

CONFIDENTIALITY: PART V (CLIENTS' PAST AND ONGOING MISCONDUCT)

Hypotheticals

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Hypothetical Error! Bookmark not defined.

You met early this morning with a prospective new client. He told you that a few weeks ago he won a million dollar verdict in a personal injury case in which another local lawyer represented him. But now he is worried that someone might discover why he won -- he deliberately lied on the stand about several important matters during the trial.

What do you do?

- (A) You must disclose your client's fraud on the tribunal.
- (B) You may disclose your client's fraud on the tribunal, but you don't have to.
- (C) You may not disclose your client's fraud on the tribunal, unless your client consents.

Hypothetical 2

You met late this morning with one of your clients. You had successfully represented her earlier this week in a small breach of contract case. She told you that her conscience has been bothering her ever since the trial ended. To your surprise, your client then confessed to deliberately lying on the stand during the trial you just won.

What do you do?

- (A) You must disclose your client's fraud on the tribunal.
- (B) You may disclose your client's fraud on the tribunal, but you don't have to.
- (C) You may not disclose your client's fraud on the tribunal, unless your client consents.

Hypothetical 3

You met over lunch today with one of your clients. You had invited her to toast an important date -- yesterday was the last day the defendant could have appealed a \$10 million verdict you had obtained for your client after a lengthy jury trial. After a few too many toasts, your client said: "What makes this day so sweet is that no one -- not even you -- suspected that most of my testimony was a lie."

What do you do?

- (A) You must disclose your client's fraud on the tribunal.
- (B) You may disclose your client's fraud on the tribunal, but you don't have to.
- (C) You may not disclose your client's fraud on the tribunal, unless your client consents.

Hypothetical 4

You met this afternoon with one of your clients. You thought he might be coming to give you a gift or otherwise thank you for representing him in a case that settled very favorably earlier this week. Instead, he apparently wanted to gloat over your initial pessimistic view of the case. He told you that you might have been right about the law, but that you had underestimated his ability to make up facts that he testified about at his deposition. When you asked him what he meant, he surprised you by saying that most of his deposition testimony resulting in the favorable settlement was a lie.

What do you do?

- (A) You must disclose your client's fraud on the tribunal.
- (B) You may disclose your client's fraud on the tribunal, but you don't have to.
- (C) You may not disclose your client's fraud on the tribunal, unless your client consents.

Hypothetical 5

After a long and stressful day, you turned on the local news after dinner. The lead story described a \$10 million personal injury plaintiff's verdict for one of your former clients. You had only represented her for a short time, and had withdrawn before you filed a lawsuit -- because she had told you that she intended to fake paralysis to increase her damages. The news story showed her leaving the courthouse in a wheelchair and quoted her statement that she was happy the defendant had to pay such a large amount for having caused her paralyzing accident.

What do you do?

- (A) You must disclose your former client's fraud on the tribunal.
- (B) You may disclose your former client's fraud on the tribunal, but you don't have to.
- (C) You may not disclose your former client's fraud on the tribunal, unless your client consents.

Hypothetical 6

For the last ten years, you have represented a wealthy individual in many of her business and personal matters. About the only transaction that you did not handle for her involved her purchase of a second home in Maine -- she told you that she preferred to use a Maine lawyer for that matter. To make sure that you kept up with your client's affairs, you reviewed the pertinent transactional documents relating to the Maine transaction -- and discovered incontrovertible evidence that she defrauded the seller. Because the fraud occurred on your "watch" as the client's lawyer, you wonder about your ethical obligations.

What do you do?

- (A) You must disclose your client's fraud.
- (B) You may disclose your client's fraud, but you don't have to.
- (C) You may not disclose your client's fraud, unless your client consents.

Hypothetical 7

About six months ago, you represented a long-time client in the purchase of some land from his neighbor. The transaction was relatively small -- involving your client's payment of \$5,000 to the neighbor for a small strip of land. The negotiations were surprisingly contentious, and over lunch today your client told you why -- the neighbor had defrauded your client's father decades ago, and your client had never forgiven him. In fact, your client boasted to you that he had revenged his father in the transaction you handled, by lying about an important element of the deal. Having been involved in every step of the negotiation and documentation of the transaction, you now wonder about your ethics duties.

What do you do?

- (A)** You must disclose your client's fraud.
- (B)** You may disclose your client's fraud, but you don't have to.
- (C)** You may not disclose your client's fraud, unless your client consents.

Hypothetical 8

You have represented an entrepreneurial individual for about ten years. Among other things, you helped her negotiate and memorialize a very complicated \$250,000 personal loan transaction with a wealthy neighbor. While organizing the loan documents for the file, you realize that your client lied to the neighbor about some material facts. You have satisfied yourself that your client's misconduct did not amount to a crime, but it clearly defrauded the neighbor. You confronted your client, but she refused to let you disclose the fraud.

What do you do?

- (A) You must disclose your client's past fraud.
- (B) You may disclose your client's past fraud, but you don't have to.
- (C) You may not disclose your client's past fraud, unless your client consents.

Hypothetical 9

You have represented a medium-sized corporation for about ten years. Among other things, you have advised the corporation about setting up its billing software. In connection with some recent work involving the software, a corporate employee confessed that the corporation has been using the billing software to defraud its customers. The corporation's fraudulent scheme is brilliant, and its customers are unlikely to ever discover the fraud.

