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Practical Tips and Tricks from Amicus Attorney

Legal Tips ...

Tips from Legal Industry Experts on How to Effectively Manage Your Practice

Spotlight On ...

Highlighting a Feature of Amicus Attorney

FAQs - Frequently Asked Questions

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Awards will be presented at the LTN Technology Awards Dinner at LegalTech ® New York on January 29, 2007.

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Legal Tips

Are You Privileged? Don't Be Too Sure When It Comes to Ethics Problems

By Edward Poll, J.D., M.B.A., CMC

Attorney-client privilege has been a foundation of common law for centuries. The full and frank communication established by confidentiality ensures effective legal representation and protects civil liberties. Even so, attorney-client privilege is not absolute. In general, attorney-client communications will only be privileged if the communication was between a lawyer and a client (or prospective client), was for the purpose of helping the client secure legal services or assistance (and not for the purpose of committing a crime), and was made in confidence (outside the presence of third parties). Thus, the mere fact that an individual communicates with an attorney does not make the communication privileged.

To understand what this means in practice consider two ethical situations that could confront virtually any attorney. In the first, you as an attorney learn about unethical conduct by another attorney and face sanctions if you don't reveal it. In the second, you as an attorney are pressured by a government investigation of your company to produce evidence against corporate officers. The question in either case is fundamental: What are your obligations?

The Duty to Report Attorney Misconduct

Visualize yourself in a proceeding where you know the other attorney is being negligent in representing his client. Should you say something to the adverse party - or to the state bar? Go one step further. You are representing the adverse party in an action against the first attorney. The first attorney agrees to settle but requires non-disclosure of the act of negligence and the settlement. You discuss this with your client and advise agreement in the client's best interests. The result - the state bar takes disciplinary action against you for not disclosing the problem!

This, in a nutshell, was what happened nearly 20 years ago in an Illinois case, *In re Himmel*; and it still reverberates in the legal community today. In this case, Himmel, an attorney with 11 years of experience, was retained to help a client recover money that her prior lawyer, Casey, had misappropriated. Himmel investigated the matter by interviewing the client (in the presence of family members), Casey's insurance company and Casey himself. Himmel negotiated a settlement with Casey in which the client agreed not to pursue disciplinary action and to keep the settlement confidential. Himmel never reported Casey to the state bar disciplinary authorities.

The Illinois Supreme Court later suspended Himmel for one year because he possessed unprivileged knowledge of illegal conduct and did not report it. The Court rejected Himmel's defense that he should have been excused from reporting the violation because his client had directed him not to report it and thus preserve the settlement. The Court stressed that a lawyer, as an officer of the court, is duty-bound to uphold the ethical rules and cannot shirk this obligation merely because his client asks him to do so. Finally the Court rejected Himmel's claim that the information he had was privileged because he had received it from his client, and therefore, he was under no obligation to disclose the matter. The justices pointed out that the information Himmel obtained from his client was voluntarily disclosed in the presence of third parties. This information, as well as what Himmel obtained from the insurer and Casey himself, was not privileged.

There are plenty of potential gray areas here. A growing number of states require lawyers to report misconduct by another lawyer, in spite of any applicable confidentiality agreement, if that knowledge (in the words of the Illinois Professional Code) is "not otherwise protected by confidence." The court in the Himmel case concluded that confidence did not in fact exist. What about other instances? Say you are working with co-counsel, and you happen to notice that the lawyer's Web site says he "specializes" in personal injury cases. However, your state bar does not have a professional certification in personal injury law. Do you report your co-counsel to the bar? It's a decision each lawyer could potentially face. This is shown by the fact that, according to official Illinois statistics, the number of attorney misconduct charges against fellow attorneys jumped six-fold in the year after the Himmel decision.

The Duty to Report Corporate Misconduct

In this post-Enron, Sarbanes-Oxley world, investigating and reporting corporate misconduct has become a major focus for many in-house lawyers. Not surprisingly, federal prosecutors and SEC attorneys have long coveted the results of such internal investigations, despite the seeming likelihood that they would be covered by attorney-client privilege. However with the 2003 publication of the "Thompson Memorandum," authored by then Deputy-Attorney General Larry Thompson, the Justice Department made it clear that the disclosure of such reports to the government was essentially a condition that any corporation attempting to avoid criminal prosecution had to meet.

The Thompson Memo said that prosecutors should take into consideration a corporation's timely and voluntary disclosure of wrongdoing and its willingness to cooperate in the investigation of its personnel including, if necessary, the waiver of corporate attorney-client and work product protection that might be part of an investigation. The Thompson Memo leaves no doubt that an important component of the anticipated privilege waiver is disclosure of the "complete results" of the corporation's internal investigation.

