

Speaking Publicly about Client Matters: Always Be Cautious

The vagueness of the “impliedly-authorized” exception to the prohibition on revealing client information indicates that attorneys should be reluctant to rely on it as permission to make comments on social media about a client’s matter without the client’s consent.

BY DEAN R. DIETRICH

Question

I have heard you talk often about the importance of an attorney protecting client information but also being allowed to disclose client information if impliedly authorized to represent the client. What does that mean?

Answer

SCR 20:1.6 of the Rules of Professional Conduct provides that all information learned by the attorney during the representation from all sources is considered confidential information not subject to disclosure by the attorney. There are exceptions to this mandate of confidentiality in specific situations, such as to address a claim against the attorney by the client.

One of the most important exceptions is that an attorney may disclose information if “impliedly authorized” to accomplish the purposes of the representation. As you might suspect, there is not a clear definition of what it means to be impliedly authorized to disclose client information. I addressed the concept of being impliedly authorized in articles published in the *Wisconsin Lawyer* in 2010.¹

In the age of technology and social media, there are a lot more questions about which information the attorney may disclose as part of the representation of a client. There is still, however, no bright-line test for whether the disclosure of information about the representation is impliedly authorized. It is obvious that an attorney is authorized to disclose

information when talking to opposing counsel, but it is not clear whether the attorney is impliedly authorized to disclose information when considering a response to a social media post criticizing the conduct of the client in the matter that the attorney is involved in. It is acceptable to contact the client to obtain informed consent to disclose client information in the social media situation, but often the circumstances do not afford much time to make that happen.

Attorneys should be careful to not rely too much on the impliedly-authorized exception to disclose client confidential information. Attorneys should always ask themselves whether the disclosure of information in a response is necessary to further the interests of the client and accomplish the objectives of the representation. The Rules of Professional Conduct are considered rules of reason, so the judgment of an attorney to disclose confidential information will be subject to that reasonableness standard. It is important, however, for the attorney to take the time to consider whether the release of the client information is necessary and thereby impliedly authorized under the confidentiality rule.

I wish I could give a clear answer to the question of what is the standard for recognizing impliedly-authorized circumstances. Each situation is unique. The attorney must be careful and exercise caution when deciding whether to disclose client confidential information, especially on social media platforms. **WL**



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ENDNOTES

¹Dean R. Dietrich, “Impliedly Authorized” Disclosure of Client Information, Wis. Law. (Oct. 2010); Dean R. Dietrich, Obtain Client’s ‘Informed Consent’ to Disclose Information, Wis. Law. (Nov. 2010). **WL**