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Definitions of the Attorney-Client Privilege

"It's privileged!" That is the mantra of lawyers and clients any time an outsider attempts to discover anything communicated between a lawyer and a client. That also is what lawyers and clients tell each other before they talk, assuring themselves that whatever is communicated will stay secret. But as this book makes clear, the bounds of the attorney-client privilege are narrower and less clear than many lawyers—and most clients—believe them to be.

Chapter 1 begins this book's examination of the boundaries of the attorney-client privilege by answering fundamental questions about what the attorney-client privilege is and how it is defined in federal and state laws. This chapter also discusses how the attorney-client privilege differs from related legal concepts such as the work-product doctrine and the lawyer's professional duty to preserve client confidences.

General Definition

Q 1.1 What is the attorney-client privilege?

The attorney-client privilege is an evidentiary privilege that protects the confidentiality of communications between an attorney and a client. With some exceptions, if evidence is subject to the attorney-client privilege, then the person who has the right to assert the privilege may refuse to disclose that evidence to another party in litigation and may prevent the use of that evidence in court. In general, the attorney-client privilege applies to (1) a communication between (2) an attorney and (3) a client, (4) made in confidence (5) for the purpose of seeking or obtaining legal advice.[1]

Other Definitions

Q 1.1.1 What are other leading definitions of the privilege?

Proposed Federal Rule of Evidence 503(b) is often cited by courts, even though it was never adopted by Congress.[2] The United States Supreme Court recommended that Congress codify Proposed Rule 503(b) as part of the Federal Rules of Evidence. For that reason, the rule is also known as Supreme Court Standard 503(b). Congress determined that instead of codifying the attorney-client privilee, it would allow federal courts to develop the parameters of the privilege

through common law. Proposed Rule 503(b) provides that "a client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client, (1) between himself or his representative, (2) between his lawyer and the lawyer's representative, (3) by him or his lawyer to a lawyer representing another in a matter of common interest, (4) between representatives of the client or between the client and a representative of the client, or (5) between lawyers representing the client."[3]

Wigmore on Evidence—a leading treatise—also is cited frequently for its definition of the attorney-client privilege: "(1) Where legal advice of any kind is sought (2) from a professional legal adviser in his capacity as such, (3) the communications relating to that purpose (4) made in confidence (5) by the client, (6) are at his instance permanently protected (7) from disclosure by himself or by the legal adviser, (8) except the protection can be waived."[4]

Finally, a United States District Court restated the definition of the attorney-client privilege in even more detail in *United States v. United Shoe Machinery Corp.* The definition is quoted in cases across the country. The *United Shoe* definition provides as follows: "The privilege applies only if (1) the asserted holder of the privilege is or sought to become a client; (2) the person to whom the communication was made (a) is a member of the bar of a court, or his subordinate and (b) in connection with this communication is acting as a lawyer; (3) the communication relates to a fact of which the attorney was informed (a) by his client (b) without the presence of strangers (c) for the purpose of securing primarily either (i) an opinion on law or (ii) legal services or (iii) assistance in some legal proceeding, and not (d) for the purpose of committing a crime or tort; and (4) the privilege has been (a) claimed and (b) not waived by the client."[5]

These definitions state the elements of the attorney-client privilege in varying degrees of detail, but the basic concept is the same. The attorney-client privilege applies to a confidential communication between an attorney and a client, made for the purpose of seeking or obtaining legal advice.

State Law Variations

Q 1.2 Do state laws differ in how they define the privilege?

Yes. Although no state defines the privilege in a way that is radically different from the definitions above, courts in different states have not adopted identical standards. Massachusetts courts, for example, have adopted the definition stated in *Wigmore on Evidence*.[6] By contrast, North Carolina courts generally follow the definition stated in *United Shoe*.[7] More importantly, most states have adopted statutes or rules of evidence or procedure that describe and govern the attorney-client privilege. The following chart lists the applicable statutes or rules in each state and the District of Columbia.

