

Leading Role of Internet in the Lawyer's Professional Secrecy

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Abstract Our professional life, including our professional activities, cannot be imagined without using the Internet information system. The standards of professional ethics of representatives of various professions should be fully observed on the Internet. Among the requirements for lawyers, their observance of the lawyer secrecy on the Internet is especially relevant, since this fundamental principle of the lawyer's activity essentially protects information from distribution. Hence, Internet plays a leading role in any lawyer's professional secrecy.

The aim of this paper is to analyze the current state of the dissemination of the requirement to maintain lawyer secrets on the actions of a lawyer on the Internet. One can see that the rules of conduct for lawyers on the Internet information and telecommunications network, adopted by the Council of the Federal Chamber of Lawyers of the Russian Federation on September 28, 2016, established ethical standards of behavior binding on all the lawyers on the World Wide Web. They specifically enshrined the provision on the need for lawyers to maintain confidentiality. Studies have shown that the provision of lawyer secrecy is quite relevant in the framework of Internet communication of lawyers. The practice demonstrates the presence of violations of the lawyer confidentiality in Internet, which requires special attention and response from the lawyer community.

Keywords: *information systems, Internet, lawyer, professional secrecy, leadership*

1 Introduction

The active introduction of the Internet information network into our lives has exacerbated many ethical issues. The Internet allows you to quickly and fairly covertly send any information over a huge distance, and make it publicly available, which may infringe on the rights of the persons concerned. This topic is especially relevant in matters of professional ethics, where representatives of a certain profession become, on duty, owners of certain information about the private life of the people with whom they work (doctors, teachers, lawyers, etc.). Representatives of these professions are required to maintain the confidentiality of information received in the course of their professional activities. Particularly stringent is the specified requirements for lawyers.

The legislator establishes the obligation of lawyers to preserve advocate secrecy in Art. 8 Federal Law "On Advocacy and the Bar in the Russian Federation" dated May 31, 2002 (Federal Law 2002) and Art. 6 of the Code of Professional Ethics of the Lawyer of January 31, 2003 (FPA 2003). Confidentiality of information obtained in the process of providing assistance is a condition of trust in a lawyer on the part of a person who has applied for legal assistance. Secrecy of law is an indispensable condition for the effective work of the bar and the most important guarantee of advocacy independence, as well as a means of ensuring the right of citizens to receive qualified legal assistance, proclaimed by the Constitution of the Russian Federation (Article 48). Lawyer secrecy protecting the information received by the lawyer in the process of providing legal assistance is a guarantee of privacy, personal and family secrets (article 23, part 1, of the Constitution of the Russian Federation). Ensuring advocacy secrecy in criminal proceedings is especially relevant. Here, a lawyer can become the owner of information about crimes committed or being prepared, the disclosure of which can significantly worsen the procedural position of his principal and negatively affect his fate. The famous scientist Koni, the founder of judicial ethics in Russia, wrote: "The caches of the soul are opened to the defender, they try to explain to him their guilt or to explain their fall and their own, hidden from others, shame with such details of personal life and family life, in relation to which the blind Themis should be deaf" (Koni 2004, p. 153]. These fair lines should be attributed not only to the defense counsel, but to any defense attorney. Whatever the quality of the defense, the attorney may become aware of the information that It will entail extremely negative consequences for its principal.

The active use of the Internet in everyday life makes the already problematic issues of ensuring lawyer's secrets even more acute. Conducting personal and business correspondence through the Internet by an attorney, communicating with an attorney on social networks, posting certain information on his personal pages, having a

lawyer's website, all this raises the question of the extent and boundaries of posting information regarding attorneys's attorneys. To characterize the problem posed, let us designate what constitutes a lawyer's secret.

The aim of the study is to analyze the current state of the dissemination of the requirement to maintain lawyer secrets on the actions of a lawyer on the Internet.

