

I Can't Believe **THEY SAID THAT**

A GROUP OF TEXAS LAWYERS CREATED A SOCIAL MEDIA SITE to provide an online forum for attorneys to exchange ideas and information. The site became popular and has a large number of active participants. The site is private and open only to Texas lawyers; judges and non-attorneys are not permitted access. Lawyers generally use it to seek help and advice on legal matters. Here are two recent postings:

POST 1: “I’ve been approached about representing a couple who is thinking about selling their small, family-owned business. They think they may have potential liability from events a long time ago and are looking for an experienced transactional lawyer to advise them about disclosures they should make in connection with the sale. Does anyone have recommendations for a referral?”

POST 2: “I work for a large Houston law firm. One of my colleagues represents a party in a divorce matter. The client’s drinking habits are an issue in the case. The lawyer knows the client was arrested for drunk driving, but all charges were dropped. Does the arrest need to be disclosed to opposing counsel?”

According to a 2018 Ethics Opinion, which of these postings violate the Texas Disciplinary Rules of Professional Conduct?

- A. Post 1
- B. Post 2
- C. Both
- D. Neither



ABOUT THE CENTER

The Texas Center for Legal Ethics was created by three former chief justices of the Supreme Court of Texas to educate lawyers about ethics and professionalism. Lawyers can access the Texas Disciplinary Rules of Professional Conduct, the Texas Lawyer’s Creed, and a variety of other online ethics resources by computer or smart device at legalethictexas.com.

DISCLAIMER

The information contained in Ethics Question of the Month is intended to illustrate an ethics issue of general interest in the Texas legal community; it is not intended to provide ethics advice that applies regardless of particular facts. For specific legal ethics advice, readers are urged to consult the Texas Disciplinary Rules of Professional Conduct (including the official comments) and other authorities and/or a qualified legal ethics adviser.



ANSWER: The key issue here is the extent to which attorneys can discuss their cases with other attorneys outside their firm without violating their privilege and confidentiality obligations. Rule 1.05 of the Texas Disciplinary Rules of Professional Conduct defines “confidential information” as both privileged and “unprivileged client information.” Unprivileged client information is defined as “all information relating to a client or furnished by the client, other than privileged information, acquired by the lawyer during the course of or by reason of the representation of the client.”

In Ethics Opinion No. 673, the Professional Ethics Committee for the State Bar of Texas considered whether this language prohibits a lawyer from seeking advice from outside lawyers. The opinion concludes that Rule 1.05 allows a lawyer to reveal a limited amount of unprivileged confidential information to lawyers outside the inquiring lawyer’s law firm when the inquiring lawyer “reasonably believes” that the communication will serve to benefit the lawyer’s representation of the client and when it is not reasonably foreseeable that revelation will prejudice the client. Client consent in these circumstances is not required.

While the information in these posts is potentially prejudicial to the respective clients, neither of them contain the identity of the client nor any information that would point to the identity of the client. However, any additional public information that might serve to identify the client—press attention in a high-profile case, for example—would preclude the ability of the lawyer to utilize an online site to seek advice from other attorneys. Given the lack of identifying information in these posts, the best response is D. For more analysis, go to legalethictexas.com/ethics-question-of-the-month. **TBJ**