FIGURE 1-1

State Attorney-Client Privilege Statutes/Regulations

State	Statute / Rule
Alabama	Ala. R. Evid. 502
Alaska	Alaska R. Evid. 503
Arizona	Ariz. Rev. Stat. § 12-2234
Arkansas	Ark. R. Evid. 502
California	Cal. Evid. Code §§ 950–962
Colorado	Colo. Rev. Stat. § 13-90-107
Connecticut	Conn. Gen. Stat. § 52-146r and Common Law *See Thopsey v. Bridgeport Roman Catholic Diocesan Corp.*, 2012 WL 695624, at *3 (Conn. Super. 2012)
Delaware	Del. R. Evid. 502
District of Columbia	D.C. Code § 1-608.66 and Common Law *See Suesbury v. Caceres*, 840 A.2d 1285, 1288 n.6 (D.C. 2004)
Florida	Fla. Stat. § 90.502
Georgia	Ga. Code § 24-5-501

State	Statute / Rule
Hawaii	Haw. Rev. Stat. § 626-1, Rule 503
Idaho	Idaho R. Evid. 502
Illinois	Ill. R. Evid. 502
Indiana	Ind. Code § 34-46-3-1
Iowa	Iowa Code § 622.10
Kansas	Kan. Stat. § 60-426
Kentucky	Ky. R. Evid. 503
Louisiana	La. Code Evid. art. 506
Maine	Me. R. Evid. 502
Maryland	Md. Code, Cts. & Jud. Proc. § 9-108 and Common Law *See* Peterson v. State, 44 Md. 105, 158 (2015)
Massachusetts	Mass. R. Evid. 502
Michigan	M.C.L.A. 767.5a and Common Law *See* Mich. R. Evid. 501, *People v. Richardson*, 2010 WL 4320392, at *15 (Mich. App. 2010)
Minnesota	Minn. Stat. § 595.02
Mississippi	Miss. R. Evid. 502
Missouri	Mo. Rev. Stat. § 491.060
Montana	Mont. Code § 26-1-803
Nebraska	Neb. Rev. Stat. § 27-503
Nevada	Nev. Rev. Stat. § 49.095
New Hampshire	N.H. R. Evid. 502
New Jersey	N.J. Stat. § 2A:84A-20
New Mexico	N.M.R.A. Rule 11-503
New York	N.Y. C.P.L.R. § 4503
North Carolina	Common Law *See Dickson v. Rucho*, 366 N.C. 332, 340 (2013)
North Dakota	N.D. R. Evid. 502
Ohio	Ohio Rev. Code § 2317.02

State	Statute / Rule
Oklahoma	Okla. Stat. tit. 12, § 2502
Oregon	Or. Rev. Stat. § 40.225
Pennsylvania	42 Pa. Cons. Stat. § 5928 and Common Law *See* Gillard v. AIG Ins. Co., 609 Pa. 65, 75 (2011)
Rhode Island	Common Law *See* R.I. R. Evid. 501; *State v. von Bulow*, 475 A.2d 995 (R.I. 1984)
South Carolina	Common Law *See State v. Doster*, 284 S.E.2d 218 (S.C. 1981)
South Dakota	S.D. Codified Laws § 19-19-502
Tennessee	Tenn. Code § 23-3-105 and Common Law *See* Boyd v. Comdata Network, 88 S.W.3d 203, 212 n.7 (Tenn. Ct. App. 2002)
Texas	Tex. R. Evid. 503
Utah	Utah R. Evid. 504
Vermont	Vt. R. Evid. 502
Virginia	Common Law *See* Va. S. Ct. R. 2:502; *Walton v. Mid-Atlantic Spine Specialists, P.C.*, 280 Va. 113, 122–23 (2010)
Washington	Wash. Rev. Code § 5.60.060
West Virginia	Common Law *See State ex rel. Ash v. Swope*, 751 S.E.2d 751, 756 (W. Va. 2013)
Wisconsin	Wis. Stat. § 905.03
Wyoming	Wyo. Stat. § 1-12-101

Q 1.2.1 Are corporations treated differently in different states?