- (a)** What do you do about the employee's confession?
 - (A)** You must disclose the confession to upper management.
 - (B)** You may disclose the confession to upper management, but you don't have to.
 - (C)** You may not disclose the confession to upper management, unless the employee consents.

- (b)** If upper management immediately stops the fraudulent scheme but refuses to let you advise victims of the fraud, what do you?
 - (A)** You must disclose your corporate client's past fraud.
 - (B)** You may disclose your corporate client's past fraud, but you don't have to.
 - (C)** You may not disclose your corporate client's past fraud, unless upper management consents.

Hypothetical 10

You just called your client to arrange for a time when you can prepare her for her testimony in next week's custody hearing. You were not surprised when she did not answer, but you were shocked to receive an email from her a few hours later -- telling you that she had taken her young son to a remote Mexican coastal town, in violation of a court order.

- (a)** If your client asks for your advice about how she can legally change her name in Mexico, can you help her with that?

YES

NO

- (b)** At next week's hearing, what do you do?

- (A)** You must disclose your client's whereabouts.
- (B)** You may disclose your client's whereabouts, but you don't have to.
- (C)** You may not disclose your client's whereabouts, unless your client consents.

Hypothetical 11

In your role as general counsel, you have been assisting your client in preparing to sell its headquarters building. However, you recently learned that the CEO abruptly pulled the building off the market.

At a meeting this morning, a vice president "remarked" that a recent environmental consultant's report showed "possible" traces of benzene and arsenic in groundwater under the building. Your company does not use those chemicals, but a previous occupant did. The vice president told you that the environmental consultant had recommended a more thorough investigation, but that was never done. A new state law requires disclosure to the state within thirty days of anyone "possessing information" about these and other dangerous chemicals' release into the environment.

You asked the company's president about this issue, and she told you that (1) the company had taken its headquarters building off the market for "business" reasons; (2) any rumors of ground water contamination could "wreck" the company; and (3) as part of an upcoming headquarters renovation project, the company will remediate any environmental problems.

Now you are wondering about your ethics responsibilities.

(a) Must you insist on seeing the environmental consultant's report?

YES

NO

(b) Must you insist that the company undertake a more thorough investigation?

YES

NO

(c) Must you go to the board with your concerns?

YES

NO

(d) If the board does not require a further investigation, must you resign?

YES

NO

Hypothetical 12

Last week, you started representing a local man accused of stabbing and robbing a bicycle messenger who had been carrying some cash and important documents. Almost immediately, a number of ethics issues have arisen.

(a) If your client tells you where he hid the cash, what do you do?

- (A)** You must disclose where your client hid the cash.
- (B)** You may disclose where your client hid the cash, but you don't have to.
- (C)** You may not disclose where your client hid the cash, unless your client consents.

(b) If your client gives you the knife, may you have it tested for blood residue?

YES

NO

(c) If your client gives you the knife, what do you do?

- (A)** You must give the knife to the police.
- (B)** You may give the knife to the police, but you don't have to.
- (C)** You may not give the knife to the police, unless your client consents.

(d) If you give your client's knife to the police, what else do you do?

- (A)** You must disclose to the police where you obtained the knife.
- (B)** You may disclose to the police where you obtained the knife, but you don't have to.
- (C)** You may not disclose to the police where you obtained the knife, unless your client consents.

(e) If your client tells you that he has the stolen documents hidden in his car, may you examine those documents?

YES

NO

- (f) If you examine the documents, what do you do after you examine them?
- (A) You must give the stolen documents to the police.
 - (B) You may give the stolen documents to the police, but you don't have to.
 - (C) You may not give the stolen documents to the police, unless your client consents.

Hypothetical 13

You and another local lawyer agreed to represent a local man accused of murdering a teenage boy. Your client soon told you that he actually murdered several young women, and even described where he left their bodies. To make sure that your client was telling the truth, and to prepare your expected insanity defense, you and your colleague visited both places where your client said he buried the victims' bodies. Your colleague actually moved one of the bodies so he could take a picture of it, but you later destroyed the picture.

Your representation has caused some agonizing choices for you, because one young victim's father works in the courthouse where you practice, her family lives in the neighborhood where you live and they attend the same church you attend. The family has been pleading with the public for information about their missing daughter. Another victim's father even came to visit you, and asked whether you had any information about his daughter's whereabouts. Despite all of this, you and your colleague remained silent.

The emotional pressure has become nearly unbearable, and you constantly wonder about your ethical and moral obligations.

What do you do?

- (A) You must disclose where the victims are buried.
- (B) You may disclose where the victims are buried, but you don't have to.
- (C) You may not disclose where the victims are buried, unless your client consents.

Hypothetical 14

When you became a criminal defense lawyer, you worried about facing moral dilemmas that could test your loyalty to the profession's ethics rules -- and now you face just such a dilemma. Last year a local man hired you to represent him in what he anticipated to be manslaughter or even first-degree murder charges. Your client confessed to having stabbed to death someone he was attempting to rob, when the victim fought back. The charges never came, but you just learned that someone else had been wrongly convicted of the stabbing death -- and sentenced to ten to fifteen years in a medium security prison. You know that you could ask your client for his consent to disclose what you know about his guilt, but you also know that he would deny your request.

- (a) What do you do?
- (A) You must disclose your client's confession.
 - (B) You may disclose your client's confession, but you don't have to.
 - (C) You may not disclose your client's confession, unless your client consents.
- (b) Would the answer be different if the wrongly convicted criminal defendant was sentenced to death?

YES

NO