Outline for Problem 6

I. Duty of Disclosure to Client

A. ABA Model Rules of Professional Conduct, Rule 1.4 Communication:
   (a) A lawyer shall:
      (1) promptly inform the client of any decision or circumstance with
           respect to which the client's informed consent, as defined in Rule 1.0(e), is
           required by these Rules;
      (2) reasonably consult with the client about the means by which the
           client's objectives are to be accomplished;
      (3) keep the client reasonably informed about the status of the matter;
      (4) promptly comply with reasonable requests for information; and
      (5) consult with the client about any relevant limitation on the lawyer's
           conduct when the lawyer knows that the client expects assistance not
           permitted by the Rules of Professional Conduct or other law.

B. Comment 7 to ABA Model Rule 1.4:
   (1) A lawyer may not withhold information to serve the lawyer's own interest or
       convenience or the interests or convenience of another person. Rules or court
       orders governing litigation may provide that information supplied to a lawyer may
       not be disclosed to the client. Rule 3.4(c) directs compliance with such rules or
       orders.

C. ICG Communications, Inc. v. Allegiance Telecom, 211 F.R.D. 610 (N.D. Cal. 2002):
   (1) The court held that there must be legitimate privacy concerns to constitute
       good cause for designating documents as attorneys’ eyes only. In this case, a
       protective order was imposed on customer lists.

   (1) Plaintiffs designated over 4,000 documents as attorneys’ eyes only; court
       removed the designation because it found that the designation unjustifiably
       impaired the defendant’s right to discover relevant information.

II. Recommendation

A. The Clinic owes no duty of confidentiality to the staffer, who is not a client. The
   Clinic does owe a duty to its clients to disclose information that would be beneficial to
   them within the scope of the Clinic’s representation. This duty of disclosure to the clients
   is only limited by court orders or rules that would prevent disclosure. Courts have only
   recognized Attorneys’ Eyes Only designations where the information was extremely
   sensitive and confidentiality was a significant concern. Here, there is no indication that
   confidentiality is particularly significant. Thus, I would recommend disclosure of the
   draft legislation to the clients.