Yes. Prior to 1981, the rule in certain federal courts and in most states was that a corporation could not assert the attorney-client privilege unless the communication at issue was made between an attorney and a member of the corporation's upper management.[8] This

is known as the "control group" test.[9] The rationale for this rule is that generally only the members of a corporation's upper management are authorized to speak on behalf of the corporation. Some states continue to follow the control group test and its restriction of the attorney-client privilege to a corporation's upper management.[10]

However, federal courts and most state courts have followed the approach articulated in 1981 by the U.S. Supreme Court in *Upjohn Co. v. United States*.[11] In *Upjohn*, the U.S. Supreme Court rejected the control group test in favor of a more flexible "functionality" test. Under that test, the attorney-client privilege may protect communications between an attorney and any corporate employee, depending on the circumstances. Generally, if an attorney who represents a corporation has a confidential communication about a legal matter with a corporate employee regarding a subject that is within the scope of that employee's duties, responsibilities, or knowledge, the communication is privileged.

For a more detailed discussion of *Upjohn* and the question of who can have a privileged communication on behalf of a corporation, see Chapter 5.

Foreign Law Variations

Q 1.3 Is the privilege defined differently in foreign countries?

Yes. In those foreign countries that recognize the attorney-client privilege in some manner, definitions of the privilege vary significantly. Some of these differences can be important to U.S. lawyers and litigants, because as discussed in Chapter 3, under certain circumstances courts in this country will apply foreign law to questions of attorney-client privilege.

One significant difficulty in attempting to define the attorney-client privilege in foreign countries is that often their legal systems do not treat attorney-client communications in a way that is comparable to American law. For example, in civil law countries, the focus is not on an evidentiary privilege that may be asserted by a client in litigation, but on the professional duty of a lawyer not to disclose confidences. In France, for instance, a lawyer is potentially subject to criminal sanctions if the lawyer discloses a secret that was entrusted to the

lawyer.[12] Moreover, the privilege in foreign countries can differ even within a single country, depending on the setting. This is particularly true in Europe, where the European Union has developed a body of privilege law that applies in cases before the European Commission. Under that body of law, written communications between a client and an "independent lawyer" are protected from disclosure by a legal professional privilege.[13] In-house lawyers, however, are not "independent lawyers" according to this definition.[14] In Europe, then, the definition of the privilege can depend on what court is hearing the case in question.

Compared with Other Doctrines

Work-Product Doctrine

Q 1.4 What is the difference between the attorney-client privilege and the work-product doctrine?

The work-product doctrine protects materials prepared in anticipation of litigation, as well as an attorney's mental impressions, from discovery by an opposing party in a lawsuit.[15] There are three main differences between the attorney-client privilege and the work-product doctrine.

First, the work-product doctrine is limited in scope to litigation or pre-litigation.[16] By contrast, the attorney-client privilege protects confidential communications, whether or not they were made in anticipation of litigation.[17]

Second, the privilege to protect attorney-client communications from disclosure belongs to the client, and the client can decide whether to assert or waive the privilege.[18] Courts have held that lawyers have the right to protect their work product from disclosure on their own behalf.[19]

Finally, the work-product doctrine provides that, under some circumstances, a party may be permitted to discover an opponent's work product if the party "shows that it has substantial need for the materials to prepare its case and cannot, without undue hardship,

obtain their substantial equivalent by other means."[20] The protection afforded an attorney-client communication cannot be overcome by an opposing party's demonstration that it has a substantial need for the communication.[21]

Duty to Preserve Client Confidences

Q 1.5 What is the difference between the attorney-client privilege and the lawyer's duty to preserve client confidences?

An attorney's duty to preserve client confidences is a professional responsibility that requires an attorney to keep information regarding the representation of a client confidential regardless of the source of the information.[22] This duty is not limited to preserving the confidentiality of attorney-client communications.[23] For example, an attorney might not be permitted to reveal a client's identity or facts that a client communicates even though that information is not protected by the attorney-client privilege.

The duty to preserve client confidences is defined by the rules of professional responsibility of each state. Most states have adopted the Model Rules of Professional Conduct.[24] Rule 1.6(a) of the Model Rules provides that a lawyer "shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is authorized to carry out the representation or the disclosure is permitted by [Rule 1.6(b)]."[25] Lawyers in some states are still governed by the older Model Code of Professional Responsibility, which provides that a lawyer "shall not knowingly . . . reveal a confidence or secret of his client."[26] These rules are intended to encourage clients to trust their attorneys and to be candid with them.[27]

In general, a lawyer's duty of confidentiality attaches "not merely to matters communicated in confidence by the client, but also to all information relating to the representation, whatever its source."[28] It is even possible for a lawyer to breach the duty of confidentiality by revealing information that is publicly available.[29] The attorney-client privilege, on the other hand, is unlikely to extend to that type of information because information that is publicly available would not be "confidential" information within the meaning of the privilege.

