

## EXAMPLE OF MEMORANDUM DISTRIBUTED

### MEMORANDUM

To: Mills Legal Clinic Ethics Committee (*i.e.* Lawyers' Ethics Class)

From: Larry Marshall

Re: Problem 4: Informing Clients and Potential Clients about Limits of Confidentiality (to be discussed on November 1)

When meeting with a client or potential client (hereinafter "client") for the first time, it is routine for clinic students and supervising lawyers (hereinafter "lawyer") to inform the client that attorney-client communications are privileged and confidential and that the client should feel safe being totally honest with the lawyer. Individual lawyers have differed, though, in the level of detail they have provided about possible exceptions to the privilege and rules of confidentiality.

For example, some lawyers explain nothing at all about any exceptions—including the legal and ethical limitations an attorney faces in presenting evidence that the attorney knows to be false. Other lawyers try to describe this exception and numerous other exceptions thoroughly. Yet others lawyers have practices that fall someplace in between.

An incident from last year provides a sense of one way in which these problems can play themselves out. A client of the Youth and Education Law Program ("YELP") was facing a school disciplinary hearing relating to a fight. During the course of conversations with his lawyers at YELP the client confided that he was, in fact, at the scene of the fight—although he denied participating. He made it clear to the lawyers, though, that were he to be asked about the incident at a hearing he would deny being in the area at all. This, of course, generated a difficult problem for the YELP lawyers. Ultimately, the issue became moot when the case resolved itself. Nonetheless, it drives home the importance of our figuring out what we should be telling our clients at the onset of representation about the scope and limits of confidentiality.

The Mills Legal Clinic now is considering whether to adopt some policies on what clients should be told on these subjects (we looked at this last year, but reached no clear resolution). Of course, if we are to adopt such policies we will have to decide what those policies should be and whether they will vary according to particular circumstances.

I look forward to discussing these matters with you.



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