**LEGAL ETHICS**

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# Introduction

Legal ethics are a complex and intangible component of law, which cannot largely be put under a standardized set of practices. In this study, three distinct case studies are discussed from the perspective of the attorneys or the paralegal advisors. The study also encompasses the legal implications of the ethical decisions that the lawyers in the scenarios should adhere to. Moreover, the study takes into consideration the personal impact that the ethical decisions will have on the lives of the attorneys and the paralegals concerned in the scenarios.

# Assignment 1

**1. The attorney-client privilege of confidentiality and its clash with ethical integrity**

The concept of confidentiality in the relation between attorneys and their clients is a non-linear relationship, which has several ethical under layers. Based on the common laws of USA, the client-attorney privileges state that significant information shared between the client and attorneys should not be shared with other people. Sharing this information can lead to major issues with other groups involved within the court process learning about the strengths and weaknesses of the defendant.

**Possible exceptions in the clause of confidentiality**

The attorney-client privilege of confidentiality is effective in all circumstances irrespective of the court’s demand of a specific piece of information. However, there is an exception to this clause, which is known as the crime-fraud exception enacted by the Federal Rules of Evidence in USA. With respect to this clause, the attorney is not supposed to keep information confidential, which might lead to additional crimes or can even be stated as a cover-up of substantial evidences for a crime. This exception was first recognized in the United States in *Alexander v. U.S.*, 201 U.S. 117, 121 (1906). The *Alexander v. U.S.*, 201 U.S. 117, 121 (1906) case depicted violation of the Anti-Trust Law of 1890 which led to the development of decisions to include the crime-fraud exception in USA (Justia, 2019).

In regards to the case study, attorney Mcneill is in a dilemma between her ethical code of practice and the concept of confidentiality. As commented by Luban and Wendel (2017), in such situations, attorneys often choose to forgo their ethical call and go with the concept of confidentiality clause. However, as there is a clear clause of exception regarding a possible future crime, the attorney should have had a clear conscience about reporting the threat mentioned in Mary’s testimony. As the threat was a direct indication of a life harming situation, the attorney should have taken that into account while making an ethical call. One may argue that, Mary’s threat was out of anger and her involvement in Duncan’s assault is still a speculation. Even though, the guilt is not proven, with her experience in the field of crimes and frauds, the attorney should have deduced that Mary is a potential threat to Duncan’s life. Even if she kept her promise of confidentiality, she could have alerted the district judge that it would be unwise to put the two convicts in close proximity. In retrospect, this can also be argued that the attorney did not anticipate that Mary would be able to harm Duncan within the protected facility of a prison; however, she must be aware of the rate of prison crimes around the globe.

It can be stated that Duncan faces a serious threat of being affected negatively due to Mary’s vengeful attitude. Therefore, it can be suggested that the attorney should immediately inform the district judge before a major increase in problems. However, the attorney herself faces high opportunities for facing major legal implications of not following the clause of exception during the first incident.

**2. Sanctions for failing to disclose a threat**

The crime-fraud exception in the attorney-client privilege of confidentiality has often resulted in a situation, where the attorney’s have failed to reveal potential threats and life harming situations. As suggested by Mueller *et al.* (2018), the district and the high court judges have the liberty to evaluate the severity of the threat they chose to hide from the legal authorities and take disciplinary actions accordingly. In such scenarios, the attorneys also enjoy certain liberties such as they are not obligated to report a threat, instead they can choose to refrain from soliciting for that particular client further. However, if they choose to continue soliciting for the client causing or have the potential to cause harm to human wellbeing, they may be charged with impeachment or prison sentences based on the severity of the issue.

In case a client is potentially causing danger to a large amount of population through putting chemical waste in a river used for drinking water, the attorney is liable to report this to the judiciary. This issue is a direct infraction of the Occupational Safety and Health Act of 1970 in USA. Compliance with this act can have positive effects on the accomplishment of a positive and safe working environment and can also be effective in ensuring better health of people (Osha, 2019). Additionally, it can also help to deal with major issues relating to health and safety conditions of the local population that utilizes water from the river for daily activities.

Based on the case scenario, Mary was not potentially causing harm of any significantly high level. However, the life of a single individual regardless of being guilty or innocent is equally important in the eyes of law. Thus, if the attorney now reveals that Mary is a potential threat as she herself has confessed it in front of the attorney, she could be charged with hindering the process of justice. However, this issue will not be able stated as a criminal contempt as the attorney was not directly involved in the process of assaulting Duncan. The attorney will also be given a certain amount of benefit of doubt as Mary did not reveal her plan or consult with her regarding her future course of action. The attorney had deduced the threat from Mary’s anger outburst. Hence, in this case, the disciplinary actions against the attorney would be limited to a temporary suspension, if she chooses to reveal the threat before Mary can engage in more harmful practices.

# Assignment 2

**Scenario 1**

**Should Tracy tell Dyland Attorneys about this information?**

It is often the case the lawyers, especially freelancers have engaged in situations, where there is a clear conflict of interest between two of their clients. In this scenario, Tracy is helping the Dyland Attorneys for fighting a case for Mega constructions. As commented by Rohr (2017), lawyers are bound by the law of confidentiality for their client’s personal and professional information. It has also been evidenced that there are certain exceptions to that clause in case of crime and fraud. However, as Tracy is officially employed to research and produce materials, she is within her rights and responsibilities to investigate about the clients. Thus, she could inform the law firm of her findings regarding the construction company’s malpractices such as the history of shady and dangerous constructions and producing false contract evidences. However, it would be the prerogative of the law firm to decide upon the usage of that information as they could choose to still represent the construction company for earning profit.