Notes to Chapter 1

1. **First Circuit.** *See* Vicor Corp. v. Vigilant Ins. Co., 674 F.3d 1, 17 (1st Cir. 2012) ("The attorney client privilege 'extends to all communications made to an attorney or counselor . . . and applied to by the party in that capacity, with a view to obtain his advice and opinion in matters of law, in relation to his legal rights, duties and obligations, whether with a view to the prosecution or defence of a suit or other lawful object.'").

Second Circuit. *See* Brennan Ctr. for Justice at N.Y. Univ. Sch. of Law v. U.S. Dep't of Justice, 697 F.3d 184, 207 (2d Cir. 2012) ("The attorney-client privilege protects communications (1) between a client and his or her attorney (2) that are intended to be, and in fact were, kept confidential (3) for the purpose of obtaining or providing legal assistance.").

Third Circuit. *See* Magnetar Techs. Corp. v. Six Flags Theme Park Inc., 886 F. Supp. 2d 466, 477–78 (D. Del. 2012) ("The attorney-client privilege exists to encourage full and frank communications between counsel and their clients. The privilege applies only if: (1) there is a communication, (2) made between privileged persons, (3) in confidence, (4) for the purpose of obtaining or providing legal assistance for the client.").

Fourth Circuit. *See* United States v. Moazzeni, 2012 WL 6019101, at *3 (E.D. Va. Dec. 3, 2012) ("[A] party claiming privilege bears the burden to show: (1) the asserted holder of the privilege is or sought to become a client; (2) the person to whom the communication was made (a) is a member of the bar of a court, or is his subordinate and (b) in connection with this communication is acting as a lawyer; (3) the communication relates to a fact of which the attorney was informed (a) by his client (b) without the presence of strangers (c) for the purpose of securing primarily either (i) an opinion on law or (ii) legal services or (iii) assistance in some legal proceeding, and not (d) for the purpose of committing a crime or tort; and (4) the privilege has been (a) claimed and (b) not waived by the client."); Richardson v. Sexual Assault/Spouse Abuse Res. Ctr., Inc., 764 F. Supp. 2d 736, 742 (D. Md. 2011) ("[F]our elements are required to establish the existence of the attorney-client privilege: (1) A communication; (2) made between privileged persons; (3) in confidence; (4) for the purpose of seeking, obtaining, or providing legal assistance to the client.").

Sixth Circuit. *See* United States v. Goldfarb, 328 F.2d 280, 282 (6th Cir. 1964) ("Communications made to an attorney in the course of his professional employment by persons other than the client or his agent are not privileged.").

Seventh Circuit. *See* Pampered Chef v. Alexanian, 737 F. Supp. 2d 958, 964 (N.D. Ill. 2010) ("The protection of the privilege extends to confidential communications made by a client to his lawyer '[w]here legal advice of any kind is sought . . . from a professional legal advisor in his capacity as such.'").

Eighth Circuit. *See* United States v. Spencer, 700 F.3d 317, 320 (8th Cir. 2012) ("The attorney-client privilege protects confidential communications between a client and his attorney made for the purpose of facilitating the rendering of legal services to the client.").

Ninth Circuit. *See* United States v. Richey, 632 F.3d 559, 566 (9th Cir. 2011) ("The attorney-client privilege protects confidential communications between attorneys and clients, which are made for the purpose of giving legal advice.").

Tenth Circuit. *See* Roe v. Catholic Health Initiatives Colo., 281 F.R.D. 632, 635 (D. Colo. 2012) ("The attorney-client privilege protects from discovery communications made in confidence between the client and the attorney. . . . In order to be covered by the attorney-client privilege, a communication between a lawyer and client must relate to legal advice or strategy sought by the client.").