In this regard, the priority tasks should be considered an analysis of the normative regulation of advocate secrecy both in Russia and abroad. The study of the disciplinary practice of the lawyer chambers of the Russian Federation, the identification of disciplinary proceedings related to the ethical assessment of the behavior of lawyers in the Internet space related to the dissemination of lawyer secrets. In addition, one should study the opinions expressed in the press of scientists, as well as the lawyers themselves, on the issue of the existence of special ethical requirements for observing the lawyer's confidentiality on the Internet. It is necessary to analyze the existing norms of advocacy ethics from the point of view of their distribution to the regulation of relations arising in the process of placement of information on the Internet by the advocate. All this will serve the solution of the problem of forming in the minds of lawyers an understanding of the need to comply with the requirements of advocacy secrets within the framework of the Internet space.

The general ethical standards of behavior of a lawyer for observing the lawyer secrecy, which are relevant today, including in relation to the actions of a lawyer in the field of the Internet community, are disclosed in general theoretical studies on the lawyer ethics. The works of Tsipkin (1947), Avrah (1972), or Bojkov (1978) became classics. The requirements for maintaining lawyer's secrecy on the Internet were discussed by Ambrogi (2012), Coon (2001), Cassens Weiss (2009), Favro (2013), Gergacz (2007) and others.

2. Methods of assessment

In preparing the material, general scientific methods (observation, comparison) were used, as well as theoretical research methods (abstraction, analysis and synthesis, idealization, induction and deduction, mental modeling, ascent from abstract to concrete. In addition, the following regulatory environment of the lawyer ethics on the Internet were also scrutinized:

- Basic provisions on the role of lawyers (adopted by the VIII UN Congress in August 1990);
- Code of conduct for lawyers in the European community (Adopted by the Council of bar associations and legal communities of the European Union in Strasbourg) of 28 October 1988;
- IBA International Principles on Social Media Conduct for the Legal Profession, 24 May 2014;
- Federal Law "On Advocacy and the Bar in the Russian Federation" dated May 31, 2002 N 63-FZ;
- Code of Professional Ethics of a Lawyer in the Russian Federation of January 31, 2003;
- Rules of conduct for lawyers in the Internet telecommunications network. Approved by the Council of the Federal Chamber of Lawyers of the Russian Federation on September 28, 2016 (Minutes No. 7).

3. Results and discussion

Lawyer's secrecy is a legal institution quite traditional for the Russian legal system. She received normative consolidation in the formation of a sworn advocacy in pre-revolutionary Russia. In the Institutions of Judicial Establishments of 1884 (Article 403), it was stipulated that "the sworn attorney should not disclose the secrets of his principal, not only during the execution of his case, but also if he is removed from it and even after it is completed."

In the Soviet period of the development of our society, research on advocacy secrets was banned. Tsypkin's work "Lawyer Secret" (Tsipkin 1947) was criticized, its author was accused of worshipping the "bourgeois West" during the campaign against cosmopolitanism, and this monograph is forbidden (Demidov et al. 2006, p. 311].

Half a century ago, domestic processors had to seriously pose and solve the problem of compliance of advocate secrets with the moral code of the builder of communism Bojkov 1978, p. 63).

It should be noted that in the early 70's. in the domestic procedural literature it was stated that the issues of advocate secrecy in science are given little attention, since "in practice they arise extremely rarely and are quite thoroughly settled" (Avrah 1972, p. 81). However, the exact opposite can be said at present. Practice has identified many problems associated with the implementation of this normative prescription, which made the process scientists turn to its study (Pshukov 2008; Pilipenko 2009; or Korotkova 2012). One of the pressing problems of our time is the preservation of lawyer secrets when using the Internet by a lawyer.

4. Advocate secrecy in the Russian Federation

According to Art. 8 Federal Law "On Advocacy and the Bar in the Russian Federation" dated May 31, 2002. bar secret is any information related to the provision of legal assistance by a lawyer to his client.

Speaking of “any” information, the law, therefore, determines that the obligation to keep the information received secretly arises from the lawyer, regardless of whether their dissemination will harm his principal or not and regardless of the source of the information received by the lawyer. By this provision, the legislator resolved a question that has been debated for a long time in domestic science.

