



You have recently been hired as primary outside counsel to Montague School of Law, an independent fourth-tier law school near Richmond, Virginia. The school has a provisional accreditation, and has recently enrolled a first-year class of 158, which was below its target of 190 entering students.

In the spring of 2012, Montague Law advertised in the usual channels to hire an Assistant Dean of Career Opportunities, and interviewed several applicants. Interviews were conducted by Dean Harriett Brewer and Associate Dean for Student Affairs Jane Franklin. Carl Washington, a life-long resident of Milwaukee, Wisconsin new to the academy and legal education, got the job. He quit his job in Wisconsin, sold his home and moved his family to Richmond in May. In late July, Dean Brewer informed him that because of low enrollment he would be fired from his new job, effective August 15th.

Washington has sued Montague Law and the Dean alleging that the school should have disclosed the precarious financial situation that the law school was facing and failed to do so. In a meeting about the lawsuit with Dean Brewer, she told you that neither she nor Associate Dean Franklin made any mention about the school's financial situation or the possibility of low enrollment. She also added that: "Everybody knows about the crisis in legal education; we should not have had to bring him up to speed on that. All he had to do was read the papers – it's all out there."

You ask for Associate Dean Franklin's file on the hiring of Mr. Washington, she first asks you: "Should I go through it first?" You respond: "I need to know everything; please give me the file as is."

When you go through the file, you make notes on each item and attach your notes to each item, taking care to write those notes on notepaper that has the printed message: "Attorney Work Product" on it.

One item you find in the file is an undated and unidentified handwritten note that reads: "If we don't enroll a large enough class, will we have enough money to pay the salary on this position?" You write a note on the "Attorney Work Product" notepaper and attach it: "Was this sent to someone, and when did they know about enrollment numbers?"

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- A. When you receive Rule 34 Document Requests that are arguably too narrow to include this document...
 - 1) What ethical issue have you been confronted with?
 - 2) Will you decide to produce the document?
 - 3) Reflect on how you have decided to resolve this question, and how it relates to the sort of attorney you want to be in practice.

 - B. You decide the document is privileged, and add it to the privilege log. Soon thereafter, counsel files a Motion to Compel its production...
 - 1) What ethical issue have you been confronted with?
 - 2) Should you produce the document, or fight the motion?
 - 3) Reflect on how you have decided to resolve this question, and how it relates to the sort of attorney you want to be in practice.