**EXAMPLE OF STUDENT OUTLINE**

Problem 6
Lawyer's Ethics

Outline for Problem 6

**Should the Clinic Disclose the Contents of the Document to Her Clients?**

ABA Rule 1.4
(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) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Comment 3:
*Withholding Information.* A lawyer may delay transmission of information when the client would be likely to react imprudently; e.g., when an examining psychiatrist indicates that disclosure of psychiatric diagnosis would harm the client. And Rules or court orders governing litigation may prohibit disclosure.

- So it seems in the absence of a rule saying Jennifer can't disclose, Jennifer cannot withhold the information from her clients

**California Rule 3-500**
A member shall keep a client reasonably informed about significant developments relating to the employment or representation, including promptly complying with reasonable requests for information and copies of significant documents when necessary to keep the client so informed.

**ABA Formal Op. 94-382**
A lawyer who receives on an unauthorized basis materials of an adverse party that she knows to be privileged or confidential should, upon recognizing the privileged or confidential nature of the materials, either refrain from reviewing such materials or review them only to the extent required to determine how appropriately to proceed; she should notify her adversary's lawyer that she has such materials and should either follow instructions of the adversary's lawyer with respect to the disposition of the materials, or refrain from using the materials until a definitive resolution of the proper disposition of the materials is obtained from a court.

- The committee considered the lawyer's duty of zealous advocacy, but thought that that couldn't justify using the unsolicited materials
- A lot of this rests on the fact that the unsolicited material contains privileged information between an attorney and client, which is not the case in our hypo
- It also rests on the fact that it was accidental

**Analysis**

This seems like a very clear case to me. Although there are not many cases or opinions dealing with an issue like ours (the cookie-cutter case is inadvertent disclosure of an opposing party's secret during discovery), it seems as though under no circumstance can a lawyer withhold important, material information from his or her client. Even in the inadvertent discovery cases, the courts say that the lawyer should try to return the materials before reading them or only read the materials enough to figure out what they are and what to do with them. None of those courts say that the lawyer can't then share the information he's accidentally gleaned with his client.

Withholding information from the client seems to directly contradict the duty of zealous advocacy. It also violates the principles of conflict of interest where the rule are set up recognizing that it is impossible for a lawyer with inside information to effectively represent a client without disclosing the information (i.e. a lawyer can't section off parts of her brain).

What is the countervailing duty here? I don't see one. In the discovery cases, the disclosure is accidental. The countervailing problem is that in sharing information with your client, you are helping break the attorney-client privilege for an opposing party. But even still, the courts do not say that you can't go to the client with information you learn, they just say "try not to read the document until you know you're supposed to have it."

When the legislative staff member turns over a document to a lawyer, he has to know that the lawyer is obligated to share it with clients who care about the document.

In hindsight, the student probably shouldn't have read the document. But now that she knows its contents and knows that her clients want to know its contents, she has to tell them. The only other option is to withdraw and courts don't tend to say that that's necessary. See Manfredi & Levine v. Superior Court, 66 Cal.App.4th 1128 (1988).