2. United States v. Moscony, 927 F.2d 742, 751 (3d Cir. 1991) ("Supreme Court Standard 503, though not promulgated, is a restatement of the common law of attorney-client privilege applied in the federal courts before the adoption of the federal rules."); United States v. (Under Seal), 748 F.2d 871, 874 n.5 (4th Cir. 1984) ("Rule 503 provides a comprehensive guide to the federal common law of attorney-client privilege."); *In re* Grand Jury Subpoena Duces Tecum, 112 F.3d 910, 928 (8th Cir. 1997) ("Rule 503 is an accurate definition of the federal common law of attorney-client privilege.").

3. *See* Transamerica Comput. Co. v. Int'l Bus. Machs. Corp., 573 F.2d 646, 651 (9th Cir. 1978).

4. 8 WIGMORE ON EVIDENCE § 2292 (4th ed. 1995).

5. United States v. United Shoe Mach. Corp., 89 F. Supp. 357, 358–59 (D. Mass. 1950).

6. Ace Am. Ins. Co. v. Riley Bros., 2012 WL 3124620, at *3 (Mass. Super. Ct. July 28, 2012); Comm'r of Revenue v. Comcast Corp., 453 Mass. 293, 303, 901 N.E.2d 1185, 1194 (2009).

7. *See, e.g.*, Kelly v. United States, 281 F.R.D. 270, 277 (E.D.N.C. 2012) ("Substantively, a party must show that: (1) the asserted holder of the privilege is or sought to become a client; (2) the person to whom the communication was made (a) is a member of the bar of a court, or is his subordinate and (b) in connection with this communication is acting as a lawyer; (3) the communication relates to a fact of which the attorney was informed (a) by his client (b) without the presence of strangers (c) for the purpose of securing primarily either (i) an opinion on law or (ii) legal services or (iii) assistance in some legal proceeding, and not (d) for the purpose of committing a crime or tort; and (4) the privilege has been (a) claimed and (b) not waived by the client.") (quoting United States v. United Shoe Mach. Corp., 89 F. Supp. 357, 358–59 (D. Mass. 1950)).

8. *See, e.g.*, MGA Entm't, Inc. v. Nat'l Prods. Ltd., 2012 WL 3150532, at *1–2 (C.D. Cal. Aug. 2, 2013); *In re* Refco Inc. Sec. Litig., 2012 WL 678139, at *2 (S.D.N.Y. Feb. 28, 2012).

9. *See, e.g.*, Maxtena, Inc. v. Marks, 2013 WL 1316386, at *5 (D. Md. Mar. 26, 2013) ("Under the control group test, a corporation's attorney-client privilege

protects 'communications directed to or from employees in the control group, which is comprised of those who play a substantial role in corporate decision-making.'") (quoting E.I. du Pont de Nemours & Co. v. Forma-Pack, Inc., 351 Md. 396, 406, 418–19 (1998)).

10. *See* Zuniga v. Sw. Airlines, 2013 WL 228460, at *3 (N.D. Ill. Jan. 22, 2013) ("Within the corporate context, Illinois requires corporations asserting the attorney client privilege to show that the contested communication was made by someone within the corporate 'control group.'").

11. Upjohn Co. v. United States, 449 U.S. 383 (1981).

12. CRIMINAL CODE art. 226-13.

13. Case 155/79, Australian Mining & Smelting Eur. Ltd. v. Comm'n, ECR 1575 (1982).

14. Case C-550/07 P, Akzo Nobel Chems. Ltd. v. Comm'n (Sept. 14, 2010), ¶ 43 ("An in house lawyer, despite his enrollment with a Bar or Law Society and the ethical obligations to which he is, as a result, subject, does not enjoy the same degree of independence from his employer as a lawyer working in an external law firm does in relation to his client.").

15. Hickman v. Taylor, 329 U.S. 495, 511 (1947); FED. R. CIV. PROC. 26(b)(3).

16. *Id.*

17. Panattoni Constr., Inc. v. Travelers Prop. Cas. Co. of Am., No. C11-1195RSM, 2012 WL 6567141, at *1 (W.D. Wash. Dec. 14, 2012) ("The attorney-client privilege '[i]s not dependent whatsoever upon the anticipation of litigation, but instead depends upon the nature of the relationship involved.'") (quoting Mission Nat'l Ins. Co. v. Lilly, 112 F.R.D. 160, 163 (D. Minn. 1986)).

18. *See* Chapter 9.

