

Professional Responsibility
and Ethics
in the
Global Legal Market

Course Summary

Kathleen Clark

Lawyer

Lawyer

Trusted by Client

Lawyer

Trusted by Client

Fiduciary

Trust

- Confidentiality (Privilege)
- Limit Conflicts of Interest

Lawyer's
obligations
depend on
client's legal context

Client's Legal Context

Client's Legal Context

- Criminal defendant
- Organization
- Fiduciary
- Government (prosecutor)

Government lawyer

Government
client
must seek
justice

Corporate
Compliance
Programs

Whistleblowing:

Context matters

Whistleblowing:



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Summary of Day 1

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Ethics Issues
from
Case Studies

Are lawyers different
from
other business people?

To whom does a lawyer owe duties?

To whom does a lawyer owe duties?

- Client
- Society
- Law Firm / Employer
- Self

Lawyer's Duties to a Client

Lawyer's Duties to a Client

- Loyalty
- Competence
- Candor

Lawyer's Duties to Society

- Confidentiality
- Exceptions to confidentiality
- Don't assist others violate the law

You're not alone!

Scandals
result in
legal ethics
reforms

Introduction to Day 2

- Know your client
- Conflicts of interest

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Summary of Day 2

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Know your client

Know your client

- Money laundering
- Conflicts of Interest

Conflicts of Interest

- European rule - “same matter”
- American rule

Conflicts of Interest

Client

must

give

“informed consent”

Communicate with Client

- Engagement letter
- Progress in case
- Disengagement letter

Mistakes

Mistakes

- Acknowledge
- Take responsibility

Confidentiality Duty

Basis for Confidentiality Duty

- contracts
- statutes / regulations
- common law fiduciary duty
- professional rules

Common law fiduciary duty

- If entrusted with asset / ability to influence
- Trusted party must not exploit asset

Professional rules - confidentiality

general duty of confidentiality MR 1.6

different confidentiality standards
for entity clients MR 1.13

additional fraud-related exception MR 4.1

Scope

scope
of
confidentiality
duty
varies
by
state

Model Rule 1.6

**“information relating to
representation of a client”**

e.g., Florida

Texas Rule 1.05

“privileged information”

or

“secrets”

relating to or furnished by client
acquired by lawyer during course of or
by reason of representing client

“secrets”

Information that

- client has requested be held inviolate or
- the disclosure would be
 - embarrassing to client
 - detrimental (harmful) to client

Non-Disclosure Agreements

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Summary of Day 2

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Summary of Day 3

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Conflicts of Interests

Between:

- 2 different clients
- lawyer & client

Duties toward Organizational Clients

Client = Organization, not agents MR 1.13(a)

Confidentiality & Providing Information to Client

Different types of clients

- Individuals v. Organizations
- Clients with duties to 3rd parties (e.g., a fiduciary)
- Private v. Public Sector

Model Rule 1.13

If a constituent commits

– violation of

- legal obligation to org.
- law imputed to org.

– likely to result in substantial injury to org.

– related to lawyer's representation of org.

Model Rule 1.13

- Shall refer matter to higher internal authority
- May disclose **externally** if:
 - Highest authority insists on / fails to address
 - Clear violation of law
 - Reasonably certain to result in
 - Substantial injury to organization

Problem Regarding Washington Bank & Trust

In-House Counsel

- Legal ethics
- Corporate ethics

Learning on 5 levels

1. Clinical – Skills
2. “Black Letter”
3. Doctrine / Policy
4. Theoretical
5. Ideological / Critical

No right answer?

Better

&

worse

answers

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