After all, a literal interpretation of the concept of “secret” may lead to the conclusion that the requirement of confidentiality of relations between a lawyer and a principal extends to the circle of information, the disclosure of which is undesirable for the latter, can harm his interests. This interpretation of advocate secrecy existed in science. In particular, V. Leonenko linked the lawyer secret with the possibility of negative consequences for the defendant when he argued that “the need and duty to preserve it ceases after the accused (defendant) is no longer threatened by the consequences of which these facts were hidden” (Leonenko 1981, pp. 134-136). Similar views can be found among our contemporaries, including among practicing lawyers (Biryukova 2009).

The same approach can be seen in the decisions of the Councils of jurors, acting in Russia in the pre-revolutionary period. Thus, the St. Petersburg Council of Sworn Attorneys indicated that the obligation not to disclose the secrets of his principal “concerns only the secrets of the principal, and not everything that the attorney may know in the case that is entrusted to him ...” (Tikhonravov 2003, p. 256.] .

The Code of Professional Ethics of an Advocate concretizes the concept of advocate secrecy established by the Federal Law “On Advocacy Activities and Advocacy of the Russian Federation”. He outlined the subject of advocate secrecy, that is, the circle of information constituting it. In accordance with Part 5 of Art. 6 of the Code, the subject of advocate secrecy consists of the following elements:

- the fact of contacting a lawyer, including the names and names of principals;
- all evidence and documents collected by the lawyer in preparation for the case;
- information received by the lawyer from principals;
- information about the principal, which became known to the lawyer in the process of providing legal assistance;
- content of legal advice given directly to the principal or intended for him;
- all legal proceedings in the case;
- the terms of the legal aid agreement, including cash payments between a lawyer and a principal;
- any other information related to the provision of legal assistance by a lawyer.

As can be seen from this provision of the law, the list is not exhaustive. This allows us to require lawyers to fully observe the safety of information obtained in the process of providing legal assistance. The law does not indicate which forms and means of disclosing information are subject to the prohibition. This indicates that this prohibition is universal and applies to all possible options for the transmission and dissemination of information. That means it affects the communication and positioning of lawyers on the Internet.

5. Lawyer secrecy on the Internet: world experience

The requirement of observance of advocate secrecy refers to international standards of advocacy. It is enshrined in the well-known acts of international law regulating advocacy: Clause 8 of the Basic Provisions on the Role of Lawyers (adopted by the VIII UN Congress in August 1990) (see OHCHR 1990); paragraph 2.3. Code of Conduct for Lawyers in the European Community (Adopted by the Council of the Bar Associations and Legal Communities of the European Union in Strasbourg) (European Union 1988).

With the advent of the Internet, scientists from different countries began to actively discuss the problem of protecting lawyer's secrets in the Internet space. In particular, issues of protection of the Internet correspondence of lawyers with clients (Coon 1997; Rose 1997; Masur 1999; Dunlap 2013; or Favro 2013), confidentiality when lawyers place advertisements on the Internet (Gergacz 2007), etc., were of particular concern.

In 2012, in the publication “Law Technology News” (USA), an American lawyer and journalist conducting research in the field of law and technology, Ambrogee published recommendations for lawyers. They contained “10 tips on how to avoid problems for the lawyer on the Internet” (Pravo 2012). One of them was the advice “not to reveal the secrets of your client.” He recommends not writing about clients or affairs on blogs and social networks, if it’s not about the details that are known to the public by open sources.

The relevance of maintaining lawyer's secrecy in the Internet space, the writings and recommendations of scientists on this issue led to the development under the auspices of the International Bar Association of the International Principles of Behavior of Lawyers in Social Media on May 24, 2014, which are currently posted by the Federal Chamber of Lawyers of the Russian Federation on official website (IBA 2014). Clause 4 entitled “Confidentiality” is devoted to the lawyer confidentiality in this document. It indicates the significance of the client’s trust in his attorney, it is emphasized that it cannot be without preserving the personal and confidential information of the principal. Lawyers were obliged to work on the network with client data and other confidential

information only in the case of absolute confidence in its protection in accordance with professional, moral and legal obligations

It was noted that when using social networks, client confidentiality should be understood in a broader sense. In particular, it included information that indicates the geographical location of a client who does not intend to publicize the fact that he needs legal advice. Lawyers were cautioned that even using hypothetical questions and the factual circumstances of the case without giving names could accidentally reveal confidential information.

