

Professional Responsibility

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Problems: Confidentiality

1. In 1985, you represented A. A and B were accused of killing V. Prior to trial, A confessed to you that he (A) was the sole killer of V and that B was not involved. You believe A's confession was truthful. A's confession was not disclosed at trial. As a result, both A and B were convicted of murder and both were sentenced to life in prison. In 2002, A commits suicide in prison. In 2003, B moves for a new trial. You are convinced that B is innocent, so you wish to voluntarily testify at the B's hearing about your 1985 conversation with A in which A confessed to being the sole murderer. Should you do so?
2. Your long-time client, John Carter, recently came to your office to tell you that he expects to be sued by the person who bought his house. He had told the buyer that the house had a dry basement. Although the basement had never flooded in the five years that he had lived there, Carter had been told by a prior owner that the basement regularly flooded after a heavy rain. There was such a rain this year, and the buyer's furniture was destroyed.
3. Shortly before his death, you were able to interview the prior owner of the house, who told you what he had told Carter about the flooding. You have notes of that interview in which you comment on the former owner's likely credibility at trial. In addition, while at a party, Carter's banker let slip that Carter is in bad financial condition. The buyer has now filed suit against Carter.
 - a. The buyer has subpoenaed you to give a deposition. What information must you disclose?
 - b. The buyer has subpoenaed any documents you have related to the case. What must you disclose?
 - c. One of your college friends, who is about to loan money to Carter, has informally asked you about Carter's financial condition. You would like to help your college friend. What may you disclose?
 - d. If Carter is compelled to testify at trial, may he use the attorney-client privilege as a basis for refusing to disclose the conversation he had with the prior owner?

4. In a federal investigation of Defendant for tax fraud, the grand jury by subpoena requests a letter written January 15 by Defendant to her attorney in which she stated: "Please prepare a deed giving my ranch to University but, in order to get around the tax law, I want it back-dated to December 15." Must attorney produce the letter?
5. Attorney represents Client in a civil commitment proceeding. During a break in the proceeding, Client confidentially tells Attorney that he (Client) intends to commit suicide at the next break. Attorney, who believes Client will carry out the threat, would like to inform the appropriate authorities. May Attorney do so?
6. On June 1, Owner consults Attorney about a motor vehicle collision resulting in a suit by P against Owner. Attorney calls E, an expert he has hired to testify in this case, into the conference to make notes of what is said, and those present discuss the facts of the collision. A few weeks later, Attorney is subpoenaed by the grand jury and asked to disclose the substance of her June 1 conversation with Owner. Must Attorney disclose such information?
7. H, newly elected mayor of Hollywood, was charged with tax fraud. The District Attorney served a subpoena directing G, H's attorney, to produce some private bank records that H had delivered to G. Must G produce the records?

8. An attorney represents a company that produces chemical products. Some of the waste products that the company manufactures are highly toxic and are likely to cause serious immediate physical harm if disposed of improperly. The president of the company recently informed the attorney that a new employee mistakenly disposed of the waste products in the ground behind the company plant, an area that is part of the source of the city's water supply. The attorney advised the president that the company could be liable for negligence in lawsuits brought by any persons harmed by the waste products. As a result, the attorney advised the president to immediately report the problem to city authorities. Fearful of adverse publicity, the president declined to do so. The attorney further advised the president that she believed the president's decision was immoral. The president continued to decline to report the matter. The attorney then informed the president that she was withdrawing from the representation and would inform the authorities herself. Immediately after withdrawing, the attorney reported the company's conduct to the authorities. Is the attorney subject to discipline?
- Yes, because the information was given to the attorney in confidence and may not be revealed without the client's consent.
 - Yes, unless the company's conduct was criminal.
 - No, because the attorney reasonably believed that the company's disposal of the waste products was likely to cause serious physical harm.
 - No, because the attorney reasonably believed that the president was pursuing an imprudent course of conduct.
9. Attorney represented Client in a large real estate deal. Buyer, who purchased the real estate from Client, has filed suit against both Client and Attorney, alleging fraud. Attorney had advised Client by letter against making the statements relied upon by Buyer as the basis of Buyer's claim. In her defense to Buyer's suit, Attorney wishes to reveal confidential information imparted to Attorney by Client that will be favorable to Attorney but damaging to Client. May Attorney do so?
10. Client, who is a fugitive from justice, is seeking an attorney to represent him. Client visits Lawyer for a free initial consultation. During the meeting, Client admits guilt. At the end of the meeting, however, Client decides not to hire Lawyer.
- Is Lawyer required or allowed to disclose Client's admission of guilt?
 - What if, unbeknownst to Client, Lawyer had never passed the bar exam and thus was not a licensed attorney?

11. John, who is employed by ABC as a truck driver, was involved in an accident last month. The other driver recently sued both ABC and John. Attorney, who represents ABC Corp., but not John, meets separately with both John and ABC's President, as part of her case preparation. Which of the communications are covered by the attorney-client privilege
- a. Attorney's communications with the president
 - b. Attorney's communications with John
 - c. Both
 - d. Neither