

# Why does the attorney refuse to answer my question?

When friends are more than willing to share their opinions, it may appear strange if an attorney refuses to talk about a legal problem. However, attorneys can be ethically or legally prohibited from discussing certain matters. These restrictions include:

1] The attorney must be knowledgeable: Since it is impossible for an attorney to be skilled in all areas of the law, the Florida Bar's Rules of Professional Conduct require that an attorney limit his/her advice to those matters where he is competent.

2] Unauthorized Practice: The law can be significantly different from state to state. Therefore, an attorney is prohibited from practicing in another state until he/she is admitted to practice in that state. If an attorney attempts to practice in a state where he/she is not a member of the bar, he/she could be subject to criminal penalties for the "unauthorized practice of law".

3] Confidentiality / Attorney Client Privilege: In order to fully and frankly discuss issues with the attorney, a client needs to know the attorney will not reveal information. Under the Florida Bar's Rules of Professional Conduct, information relating to the representation is confidential (with few exceptions) and cannot be shared with anyone else without the client's express permission. Information is also protected as Attorney-Client Privilege under Florida's Evidence Code from attempts to compel the attorney to divulge the information in legal proceedings. Even after a client has passed away, the attorney has a continuing obligation to protect this information.

4] Conflict of interest: A lawyer cannot represent one client where that



By Attorney  
Truman Scarborough

representation would adversely affect another client's interest. For example, an attorney normally assists the husband and wife as a couple in developing an estate plan. But if a conflict arises between the spouses, the attorney cannot assist both of them. In settling a trust or probate estate, the attorney communicates with the beneficiaries, providing them copies of the will, trust, inventory, accounting, etc. However, the attorney represents the personal representative (executor) or the successor trustee, not the beneficiary. If a conflict arises, the beneficiary must seek legal advice from a different attorney.

5] Communication with a person who has an attorney: The Rules of Professional Conduct prohibit an attorney from communicating with a person who is represented by an attorney without the other attorney's consent. This rule applies even if the represented person initiates or consents to the communication. Furthermore, the attorney may not communicate through a third person.

6] Undue Influence: The law recognizes that a beneficiary who has an opportunity to discuss an estate plan with the drafting attorney has an unfair advantage over other beneficiaries. If this beneficiary receives a substantially larger inheritance, other beneficiaries can have the will or trust voided by the court.

On the other hand with a normal attorney client relationship, the Rules of Professional Conduct require an attorney to promptly communicate with the client and explain a matter to the extent reasonably necessary to permit the client to make informed decisions.