6. Observance of lawyer secrets on the Internet in Russia

Given the relevance of adhering to the requirements of advocate ethics when using the Internet, the Council of the Federal Chamber of Lawyers of the Russian Federation on September 28, 2016 adopted the Rules of Conduct for Lawyers in the Internet (hereinafter referred to as the Rules) information and telecommunications network (FPA 2016). In them, he outlined the basic norms of communication and self-representation of a lawyer in the World Wide Web. The rules include 5 sections. Section 4 is specifically devoted to advocacy secrecy. It contains two provisions:

1. An attorney must create the conditions and take all reasonable measures to maximize the protection of any information received and transmitted through the Internet, including correspondence, documents, and any other information constituting a lawyer's secret.
2. Publication of information related to the practice of advocacy in the public domain on the Internet without the prior written consent of the principal is not allowed.

It should be noted that the regulation of the requirements for observance of advocate secrecy is not limited to section 4 of the Rules; in essence, this idea is also permeated by other provisions of the Rules.

In particular, Section 1 "General Provisions" emphasizes the right of a lawyer based on the Constitution of the Russian Federation to freedom of expression and freedom of information, while substantiating the need for him to comply with the requirements of professional conduct on the Internet, as well as the mandatory requirements of the Rules. In this case, the Rules emphasized that the requirements for observance of advocate secrecy are of a special nature in relation to the general constitutional law of an advocate as a citizen, and therefore have priority.

Section 2 - "The Basic Principles of the Lawyer's Activities on the Internet" also contains provisions affecting the issues of ensuring lawyer's secrecy. Namely:

- The principle of professionalism in the Rules is revealed through the obligation of a lawyer to comply with the requirements of the law on his professional activities, including the need to ensure the safety and confidentiality of information posted. The rules prescribe "with caution" to provide legal advice online, accessible to an indefinite circle of people (with the exception of scientific, discussion, analytical, etc. comments);
- The principle of restraint and correctness obliges the lawyer to refrain from publicly commenting on the circumstances and positions of participants in criminal cases in which he does not participate;
- The principle of security is considered in the key to ensuring the confidentiality of posted information. He requires a lawyer to constantly check their Internet resources for extraneous information.

Thus, one can say that the idea of preserving the lawyer's secrecy as a red thread goes through all the Rules and many of the principles mentioned in them are guarantees of its maintenance.

7. The responsibility of lawyers for the disclosure of lawyer secrets on the Internet

The active use of the Internet has exacerbated the problem of the responsibility of lawyers for the dissemination of information constituting their professional secret in the Internet space.

Overseas, a relatively long time ago, cases began to appear of imposing measures on lawyers for such violations. An example is the prosecution of an assistant attorney from Illinois, Christine Ann Peschek. She was suspended from legal practice because she published confidential information about clients on her blog: she described them so that they could be identified. The lawyer referred to his clients either by their names, or by derivatives of their names, or by their identification numbers in the prison (Cassens Weiss 2009).

In Russia, the practice of bringing lawyers to disciplinary liability for violation of professional ethics on the Internet, including for violation of confidentiality, is also gradually developing.

An example is disciplinary proceedings against a lawyer V.V.V. In 2013, counsel V.V.V. It was found to violate the requirements of professional ethics in the following circumstances: after its submission to the client S.E.S. Complaints about her to the Law Chamber of the Moscow Region, the lawyer posted two publications on the Internet. The first one is in his personal blog on the site of the Echo of Moscow radio, entitled "The History of

Betrayal S. I Publish Documents About Which We Talked For So Long”. The second - on the social network Twitter with the headline “Feeling fear of the system, ready to betray friends for the sake of their own freedom - proudly carry the name S.”. In a further complaint, the applicant S.E.S. He pointed out that both of these publications, relating to him personally and his criminal case, were posted without his consent and are offensive in nature.

