

After I had been emailing a client at the email address she had given me, I noticed something odd in my email program - my client's husband's name appeared as the sender of the emails she was sending me. When I questioned the client about this and she explained that the address she gave me was a "family email" which her husband not only had access to, but which he frequently read. As a result, I can no longer email this client.

Communications between an attorney and a client are supposed to be privileged. The purpose of the privilege is to ensure that communications between the attorney and client are confidential; neither the client nor the attorney can be compelled to reveal the substance of their communications. However, if a third party is present, the privilege is waived. By including her husband in the email exchange, the client may have waived her attorney client privilege.

Taking the waiver of the attorney client privilege aside, I cannot fathom why the client would want her husband to be privy to the legal advice she was being given. Sooner or later in our email communications, we would have discussed negotiation and litigation strategy (fortunately, we had not gotten there yet). Wouldn't it be nice to know your spouse's settlement position before you made an offer? Why accept x dollars, if they are willing to pay 3x?

It just seemed like common sense to me that emails intended to be confidential would not be sent to the other spouse's email. In the old days when we mailed and faxed communication, we always made sure that the communications were "secure" and free from the other spouse's prying eyes.

Given the ease of opening email accounts through gmail, yahoo and Hotmail and the fact that the majority of communication between a client and an attorney are going to be through email, I cannot understand why anyone would give a communal email address to their attorney.

I suppose I now have a new question to ask during the intake process- is this your private email and does anyone else, particularly your spouse, have access to it? If anyone else has access to the email account, I may have to seat them in front of my computer advise them to open a new account for our privileged communications.