

## § 7.8

**Remote Working***Privacy at a Distance***MAINTAINING THE PRIVILEGE REMOTELY**

As mentioned in the section on Social Networking above, a privilege is a fragile thing. Consider this.

*Police are called to an office building and are quickly guided up to the rooftop. There, a man is standing by the edge of the building threatening to jump. He has been accused of assaulting a woman in the building's stairwell earlier that afternoon. At some point he ended up on the roof.*

*The police try to calm him down but have a problem. The man is deaf. An attorney from the Public Defender's office arrives to give counsel to the man, but since the attorney does not know sign language a signing interpreter is brought to the scene.*

*The police wait at a distance for about an hour while the man and the public defender talk, with the interpreter signing between the two. Finally, the man agrees to give himself up and the police take him into custody peacefully.*

*Fast forward a few months. At a pretrial hearing, the prosecution declares its intent to depose the interpreter as to the conversation that took place between the defendant and the public defender. At first glance it seems like a no-brainer. That conversation should be protected by the attorney/client privilege. However...*

*The judge in that case ruled that the interpreter constituted a third-party, and with a third-party present, the conversation was not a "private communication." Thus, there was no privilege, and the interpreter had to testify.*

**HOW IT APPLIES TO YOU**

Now imagine that you are working remotely from home. You have a video conferencing session with your client over *Zoom*. What happens if any of the following people are also in the room and can hear the conversation?

- Your spouse
- A friend
- Your mother
- Your adult children
- A computer repair technician

If any of those individuals hear the conversation between you and your client, that conversation is likely not a privileged communication. If opposing counsel finds out that there were others present during that conversation, there could be a battle over its status as privileged.

So, what can you do?

1. Use headphones. This ensures only you can hear the other side of the conversation.
2. Set up your computer in a place that affords privacy.
3. If the computer is in a public space, try to ensure that the screen faces away from others.
4. Do not record the session unless your attorney requires it.

There are sure to be court rulings in the coming years that define what is and what is not private in a remote working world. But if past is prologue, we could be in for some head-scratching ground rules. So be cautious.

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**CHAPTER 7**

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**Wrap-Up**

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**WHAT YOU SHOULD KNOW**

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After reading this chapter you should know the following:

- The definition of evidence
- The differences between direct and circumstantial evidence
- How to break rules into elements, and why to do it
- The concept of procedure, and how courts implement procedures
- The function of court rules and how they are best accessed

**ASSIGNMENTS**

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*There are no assignments for this chapter.*