

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.

D. *Team Play, Inc. v. Boyer*, 2005 U.S. Dist. LEXIS 3968 (N.D. Ill. 2005):

- (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.



This resource was downloaded from <http://etl.du.edu>

EDUCATING
TOMORROW'S
LAWYERS®

IAALS

INSTITUTE for the ADVANCEMENT
of the AMERICAN LEGAL SYSTEM