Concept of attorney-client confidentiality and conflicts of interest essay sample...

Inherent in the attorney-client privilege concept, is that everyone deserves to speak freely, without fear of disclosure later. This ensures that a client can communicate openly so that the attorney operates from a position of informed counsel, and thus protects the rights and well-being of the client.

Any information revealed or shared between an attorney and a client is confidential, and cannot be used to incriminate the client. Absolutes being notoriously in need of loopholes, this confidentiality requirement has exceptions. One, is that if the information shared concerns ongoing or future crimes, the attorney is not bound to the restrictions of privilege, and the attorney is then ethically obligated to report the information to proper authorities (Hill, 2006).

The first conflict of interest resides with the defense attorney, Ally McNeill, who is representing a woman charged with a serious crime, while her cohort becomes a witness for the prosecution; the prosecutor happens to have a dating relationship with McNeill. This would suggest that McNeill could not represent her client’s best interests, due to a natural inclination to show favoritism to the interests of her boyfriend, the prosecutor.

The second conflict of interest is with myself, as paralegal to Ally McNeill. As an employee of the defense attorney, I am also bound by attorney client privilege, and to tell the prosecutor of the threat made by Thelma is a breach of this (Essortment, 2001).

Yet, this break in confidentiality may be considered acceptable under the crime-fraud exception, since the information is regarding an ongoing illegal activity, and there is a threat of harm which would entail another illegal

activity. By making threats toward Louise for agreeing to testify against her, Thelma presents herself as capable of intention to commit an illegal activity.

Perhaps unclear if the threat was sincere at first, McNeill might not have been culpable. But after Louise was beaten and there were accusations that the beating was a contracted attack by Thelma, the circumstantial evidence was sufficient to negate attorney-client confidentiality, and in fact, the negligence to report this threat to proper authorities, would be considered improper conduct on the part of the defense attorney. The prosecutor, or myself, as paralegal, should notify the proper authorities. According to the Jonestown Journal of Legal Ethics,

“ Despite the importance of the privilege in ensuring proper and competent legal representation, the privilege has been criticized as an impediment to the truth-seeking function of the judicial system. For this reason, courts have long recognized the need to terminate the privilege in certain circumstances in which the protection of the privilege would cause more harm than good by allowing clients to consult with attorneys in order to more effectively commit crimes or frauds. The crime-fraud exception was adopted as a way to balance the need for attorney-client confidentiality with the need to prevent attorneys from knowingly or innocently aiding their clients in committing crimes or frauds (Daily, 2003).

The rules of conduct may be overruled if the confidentiality precludes “ committing a criminal act that. . . is likely to result in imminent death or substantial bodily harm” (American Legal Ethics Library, 1983).

Another conflict of interest rests with the prosecutor, who might not be as enthusiastic about protecting his own client, for fear of endangering his current dating relationship with the defense attorney. As this doesn't seem the case, it might be moot, but it would still be considered an ethical *faux pax* , if not a potential conflict of interest.

Additionally, the request for disclosure of the interview with the defendant, Thelma, would be inappropriate under the " opinion work product doctrine" (Thornhill, 2001), except in very rare cases where overwhelming proof or exception would be offered. The defense attorney can, then, be sanctioned for not reporting the knowledge of this particular threat, since it is considered an exception to the attorney-client privilege.

Due to the ambiguous nature of the situation, and the necessity of a judgment call on the part of defense, the sanctions would likely not be as severe as disbarment, suspension, or probation; they might include one of the lesser sanctions such as reprimand, or admonition, depending on the discretion of the governing body. Aggravating or mitigating factors would have to be considered, as well as the defense attorney's obligation being predicated on the interests of her client, while potential danger might or might not exist for another party whose welfare might or might not depend on her decision to make assumptions about intent on the part of her client.

Had I, as paralegal, believed that the outburst by Thelma was indeed an emotional response, not meant sincerely, I would have allowed the defense attorney to make her own decisions.

If I believed that Louis's life or safety was in danger from Thelma, I would have reported it at that point. Regardless, after the information of the battery on Louise, I would have felt obligated to speak to McNeill about claiming exception to the attorney-client privilege, and reporting the threats to the proper authorities.

If McNeill did not claim the exception, I would have reported it myself, as I would not only be held culpable, but due to personal ethics, I could not have ignored the implications for those involved. If the matter was broth to light in this way, I firmly believe that if Thelma was not responsible for the battery on Louise, she would be proved innocent of any wrongdoing during the ensuing investigation.

References

American Legal Ethics Library. (2006). *Model Rules of Professional Conduct,* Rule 1. 6 1983. Retrieved on October 9, 2006 from http://www. law. cornell. edu/ethics/aba/

Daily, Auburn K, Thornquist, Britta S. (2003). *Has the exception outgrown the privilege?: Exploring the application of the crime-fraud exception to the attorney-client privilege.* The Jonestown Journal of Legal Ethics. Retrieved on October 9, 2006 from http://www. findarticles. com/p/articles/mi_qa3975/is_200307/ai_n9249686

Essortment. (2002). *What is Attorney-Client Privilege?* Retrieved on October 9, 2006 from http://co. essortment. com/attorney client_ritc. htm

Hill, Gerald N. and Hill, Kathleen T. (2006). *Attorney Client Privilege* . Legal Dictionary. Retrieved on October 9, 2006 from http://legal-dictionary. thefreedictionary. com/attorney-client+privilege

Thornhill, M., Barrett, J., Levy, M., Friedman, S, and Krakoff, D. (2001). *Peering into Lawyers Files – Prosecutors' Use of the Crime or Fraud Exception* . American Bar Association. Retrieved on October 9, 2006 from http://www. abanet. org/environ/committees /environcrimes/thornhill. pdf