

## A Third Person in the Attorney-Client Relationship

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Has anyone come across a non-lawyer who believes he has the right to be involved in case strategy and discussions with your client? My client is from another state who believes it's appropriate to have her friend who works for the governor's office of that state to advise her on matters involving Georgia litigation. This involvement includes being in on phone conversations and asking me questions. When I advised him he could destroy the attorney client privilege, he didn't seem to care. He said he testified in court before. My client is a sympathetic plaintiff. So, he can actually destroy that sympathy. My foot is 99% out of the door unless she can break his grip. Luckily I haven't filed anything in court yet. So, I won't have to file a notice of withdrawal.

Nevertheless, has anyone come across these know it all executive government workers who believe they know more than lawyers and can interfere with the case? Normally, when "non-official types" are told the consequences of interfering, they comprehend and back off. This guy is too arrogant to believe he's doing anything wrong.

When I think I've seen it all, something new happens in my practice.

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It sounds like you have other problems with this client beyond the third-party interventionist.

What I do in these situations is construct the fee agreement to discuss the attorney-client privilege, and then it has a blank space for the initials of the client to authorize me to discuss things with that third party. Even if that is done, I always copy the client on communications to the third-party, but I do not necessarily copy communications to my client to the third-party unless my fee agreement allows that. If the client wants to waive the attorney-client privilege, I always warn them in writing about the hazards of doing so, and get their prior concurrence in writing.

Some people want spiritual advisers involved, other people want relatives involved, other people want just good old buddies involved. If they want it, and I warn them, and they initial the space, then I don't care if they have me copy the local editor to the newspaper. It's their case and their call.

I'm not proud enough to refuse comments or suggestions on my case strategy, and I'm always searching for new ideas, but whether I follow that advice or recommendation is an entirely different story. I have never had to put that type of thing in a written fee agreement to a client, although we have discussed it in emails back and forth.

I hope that helps.

Sincerely,

Arthur B. Macomber, Idaho

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## SoloSez Popular Threads, February 2013

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I find this happens a lot in family law and a bit in criminal. Sometimes I feel the need to have the following put in needle point and framed:

I am a jealousy attorney. Thou shall have no other attorney but me.

John Davidson, Pennsylvania

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RULE 1  
ME LAWYER. YOU NOT.

Jim Moriarty, Iowa

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Attorney-client privilege protects only confidential communications between an attorney and client in connection with the attorney providing legal services. With some exceptions (e.g., the client's tax accountant or office assistant), disclosure of an attorney-client communication to someone else defeats privilege by eliminating the required element of confidentiality. Having the client authorize disclosure to the third person doesn't save the privilege. There is no privilege for an attorney communicating with a third-party; CCing the client doesn't make communication with the third party privileged.

I would explain to a client who asked for this that, without confidentiality to preserve the privilege, I could not give the client candid legal advice and I could not elicit all relevant facts from the client. I would not solicit a waiver of attorney-client privilege, and would not represent a client without having privileged attorney-client communications.

Steven Finell, California

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If you want out this early, Get Out. Worse yet that third person destroys attorney-client privilege which undermines your case.

Gilberto Valdes Alba, Florida

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The other issue is that you are ethically bound to use your independent professional judgment. You can certainly listen to others, if you choose, but at the end of the day, it's you.

William B. Richards

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If I fear this is an issue, I send the client a copy of a S.C. appellate case, wherein our supreme court found that waiver of attorney-client privilege at one time equates to a complete waiver of all communications regarding that same subject. I briefly summarize what the case means and why it's important.

Ryan Phillips, South Carolina

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