The Qualification Commission of the Lawyer Chamber of the Moscow Region acknowledged that the lawyer V.V.V. Abused the trust of S.E.S., violating p.p. 2 and 3 tbsp. 5 Code of Professional Ethics for Lawyers. The commission emphasized that “it is considered proven that the author of the articles in question is the lawyer V.V.V., since they are posted under her last name and are on the Internet for a considerable time, during which the lawyer V.V.V. has not taken measures to refute her authorship”(Law Chamber of the Moscow Region 2013).

8. Conclusions

Our results demonstrate that the lawyer ethics is quite relevant in the framework of the Internet communication of lawyers. The requirements for observing the lawyer secrecy in the Internet space apply to information posted by the lawyer on the network, to his correspondence.

On September 28, 2016, the Council of the Federal Chamber of Lawyers of the Russian Federation adopted the Rules of Conduct for Lawyers on the Internet. They have established ethical standards of conduct binding on all Internet lawyers in the Internet space, including those related to the observance of lawyer secrets, the violation of which entails disciplinary liability. Currently, there is a practice of bringing lawyers to disciplinary liability for the disclosure of lawyer secrets through the Internet.

It is clear that lawyers should proceed from the fact that their Internet positioning and Internet communication is subject to the requirements of the professional ethics of the lawyer, including such a basic principle as lawyer confidentiality.

The provisions of the Federal Law “On Advocacy and the Advocacy of the Russian Federation” dated May 31, 2002, the “Code of Professional Ethics of an Advocate” dated January 31, 2003, which disclose the subject of advocate secrecy and its content, are fully applicable to regulate the activities of an attorney on the Internet. Rules of conduct for lawyers in the information and telecommunication network "Internet" dated September 28, 2016 provide lawyers with additional guidance on special issues of maintaining the confidentiality requirements on the Internet. Finally, it must be noted that in the connection with the development of forms and methods of Internet communication, scientific research on the observance of the requirements of advocate secrecy in the Internet space remains an urgent and relevant matter.

References

- Avrah YS, Psychological Issues of Criminal Defense, 1st edn. (Kazan: Kazan State University Publishing House, 1972), 106 p.
- Biryukova I (2009) It is necessary to consider the requirements of life. Lawyer newspaper. <http://www.advgazeta.ru/arch/64/373> Accessed 21 Mar 2020
- Bojkov AD, Ethics of Professional Defense in Criminal Matters, 1st edn. (Moscow: Legal literature, 1978), 172 p.
- Cassens Weiss D (2009) Blogging Assistant PD Accused of Revealing Secrets of Little-Disguised Clients. http://www.abajournal.com/news/article/blogging_assistant_pd_accused_of_revealing_secrets_of_little-disguised_clie/ Accessed 21 Mar 2020
- Coon MK (1997) United States v. Keystone Sanitation Company: E-mail and the Attorney-Client Privilege. <https://paperity.org/p/82351997/united-states-v-keystone-sanitation-company-e-mail-and-the-attorney-client-privilege> Accessed 21 Mar 2020
- Demidov AI, Bichehvost AF, Tyapugina NY, Matorina EI, Encyclopedia of our life, 1st edn. (Saratov: SGAP, 2006), 440 p.
- Dunlap NB (2013) Beware inadvertent waiver of the attorney-client privilege through use of employer-provided computers or e-mail. <https://www.lexology.com/library/detail.aspx?g=8ed8d677-406c-4d49-bd23-667cb0f18959> Accessed 25 Mar 2020
- European Union (1988) Code of conduct for lawyers in the European community. Adopted by the Council of bar associations and legal communities of the European Union in Strasbourg of 28 October 1988

