

ETHICS FOR EVERYONE

Charles Bennett

CONFIDENTIALITY

Supreme Court Rule (SCR) 20:1.6(a) A lawyer shall not reveal information relating to representation of a client unless...

Attorney Client Privilege

- Why have it?
- Encourage persons to seek legal advice and to be candid with their attorneys
- Extends to Entire office
- Extends to work product
- Exceptions
- Informed consent by client
- Disclosure impliedly authorized to carry out representation
 - reasonable
 - within the defense team
 - helpful info to further case, ie bond info
- Mandatory Crime/Fraud Exception -Reasonable Belief
 - Disclosure Necessary to prevent client from committing crime//fraud likely to result in death, great bodily harm, or substantial financial injury
 - Does not apply to admissions of past conduct
- To defend against claim against lawyer, ie malpractice, ineffective assistance of counsel, OLR discipline

Violating Attorney Client Confidentiality

- Telling the DA
- What about family?
- Who can you talk to?
- Can we tell people what is public knowledge about our clients such as who is representing?

Be careful!

- Public areas (office reception, jail,ct)
- Discussions in the holding cell before intake
- Keep files closed and out of public view
- Avoid client-specific conversations that visitors can overhear
- Talking to clients alone without family members, friends or alleged victims.
- Friends and relatives (I can't even tell my mom?)
- E-mail
- Facebook and social media
- The media-Reporters, Court tv, etc.

When in doubt, who do we ask?

- Other experienced staff
- Managers
- Administration

GIVING LEGAL ADVICE

- Attorneys
- Non-attorneys and the unauthorized practice of law
- What about advising when doing the e-form?
- What if the person is not eligible?
- What if the person is eligible? Can I advise right away or wait until appointed?
- What is Early Representation?
- Can I advise if there's a conflict?
- General advice as opposed to specific?
- Can you talk to a person who is represented by another attorney?
- Consent of the other lawyer?
- Representation at initial appearances?, co-defendants, witnesses, etc.

Dealing with Unrepresented persons

- Family of clients
- Can I tell a family member who the attorney is that we appointed?
- What if it's already on CCAP?
- Still need client consent
- Parents and guardians of juveniles
- What if co-defendant, witness, etc. comes in and asks for representation?
- When dealing with unrepresented person, you must identify yourself. (Talking to witnesses)
- What if they ask about legal consequences of changing a statement? (recantation)
- Can't give legal advice about taking the 5th, obstructing, perjury.

CO-DEFENDANTS

- Can one attorney represent more than one?
- Past?
- Present?
- Future?
- How about different attorneys from the office?
- Witnesses in the same case?
- Generally, no.
- What if the witness will testify for our client?
- What if we represented the witness a long time ago?
- Does it matter whether the file is open or closed?

Representing Someone you know

- Family member
- Neighbor
- Neighbor of someone in the office
- Alleged victim is a member of the office
- Defendant used to date the investigator's third cousin 7 years ago?
- What if the victim is a police officer, social worker, or clerk?

WHAT DO YOU DO IF YOU FIND A CONFLICT ON AN OPEN CASE?

- Talk to the attorney who has the case
- Talk to the other attorney (if within the office)
- Talk to your supervisor
- Talk to your client
- Move to withdraw (Only a Judge can allow an attorney to withdraw from a case)
- Be concise when withdrawing (Remember confidentiality)
- When in doubt, who do we ask?
- Other experienced staff
- Managers
- Administration

YOUR (AND YOUR OFFICE'S) ETHICAL DUTY TO UNPOPULAR CLIENTS

- How can you work for someone charged with _____?
- Media cases
- Homicides
- Sexual assaults
- Child Abuse
- Animal Cruelty
- What about racists, nazis, convicted sex offenders, etc?

COMMUNICATION

SCR 20:1.4

- A lawyer has a duty to inform and consult with client
- See your client in jail in a timely manner
- make appointments and send letters
- Answer your phone.
- Do not let your voice mailbox to become full
- Return your phone calls

CANDOR TOWARD THE TRIBUNAL

- a lawyer shall not knowingly make false statements of fact or law to the tribunal
- What does that mean?
- a lawyer may not offer evidence that the lawyer knows to be false testimony of

- witnesses or client
- What if somebody wants to lie on the stand?

WORKING AS A TEAM

Statements and information

- Phone calls from family.
- Phone calls from the press
- Phone calls from the alleged victim or other witnesses
- Phone calls from other lawyers
- Relay that information to other members on your team

Talking to Witnesses

- Do it yourself or have someone else do it
- What happens if they change the story?

SHARING INFORMATION

- Brainstorming
- Police reports, pictures, etc.
- Sharing client info

HELLLLLLLLLLLP!!!!!!????

- Ethical issues?
- Talk to an experienced attorney, talk to your supervisor, talk to Admin
- Ethics Hotline from the State Bar
- What do you do when you get a letter from the Office of Lawyer Regulation (OLR)? Talk to your supervisor and respond asap.
- How about an Ineffective Assistance of Counsel?
- Talk to your supervisor.
- You are not alone.
- We are a community.