In the years since the Thompson Memo was issued, it has, not surprisingly, caused great concern among counsel nationwide. The American Bar Association was moved to establish a Task Force on Attorney-Client Privilege focused on the corporate setting. The stated goal of the Task Force was to help preserve confidentiality in order to ensure that a corporate lawyer's advice will be sought by corporate managers on complex or questionable legal matters, giving the lawyer the opportunity to counsel legal compliance more effectively. As a result of the Task Force's report, the ABA's House of Delegates in August 2005 approved resolutions that declared:

- "The American Bar Association opposes policies, practices and procedures of governmental bodies that have the effect of eroding the attorney-client privilege and work product doctrine and favors policies, practices and procedures that recognize the value of those protections."
- "The American Bar Association opposes the routine practice by government officials of seeking to obtain a waiver of the attorney-client privilege or work product doctrine through the granting or denial of any benefit or advantage."

Even so, enforcement officials from the Department of Justice, the SEC and other agencies can still pursue sanctions against in-house counsel for failing to vigorously investigate and report allegations of misconduct within the organization. Penalties can be imposed for advice the lawyer gave, and also for the lawyer's failure to cooperate with government efforts to investigate the conduct for which the advice was given.

The Duty of Every Lawyer

Ethical conduct is the duty of every lawyer, and it is clear that the vast majority of lawyers take their ethics responsibilities seriously. However, many ethical issues are not so clear-cut as misuse of client trust accounts. In the area of confidentiality and reporting misconduct, lawyers who honestly believe they are upholding their ethical responsibilities to their clients can still run afoul of their state bar disciplinary system and of regulators and prosecutors. The bottom line is clear: when in doubt, don't assume - seek guidance from appropriate authorities.

Compliments of:

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Edward Poll, J.D., M.B.A., CMC, advises law firms and their leaders on practice management, business development, and financial matters. He is a nationally-recognized practical guide to profit. His advice has benefited national, regional, and local law firms. Ed is unique in that he has long-term experience in both business and law. Ed has practiced law for 25 years, was the CEO and COO of several manufacturing businesses, and has been a consultant to small and large law firms for 15 years.

Spotlight On ...

AMICUS ACCOUNTING

Tracking Time and Expenses

The Time Module in Amicus Accountings allows you to easily handle all time-related activities including hourly or flat-fee time entry, billable and non-billable entries.

If you use Amicus Attorney V+ or Amicus Attorney 7 with Amicus Accounting, the time recorded in Amicus Attorney is posted to Amicus Accounting automatically. You can then quickly edit or write-off unbilled time entries and even transfer work-in-progress across clients and matters. Amicus Accounting supports up to 25 rates per Timekeeper.

Enter and manage everything related to expenses from the Expenses module. Track all of the expenses related to a client or matter to ensure they are billed back to the client. Expense entries can be edited, transferred across clients or matters or written off completely. You can write checks to pay and post client expenses in a single step. Once you've completed your task, you can then quickly issue individual payments or batch process your checks. In addition, with one step you can quickly issue firm checks and allocate expenses to Client Matters.

Like the Time Entry module, integration with Amicus Attorney 7 will automatically exchange expense entries with Amicus Accounting.

Integration between Amicus Attorney and Amicus Accounting ensures you never need to type the same information twice. Capture your billable time more efficiently and accurately in Amicus Attorney, then pass it to accounting electronically. Time entries get into your accounting system much more quickly, with less effort, and more time is captured. There is less chance of a bill going out without all the time being on it.

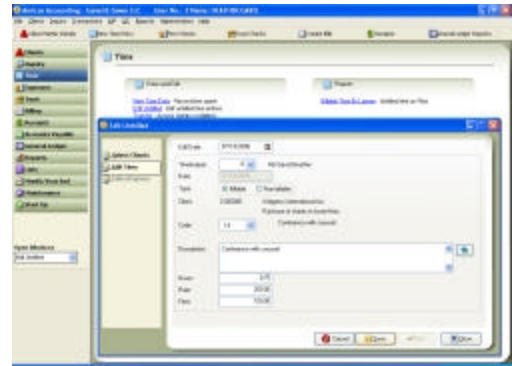
Partner Amicus Accounting with your Amicus Attorney for a complete front office-back office solution for your firm.

Try Amicus Accounting for yourself to see how it can benefit your practice. Request a Free 30-day Trial Now:

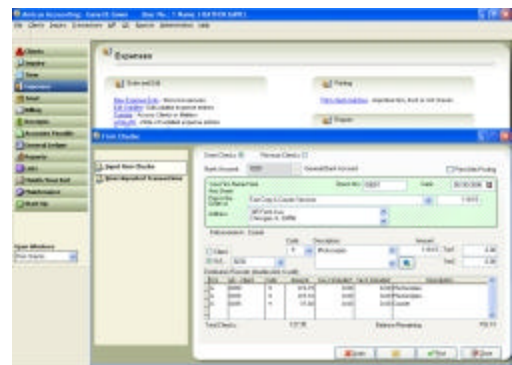
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For more information call 800-472-2289 or info@amicusattorney.com

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FAQs - Frequently Asked Questions

Question 1:

How do I open another Firm Members Office in Amicus Attorney 7?

