and direct. And tell the client you cannot represent someone who discloses information about the case on social media.

Send a letter advising of the same and stating that if the client communicates with anyone else on social media, you cannot serve as their lawyer. And follow up.

Steve Terrell, Indiana

Insert a clause on this subject in your engagement agreements. I speak here not just of emails but of texting and any oral and written communications.

The first post asked about politely commenting to clients on this.

By having a clause in your engagement agreement you are bringing it up from the get-go, and at a time when the client is likely more spongey on advice, recommendations, etc.

While we are at this topic, this point applies to many things which can arise in the course of a representation.

If your engagement agreement does not mention the points, it is never too late tostart.

Also, your engagement agreement can have blank space for special drafting for the particular engagement since it seems subjects are always coming up which were not anticipated in your boilerplate.

The engagement agreement needs to start by pointing out the perils of the client blabbing privileged and confidential information . . . even to family members, good buddies, etc.

The topic of engagement agreements is a good one for a CLE.

Rob V. Robertson, Texas

My god, I've had this problem bad lately.

Last week, I mentioned that we should say something to the opposing side, and in the next email, my client CC'd the opposing counsel with the info, exposing ALL of our previous long chain of text and substantive case strategy to opposing counsel. What's worse, it wasn't even an accident and I had to explain to Client why this was a big deal. And opposing counsel is not the gracious type and is now arguing that all privilege is waived.

Just a few days later another client did something similar with a third party who has no allegiance to either side in the case.

I would think this is common sense... but apparently, I'm going to have to explicitly instruct all my clients from now on not to do this?

Stephen Charles McArthur, California

What's that saying about common sense? "The thing about common sense is that it ain't all that common"?

Greg Zbylut, California