19. *See, e.g.*, OXY Res. Cal. LLC v. Superior Court, 9 Cal. Rptr. 3d 621, 636 (2004) ("The work product protection may be waived by the attorney's disclosure or consent to disclosure to a person, other than the client, who has no interest in maintaining the confidentiality . . . of a significant part of the work product.") (internal citations omitted); Clausen v. Nat'l Grange Mut. Ins. Co., 730 A.2d 133, 138 (Del. Super. Ct. 1997) ("In contrast to the modern attorney-client privilege, the work product doctrine (privilege) is one belonging to the attorney rather than the client.").

20. *See* City of Glendale v. Nat'l Union Fire Ins. Co. of Pittsburgh, Pa., 2013 WL 1797308, at *15 (D. Ariz. Apr. 29, 2013) ("'Ordinary' work product" that contains factual information "can be discovered if a 'party shows that it has substantial need for the material to prepare its case and cannot, without undue hardship, obtain their substantial equivalent by other means.'") (quoting FED. R. CIV. PROC. 26(b)(3)(A)(ii)).

21. Siddall v. Allstate Ins. Co., 15 F. App'x 522, 523 (9th Cir. 2001); SEC v. Merkin, 2012 WL 2568158, at *7 n.3 (S.D. Fla. June 29, 2012); U.S. Fire Ins. Co. v. City of Warren, 2012 WL 2190747, at *4–5 (E.D. Mich. June 14, 2012); Barr Marine Prods. Co. v. Borg-Warner Corp., 84 F.R.D. 631, 633 (E.D. Pa. 1979).

22. Woodbury Knoll, LLC v. Shipman & Goodwin, LLP, 305 Conn. 750, 763–64 (2012); *In re* Bryan, 61 P.3d 641, 656 (Kan. 2003).

23. *See* State v. Gonzalez, 234 P.3d 1, 11 (Kan. 2010) ("[N]ot all client confidences inevitably must be protected through invocation of attorney-client privilege."); *In re* Gonzalez, 773 A.2d 1026, 1031 (D.C. 2001) ("An attorney's duty of confidentiality applies not only to privileged 'confidences,' but also to unprivileged secrets; it 'exists without regard to the nature or source of the information or the fact that others share the information.'") (quoting Perillo v. Johnson, 205 F.3d 775, 800 n.9 (5th Cir. 2000)).

24. These states and territories include Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, and Virginia. *See* Hazard, Hodes & Jarvis, *Law of Lawyering*, Appendix B, State Adoptions of the Rules of Professional Conduct (last updated Dec. 2012).

25. MODEL RULES OF PROF'L CONDUCT R. 1.6(a) (2004).

26. MODEL CODE OF PROF'L RESPONSIBILITY, DR 4-101(B)(1) (1980).

27. Doe v. Md. Bd. of Soc. Workers, 840 A.2d 744, 749 (Md. Ct. Spec. App. 2004) (information "can be confidential and, at the same time, non-privileged"); Akron Bar Ass'n v. Holder, 810 N.E.2d 426, 434 (Ohio 2004) ("This professional duty exists to safeguard client confidences and secrets to ensure the client's complete trust in the attorney and the client's freedom to divulge anything and everything needed for the client's proper and effective representation."); *In re* Disciplinary Proceeding Against Schafer, 66 P.3d 1036, 1041 (Wash. 2003) (discussing Washington state's version of Rule 1.6).

28. Elijah W. v. Superior Court, 216 Cal. App. 4th 140 (2013) ("This duty of confidentiality is broader than the lawyer-client privilege and protects virtually everything the lawyer knows about the client's matter regardless of the source of the information.").

29. *See* Iowa Supreme Court Attorney Disciplinary Bd. v. Marzen, 779 N.W.2d 757, 766 (Iowa 2010) ("Thus, the rule of confidentiality must apply to all communication between the lawyer and client, even if the information is otherwise available."); *In re* Anonymous, 654 N.E.2d 1128, 1129–30 (Ind. 1995) (holding that lawyer violated Rule 1.6(a) by revealing information "readily available from public sources"); Lawyer Disciplinary Bd. v. McGraw, 461 S.E.2d 850, 861–62 (W. Va. 1995) ("The ethical duty of confidentiality is not nullified by the fact that information is part of a public record or by the fact that someone else is privy to it.").