

## WHO IS THE CLIENT?

At first the question seems simple: Who is the client? The client is the person who comes to my office, pays me a fee, and gets my advice, representation, and confidentiality in return. If only it were so easy. Unfortunately, it's sometimes hard to determine the identity of the person you are representing--but nothing could be more important. The identity of the client has implications for duty, confidentiality, and liability. The short articles that follow will explore how the identity of your client makes a huge difference in various areas of law.

Let's take the case of the officers and directors of a small business or nonprofit corporation. When you represent Jo, the owner of Jo's Bar and Grill, Inc., you probably discuss Jo's business licenses, dram shop liability, and perhaps employee relations. You may also draft wills for Jo and his wife, discuss Jo's marital relationship, and perhaps even represent Jo in a personal injury action. Maybe Jo's son, Jo Jr., gets involved in a small criminal matter. As the family attorney, you are the first person Jo calls. Jo is paying your bill for his son's defense. Because Jo Jr. is a minor, the owner of the house that Jo Jr. allegedly spray painted is now suing Jo, his wife, and his son; to further complicate matters, Jo's Bar and Grill, Inc., is also being sued because the mischief was done when Jo Jr. was supposed to be working at Jo's Bar and Grill and because he allegedly used spray paint kept in the paint locker at the bar. To make matters worse, Jo Jr. is being charged with a criminal act because vandalism is a crime in your jurisdiction.

So, who are you representing here? Jo's Bar and Grill, Inc. (the entity)? Jo and Jo's wife (the parents or the entity's officers and directors)? Jo Jr. (a child/employee)? Does it make a difference who is paying your bill? If Jo's Bar and Grill, Inc., is paying the bill, does Jo Jr. have any right to expect that the things he tells you will be kept confidential from Jo (the parent) or Jo (the corporate president)? These may seem like law school exam questions, but they have real-world application, and how they are answered will make a big difference in the existence and scope of the attorney-client privilege, the existence of a cause of action for malpractice, and whose orders you comply with in the course of the representation.

Other articles in this section will examine these questions with more particularity in other substantive areas of law. As a general rule, however, the client is the person you agree to represent or advise at the beginning of the representation. Your duty and loyalty are to the person or entity that you represent, not to other persons, be they employees, employers, directors, or children. In the best of worlds, there is a retainer agreement that specifies who is represented. If there is someone else making the payment, the agreement should specify that the payor has no rights to direct the course of the representation.

Whenever you represent more than one entity, there are possible conflicts of interest. In the above example, can you even offer to settle the damage when representing Jo Jr. because there are criminal charges pending? Does what Jo Jr. tells you remain confidential when you are representing his father and employer? Suppose Jo Jr. admits to smoking marijuana, a crime, in the paint locker? Can you ethically disclose this to Jo, the parent or the employer? What if being under the influence is a defense to the criminal charge (no specific intent to damage) but will result in treble damages under some local statute for the corporation (failure to supervise toxic chemicals, in this case paint)? What can you tell to whom?

How you answer these questions depends on who the client is. Sometimes it is not so easy to tell. You need to think about the consequences before you are left with no choices.

### Footnotes

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