Favro PJ (2013) Inviting Scrutiny: How Technologies are Eroding the Attorney-Client Privilege https://www.researchgate.net/publication/256059912_Inviting_Scrutiny_How_Technologies_are_Eroding_the_Atorney-Client_Privilege Accessed 25 Mar 2020

Federal Law (2002) "On Advocacy and the Bar in the Russian Federation" dated May 31, 2002 N 63-FL

FPA (2003) Code of Professional Ethics of a Lawyer in the Russian Federation, January 31, 2003. <https://fparf.ru/documents/fpa-rf/documents-of-the-congress/the-code-of-professional-ethics-of-lawyer/> Accessed 21 Mar 2020

FPA (2016) Rules of conduct for lawyers in the Internet telecommunications network. Approved by the Council of the Federal Chamber of Lawyers of the Russian Federation on September 28, 2016. https://fparf.ru/documents/fpa-rf/the-documents-of-the-council/rules-of-conduct-for-lawyers-in-the-information-telecommunication-network-internet/?sphrase_id=7443 Accessed on 29 Mar 2020

Gergacz J (2006) Using the Internet to Attract Clients and the Attorney-Client Privilege. <https://www.questia.com/library/journal/1G1-161980699/using-the-internet-to-attract-clients-and-the-attorney-client> Accessed 21 Mar 2020

IBA (2014) International Principles on Social Media Conduct for the Legal Profession. <https://www.ibanet.org> Accessed 08 Apr 2020

Koni AF (2004) General features of judicial ethics. Report at a meeting of the Moscow Psychological Society on December 22, 1901, In: Traditions of the Lawyer Ethics. Selected Works of Russian and French Lawyers (XIX-early XX centuries), 1st edn. (St. Petersburg: Publishing House "Legal Center Press", 2004), pp. 131-168

Korotkova PE (2012) Formation, development and functioning of the institution of advocate secrecy (an example of Russia and several foreign countries). <https://www.dissercat.com/content/stanovlenie-razvitie-i-funktsionirovanie-instituta-advokatskoi-tainy> Accessed on 19 Mar 2020

Law Chamber of the Moscow Region (2013) The conclusion of the qualification commission of the Law Chamber of the Moscow Region on disciplinary proceedings No. 04-08, August 13, 2013. https://www.apmo.ru/?show=qualification_commission_solutions_archive Accessed on 29 Mar 2020

Leonenko VV, Professional Ethics for Criminal Justice Participants, 1st edn. (Kiev, "Naukova Dumka", 1981), 163 p.

Masur JM (1999) Safety in Numbers: Revisiting the Risks to Client Confidences and Attorney-Client Privilege Posed by Internet Electronic Mail. *Berkeley Technology Law Journal* 14(3):1117-1162

OHCHR (1990) Basic provisions on the role of lawyers (adopted by the VIII UN Congress in August 1990). <https://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfLawyers.aspx> Accessed 20 Mar 2020

Pilipenko YS, Lawyer secrecy: legislative, ethical, law enforcement aspects, 1st edn. (Moscow: Info-pravo, 2009), 536 p.

Pravo (2012) 10 tips for attorney on social media behavior. <https://pravo.ru/review/view/76047/> Accessed on 29 Mar 2020

Pshukov AM (2008) Lawyer secrecy. <https://www.dissercat.com/content/advokatskaya-taina> Accessed on 19 Mar 2020

Rose J (1997) E-Mail Security Risks: Taking Hacks at the Attorney-Client Privilege. <https://www.questia.com/library/journal/1G1-19541575/e-mail-security-risks-taking-hacks-at-the-attorney-client> Accessed 02 Apr 2020

Tikhonravov YuV (ed.), The rules of the legal profession in Russia: the experience of systematizing the decisions of the Councils of jurors on professional ethics. Compiled by a member of the Council of Sworn Attorneys of the District of the Moscow Judicial Chamber A.N. Markov. Moscow, 1913, 1st edn. (Moscow: Statut, 2003), 384 p.

Tsipkin AL, Lawyer secrecy, 1st edn. (Saratov: Saratov State Law Institute Press, 1947), 40 p