Answer:

Granting access to your Office

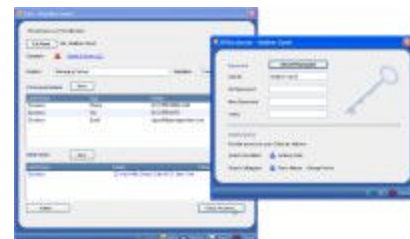
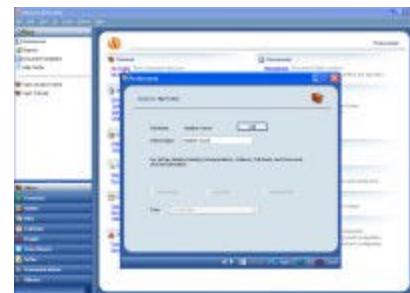
To grant Firm Members access to your Office:

1. Click Office Access at the right in your Person Edit dialog. (You may go to this dialog by clicking Edit at the right in the My Profile view of your Preferences dialog.) The Office Access dialog appears.
2. In the Guests section of the dialog, click the Select People buttons to add or remove Guest Assistants and/or Guest Colleagues. When you are finished, click OK.
3. Click OK in the Office Access dialog.

Opening another Firm Member's Office

When you want to see or change information in another Firm Member's Office:

1. Close all dialogs to make sure that your information is saved.



2. Choose Open Another Office in the navigation list of your Office window. The Select Office dialog appears.
3. The Firm Members who have granted you access to their Office are listed. Select a Firm Member and click OK. The other Firm Member's Office opens. You can now look up information and perform tasks, as determined by your usual security permissions and further limited by your current status as Guest Assistant or Guest Colleague (as determined by the Office Owner).

Returning to your own Office

When you are finished working in another Firm Member's Office, you can return to your own Office:

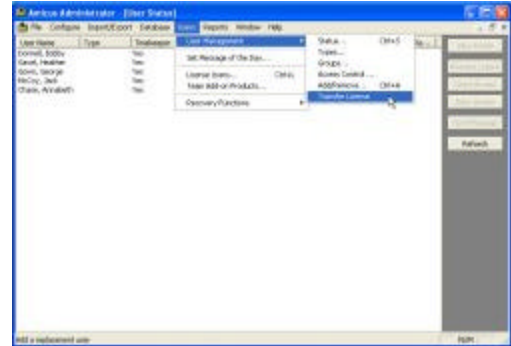
1. Close all your dialogs to make sure that your information is saved.
2. Choose Return To My Office in the navigation list of the Office window. Your own Office opens.

Question 2:

How do I Transfer a license to another Team Member in Amicus Attorney V/V+?

Answer:

The transfer license feature provides a way to add new Team Members in place of former Team Members and effectively transfer records from the former to the new Team Member without any supplementary licensing requirements. Before a Team Member can be made inactive, all unposted time entries must be either posted or deleted. The license transfer will not begin if there are any unposted time entries. After posting, any accounting link Team Member settings should be changed manually. Also, any sensitive personal information should be removed, as it will be assigned to the new active Team Member. When the above procedures are completed, the former Team Member's office should be uninstalled from the workstation.

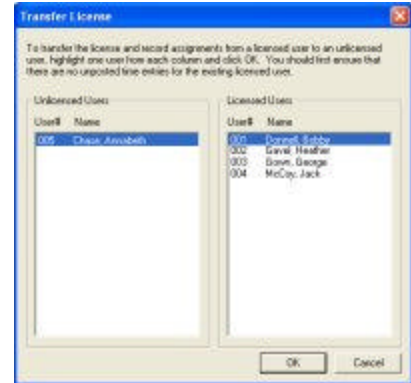


Important: Before reassigning a license:

- Ensure all Team Members are logged out.
- It is strongly recommended that you Perform a backup of your data.

To replace an existing Team Member with a new user:

1. If you have not done so already, from Amicus Administrator, select User Management > Add/Remove Users, click the Add New user button and fill in the user details.
2. Select Users > User Management > Transfer License. The Transfer License dialog appears.
3. Select the two Team Members (one licensed and one unlicensed) you would like to switch and click OK. Depending on the volume of records in the former user's Office, the transfer process may take some time.
4. Once the process is complete, you may install the new Team Member.



All necessary record reassignments are automatically made to allow the new user to assume the role of the former Team Member. The new Team Member will be assigned to the following items belonging to the former user:

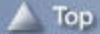
- Contacts
- Files, including Responsible Lawyer assignments
- Future events that are not personal (i.e. that are not attached to a File or Contact)
- Outstanding phone messages
- Assignment on precedents where the former Team Member was set as a default
- Personal Library records
- Access Profile
- E-mails and messages not dealt with (Client/Server users only)

On completion of the transfer, the new Team Member may be installed.

Events

Date	Event	Location	To be Attended by
November 16 -17, 2006	Wisconsin Solo & Small Firm Technology Conference	Milwaukee, WI	Ileene Levine Consulting
January 12-13, 2007	Chicago Bar Association Practice Management & Legal Technology Conference	Chicago, IL	HMU Consulting www.hmuconsulting.com

January 29-31, 2007	Legal Tech New York	New York, NY	Gavel & Gown Software Inc. www.amicusattorney.com
March 22-23, 2007	ABA Techshow	Chicago, IL	Gavel & Gown Software Inc. www.amicusattorney.com



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