**Should she let the Junior Society know?**

In cases of crime-fraud exceptions of the confidentiality clause, the lawyers are supposed to directly inform the judiciary of potential dangers. However, the lawyers are not obliged to inform the accuser or any other organization, who is concerned with the case. This would be direct breach of the ethical conduct of practices (Uslegal, 2019). Tracy’s dilemma is understandable as the Junior Society would have never hired the construction company if they would have known its ways of conducting business. As the organization is a charitable trust, there is also an ethical compulsion faced by Tracy. However, she should keep in mind that, Junior Society does not belong to any of her clients and thus, she should not reveal the information to them. Revealing the information can be stated as a direct violation of the rules and regulations of the attorney-client privilege. Violating these terms can lead to major legal backlashes for the attorney involved. Additionally, this situation does not involve a severe issue and thus the crime-fraud exception cannot be implemented.

**Should she let Brokaw, Terance, and Falcon know about the situation?**

Brokaw, Terance and Falcon are direct clients of Tracy, who has also filed a case against the Mega Construction Company. The construction company has stated that they are not responsible for their quality of work; however, there has been an injury, where a staircase, constructed by the same company collapsed on a person. In this situation, it has become an issue of insurance claiming. The information regarding the contract of not being responsible for quality of work was obtained by Mary from the case of Dyland Attorneys. Hence, passing on that information would be a breach of the confidentiality clause (Saltzburg, 2016). These confidentiality breaches can lead to major issues with the imposing of penalties or termination of the attorneys involved. However, as she is an independent researcher, she can convey her findings to these clients because she is directly hired by these clients. Being an independent researcher provides her an opportunity to present the findings individually.

**Which codes of ethics apply?**

The code of ethics is a set of principles based on which business functions are conducted. Based on the code of ethics of USA, attorneys are not obligated to protect information provided by the defendant in case that those values are going against the country’s legal values and customs (Uslegal, 2019). Thus, Tracy is within her rights if she chooses to reveal the situation to her clients or to the Junior Society. Even if Tracy is not legally obligated, she should keep in mind that, if she reveals the information to the Junior Society, she would lose one of her most potential clients, which she needs to sustain her life. However, presenting this information can indicate that she has a great regard for the enforcement of laws and the provision of better security conditions. Hence, it would be advisable to restrict to revealing the information to the Dyland Attorneys firm.

**Scenario 2**

In large law firms, it has often been evidenced that the senior lawyers are often busy with multiple clients and thus they hire paralegals, which assist them in performing research and making legal drafts. As suggested by Swenson (2018), these law firms often pressurise the paralegals to perform duties, which they are not qualified for or they are not supposed to. It can be considered a criminal offence in case a paralegal performs legal services based on the Legal Services Corporation 501 (c.3). These legal services are restricted to attorneys or solicitors under Reserved Legal Activities within the Legal Services Corporation (Lsc, 2019).

In the case of Mikala, she has recently joined the law firm of Rowe, Pierce, and Jopler. She has been burdened with responsibilities that she feels she is not accomplished to perform. As her seniors are busy in multiple cases, she is not getting enough time to discuss the research findings with her seniors before a prior meeting with the clients. This has also been mentioned as an ethical dilemma faced by Mikala. The major ethical conflict ignited in her was the incident of a deposition, where she was present with the client without any senior solicitor. The client was particularly under-confident and was asking for valuable legal advices, which she was not entitled to give.

This issue can be stated as highly unlawful and unethical and firm is liable for it. The firm introduced Mikala as an assistant lawyer, which was false. The client was paying for a legal solicitor and was thus entitled to have direct conversation. Based on the regulations postulated by the National Association of Legal Assistants, clients can have direct contact with the solicitors in case of vital legal depositions and consultations. As influenced by the studies of Rhode (2016), this incident, from the part of the firm can be considered as fraudulent practices and hence, the client will be within his rights if he chooses to sue the firm.

Mikala is in a situation, where her career would be hampered if decides to reveal her real position in the company to the client. It would also go against her contract of employment, which would have a clause of non-disclosure and can be treated as an issue of whistle blowing. Thus, Mikala is lawfully bound to her employer for not disclosing company decisions. However, she is also bound to the Members’ Code of Practice and Ethics through the National Association of Legal Assistants (Nala, 2019). This suggests that paralegals are not eligible and not permitted to solicit any client independently. Thus, Mikala would be well within her rights if she chooses to resign from her position in the company and decides to file a lawsuit against the company for their unlawful practices regarding soliciting. However, filing a lawsuit would not be a wise choice as the firm is a reputed and well-established law firm. This could hamper her future employability. However, communicating effectively with the members of the NALA can allow her to deal with the problem efficiently.

# Conclusion

Ethical legal practices often differ depending upon the severity of the issue and the position of the concerned legal practitioners. In the first scenario, the practitioners involved in the ethical issue are an attorney herself and thus is liable to face major consequences for unethical practices. However, there is often direct conflict between legal conduct and ethical conduct. It has been evidenced in the study that striking the right balance between the two is essential for practitioners. The second and third scenario refers to paralegal researchers, who are not entitled to provide direct solicitation. However, in case of legal research, there is often information that is sensitive and vital. Thus, paralegals need to understand the gravity of the situations they are dealing with keeping in mind the guidelines set for them.

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