



100 South Broad Street, Suite 1810

Philadelphia, PA 19110

TEL: (215) 988-1244

FAX: (215) 988-1243

[www.seniorlawcenter.org](http://www.seniorlawcenter.org)

**PROTECTING THE LEGAL RIGHTS OF SENIORS IN NEED SINCE 1978**

KAREN C. BUCK, Esquire

*Executive Director*

KATHERINE G. WEISS, Esquire

*Managing Attorney*

**SeniorLAW Center**

**POLICY ON CONFIDENTIALITY OF CLIENT INFORMATION**

Rule 1.6 of the Lawyers' Code of Professional Conduct states that:

A lawyer shall not reveal information relating to representation of a client *unless the client consents after consultation*. There is an exception for disclosures that are impliedly authorized in order to carry out the representation -- for instance, in a negotiation you may need to disclose information that facilitates a satisfactory settlement, and in litigation, you may need to disclose information by admitting a fact that cannot properly and truthfully be denied. However, even this implied authorization can be limited by the client's instructions or by special circumstances.

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It is vital that all staff -- attorneys and non-attorneys alike -- be guided by this rule in all dealings with clients, as well as with family members and companions, opposing parties/counsel, and even other agencies whose role is to provide services to seniors.

SeniorLAW Center staff may, in the course of our practice, disclose to and discuss with each other information relating to clients. However, needless to say, such information should never be disclosed to persons outside the office, including family or friends. Even within the office, care should be taken to avoid discussing cases within earshot of the reception area or anywhere that clients, visitors or others may overhear. Also, be vigilant in keeping intake sheets and client files secure in your office or workspace -- they should never be left in interview rooms or other public space, and should not be on your desk or otherwise visible to other clients with whom you may meet.

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\*\*Other exceptions exist where the lawyer reasonably believes that the client is about to commit a serious crime, where the lawyer's services have been used by the client to commit criminal or fraudulent acts, and where the lawyer needs to establish a claim or defense in a controversy with the client or defend against allegations in a criminal, civil or disciplinary proceeding concerning his/her representation of the client. However, these situations will be rare, and all decisions about the need to disclose information in these cases should be referred to and handled by the Executive Director.

In practice, the issue of confidentiality most often arises in the following circumstances:

1) Intake/Interview/meeting with client:

Confidentiality begins with the initial consultation. However, many clients come to the office accompanied by a relative or friend, and even some callers have another person on the line with them. It is important to begin any consultation as a one-to-one meeting with the client. Explain attorney-client privilege and the duty of confidentiality and review the retainer agreement with the client.

If the client still insists on having another person present for the rest of the interview, this is permissible, but explain confidentiality to that person also, and urge him or her to maintain it. In addition, you must be careful that the 3<sup>rd</sup> party does not control the interview or “speak for” the client.

2) Inquiries about the status of a client’s case or intake:

It is not uncommon for people to call or come to SeniorLAW Center claiming to be relatives of a client and/or seeking information “on behalf of” a client. **No information may be revealed in these circumstances, including the fact of representation itself.** If the caller is inquiring about the status of a senior who is waiting for a case to be assigned, state that the senior must personally contact us. Give no information indicating whether the senior has sought legal representation or services. Problems with such inquiries should be referred to the Managing Attorney or Executive Director.

**MEDIA INQUIRIES: Any media inquiries about any matter, including client-related issues of any kind, must be immediately referred to the Executive Director.**

Occasionally, someone contacts us because the senior-client has died. These inquiries often involve the client’s will. Again, refer these matters to the MA or ED, who will request a death certificate and will consult only with the named personal representative.

3) Situations where an attorney or legal assistant believes the client needs protection or the assistance of another agency (Older Adult Protective Services (OAPS), Department of Human Services (DHS), police, etc.):

It is critical to remember that, when a senior contacts us for legal advice and/or assistance, the duty of confidentiality prevents us from disclosing information about that person or problem even if such disclosure is meant to help or protect the senior from harm. Whether or not we can provide the client with a legal solution to a problem, it may be appropriate to provide the client with a referral for social services, such as financial or housing assistance. However, under no circumstances should a referral be made, without the client’s specific authorization, to any law enforcement entity or to protective services.

As a legal service agency, SeniorLAW Center has no duty to report abuse, crime or anything else to anyone. If the senior seems to you to need protection, mental health or medical care, you can discuss your concerns with the client and ask if she wants you to contact someone. However, despite your concerns or feelings about what “would be best” for a senior, if she or he refuses, the matter must end there. A report may not be made without the knowledge and informed consent of the senior.

The duty not to reveal information relating to representation continues after the client-lawyer relationship has terminated. This means that all closed files, as well as open cases, are confidential, and no file information should ever be revealed to any caller, including an attorney, without a signed authorization from the client.

Likewise, the information contained in our client database is strictly confidential. **Under no circumstances should non-staff be given access to any database information without a specific authorization.**

If you have questions or concerns about this policy or about a specific situation that arises, please bring them to the Executive Director or Managing Attorney.

**All Staff and Volunteers must read and sign, indicating their review, understanding and acceptance of this policy. A copy will be maintained in the individual’s personnel or volunteer file.**

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Signature

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Name

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Date

*Providing legal services and community education to Philadelphia's elders since 1978*  
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