

The Leak-Free Office: Preventing Accidental Breaches of Confidentiality

By Paul Sullivan

If you're like most lawyers, you understand and take seriously the ethical requirement that client information be treated confidentially. But how about your staff? Is your office vulnerable to accidental breaches? Maybe it's time to review your policies and practices to reduce the risk of accidental disclosure.

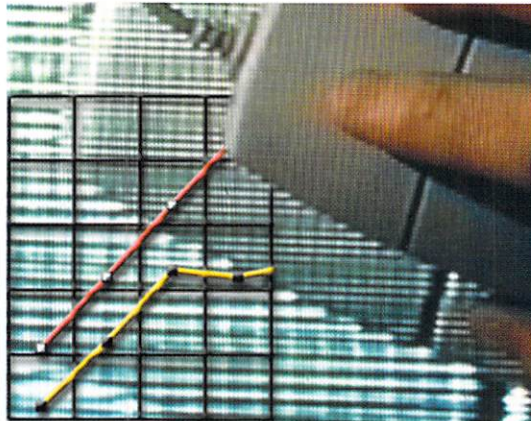
Training is the key

You can't make your employees too aware of the critical need for confidentiality. As part of a new employee orientation, they should be told what is expected from them and how they can take steps to ensure that accidental breaches don't occur. The State Bar of Wisconsin offers excellent videos on this topic (see sidebar), which you should require each new employee to view. After orientation, staff should be reminded regularly of the need for confidentiality and avoiding accidental disclosure.

If you have a firm policy manual – and you should – make sure it includes a confidentiality policy. Many firms also require employees to sign a form indicating they understand the policy and the seriousness of a breach. Here's our firm's policy:

By the very nature of our work, we receive information that clients rightly expect to be kept in the strictest of confidence. As a group of lawyers, the firm has legal, ethical and moral responsibilities to its clients, to the courts, and to the community. All communications among the firm, its attorneys and the clients of the firm are confidential and protected by law. Employees must be careful not to reveal confidential information learned in the course of work. Any employee who violates the confidentiality policy is subject to immediate dismissal.

Once your staff understands the critical importance of this issue, they can help identify weaknesses in your sys-



Are you doing all you should to make sure confidential client information stays that way in your office?

tem. Conducting an audit of your procedures with a focus on exposing these traps may yield interesting – and disturbing – results.

Confidentiality dos and don'ts

Here are some confidentiality tips for office staff, with a few tidbits for lawyers, too.

1. Always assume the client doesn't want anyone to know he or she is visiting an attorney. Never announce the arrival of a client over an intercom. Any casual mention outside of the office that a person visited the office is a breach of confidentiality.
2. A client may ask a staff member a question about their matter. The staff member should listen but should never answer the question, and any information he or she learned in that conversation is subject to the same confidentiality standard that applies to the lawyer.
3. Casual conversation about clients

among staff outside the office is absolutely taboo (lawyers should heed this admonition as well). Perhaps the person in the elevator, at the next table in the restaurant, or in the next seat on the bus or train can overhear your conversations – and that person might be a friend of the client, or perhaps a friend of the opposing counsel.

4. The reception area is a problem zone. It is the first stop for clients and is usually a waiting room.

The receptionist who takes incoming calls must be careful about what information he or she gives out when transferring calls, particularly if clients are there. Documents on his or her desk or computer screen can disclose confidences to anyone standing at the reception desk. Develop procedures to be sure these accidents don't happen.

5. Staff or attorneys meeting with clients should make sure that no documents relating to other clients are visible. Doors should be closed to reassure the client that the conversation is private.

6. Waste should be discarded in such a way that confidentiality is preserved. Discarded files should be shredded or sent to a contractor who can destroy them. Draft documents should be disposed of properly. Most outdoor dumpsters are accessible to anyone.

7. Set up procedures to help staff avoid mailing a letter to the wrong party or hitting the wrong speed-dial number on the fax machine.

8. Likewise, e-mail with caution. Be sure that the address in the "to" field is the right one. Be especially careful if your e-mail program has "look forward" capability – i.e., when you type a first name, the program automatically finds the first record in the

address book with that first name.

9. Lawyers have long been concerned about the vulnerability of cell phone discussions to interception – there's even an ISBA Advisory Opinion on Professional Conduct on the subject (90-07, which is online at <<http://www.isba.org/courtsbull/ethicsopinions/90%2D07.asp>>). But wireless network information can be accessed by anyone with a modest level of know-how. If you use a wireless network in your practice, be sure to encrypt confidential data.

Disclaimers

You might want to include a disclaimer similar to this one, which we use at our firm, on your faxes:

This message and any documents included are intended only for the above-listed recipient and contain legally privileged and confidential information. If the viewer of this message and documents following is not the intended recipient, then please be advised that any reading, disclosure, copying, distribution or other dissemination regarding this communication is strictly prohibited. If this communication has been received in error, please notify us immediately by telephone (insert your phone number) COL-

LECT and return this message and the documents that follow by U.S. mail.

There's a version for e-mail, too:

Note: The information contained in this message may be privileged and confidential and protected from disclosure. If the reader of this message is not the intended recipient, or an employee or agent responsible for delivering this message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by replying to the message and deleting it from your computer.

A disclaimer is hardly a silver bullet, but at least it asks an unintended recipient to let you know about the misdirected message.

Leak-proof your office today

Law firms are responsible for protecting information they receive from their clients. Negligent disclosure of confidential information, even if accidental, damages your reputation and puts you and your office at risk of being sued for malpractice. Be aware of the dangers and take steps to eliminate them. ■

Confidentiality training: the videos

The State Bar of Wisconsin offers two staff training videos devoted to confidentiality in the office: *Law Office Confidentiality* and *Advanced Confidentiality Issues*. You can find out more and order these and other practice-management videos online at <<http://www.wisbar.org/video/staffed.html>>

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