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**§ 7.6****Privileges***Keeping Private Communications Private*

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A privilege is the right to refuse to testify, or to prevent someone else from testifying, in court. Very few privileges are recognized by the court. Privileges are usually statutory, although many were recognized and applied by the courts or within the Constitution before being codified into statutes.

All privileges involve private communication that remains private. If the communication becomes public knowledge through no fault of the privileged parties, the privilege remains intact. If the communication was not private, or if the privileged parties disclose the communications, the privilege may be waived. Some of the recognized privileges include:

**EXAMPLES OF PRIVILEGES**

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- *attorney-client privilege*

A client can refuse to testify about private communications between his attorney and himself and prevent the attorney from testifying. This privilege extends to staff working for the attorney.

- *doctor-patient privilege*

A patient can refuse to testify about private communication with her physician. The client may also prevent the doctor from testifying or releasing confidential information against the client's wishes.

- *privilege against self-incrimination*

A person has a right, protected by the Fifth Amendment, to refuse to testify against his own interests. Once a defendant chooses to testify, however, he cannot pick and choose those questions he wants to answer.

- *governmental information*

Certain government records, such as tax returns, are privileged, except in matters regarding the fraudulent preparation of such documents.

- *clergy-penitent privilege*

Often referred to as the "priestly privilege," this privilege applies to private communication between any member of the clergy, acting in the capacity of spiritual counselor, and an individual seeking spiritual counseling.

- *spousal communications privilege*

Private communications between a husband and wife are usually privileged. The privilege does not apply to litigation between spouses, such as an assault and battery case, or to matters involving the well-being of a child.

Many people assume that privileges exist where there is no such protection. For instance, the following privileges do not exist or only exist in limited jurisdictions or legal matters:

- *parent-child privilege*
- *employer-employee privilege*
- *accountant-client privilege*

In all privileges, the communication must take place in private and remain confidential. Otherwise, the privilege is considered to be waived.

## § 7.7

# Social Media

## *Understanding Privileged Communications*

### WHERE IT BEGINS AND WHERE IT ENDS

Privileged communications are not made of concrete. They easily crumble if even one misstep takes place. Consider this.

Communication between a paralegal and a client regarding the case is generally considered to be a privileged communication. But that communication:

1. *Must be private when the communication is made.*
2. *Must remain private.*
3. *Must be within the scope of the paralegal's assigned task.*

But what happens if, after a dinner meeting with your client, who is the Defendant, one or more of the following takes place:

- The client posts comments about your meeting on Facebook.
- You post on Twitter, "The Plaintiff, Jon Turdley, has no case!"

Any of the above may be grounds for violating the privilege.

- The communication has not remained private.
- You have likely acted outside the scope of your duties.

If the communication is deemed to have been waived, there is a chance you could be called to testify as to the meeting. Very bad.