

1. Introduction: Read (1) Rotunda: Preface and pages 1-18; (2) Model Rules: Preamble, Scope, and Rule 1.0; (3) Clark, "The Legacy of Watergate," 51 Hastings Law Journal 573 (1999).
2. Confidentiality: Read (1) Rotunda: pages 77-136; Model Rule 1.6.

Questions and Problems on Confidentiality

1. How is the ethical obligation of confidentiality different from the attorney-client evidentiary privilege?
2. Why reasons support a very broad confidentiality rule that offers the most protection against disclosure? Do you agree that the broadest rule is the best rule?
3. Lisa Lawyer represented Coach Dodge, the head football coach at State University, in a paternity matter where Dodge was alleged to have fathered a child. Dodge denied any involvement with the child's mother. Lisa was at the airport when she received a call on her cell phone from her secretary, Bob. Bob told Lisa that results of a blood test had just come in to the office, and he had opened the envelope with the results. Lisa asked, "Well, what were they." Bob told Lisa, "the results ..., " but then a boarding announcement was made making it very difficult for Lisa to hear Bob. Lisa said to Bob, "Can't hear you. I'll call back soon." Lisa then lined up to board her Southwest flight. She called Bob, and said, "Did I hear you say that the paternity test results were bad for Coach Dodge. Did they say he is the father." When Bob responded yes, Lisa responded, "Darn," or something similar. Lisa then emailed Coach Dodge at his university email address. The subject line of the email was "Paternity test results bad for you." She then typed as the message, "We need to talk. We need to settle this before word gets out. Getting on plane now, can't talk until tonight." She cc'd Bob on this email. What ethical issues involving confidentiality are involved in this problem?
4. Sally Sloan came to Lisa Lawyer's law office and met with Lisa. Sally told Lisa that she had killed her cousin, Rita Roxy, two weeks ago and had placed the body in a trash dumpster outside of a Whataburger. Sally also told Lisa that since her life was probably already ruined by killing Rita, she had decided to kill her former husband's lawyer, Cliff Dott, because she wanted revenge after losing custody of her son. Lisa is a good friend of Cliff. What are Lisa's ethical obligations involving confidentiality?
5. Jane Joker came to Lisa Lawyer's law office and met with Lisa. Jane told Lisa that she planned to steal a dress from Walmart the following day as part of a scheme in which she would switch labels on the dress, and sell the dress as an original Versace design to Veronica Vain who was a big fan of Versace. What are Lisa's ethical obligations involving confidentiality?
6. Phil Farma is a pharmacist who owns his own pharmacy. Phil came to Lisa Lawyer's law office and met with Lisa. Phil told Lisa that in order to recover on an insurance policy that he had for his business, he had falsely claimed that his store had been burglarized and that thousands of dollars of drugs had been stolen. Phil arranged the scene to indicate a burglary, and the police seemed convinced. Phil dumped all the drugs into a small lake in a local park. Lisa knows that

this lake is regularly used by small children to splash around and learn to swim. In fact, Lisa takes her two year old son each Sunday on a play date to this lake. What are Lisa's ethical obligations involving confidentiality?

7. Cathy Katt hired Lisa Lawyer to help Cathy set up her new business venture to sell a new medical device. At Cathy's request, Lisa prepared various documents that were presented to potential investors in order to fund the venture. Cathy was able to raise \$5 million in equity and \$2 million in loans. Lisa then learned that Cathy's medical device was a scam, and that Cathy was planning to use the invested funds not to start a business, but to enable Cathy to flee the United States and live in Malta. What are Lisa's ethical obligations involving confidentiality?
8. Debbie Grant was injured in a workplace accident. Her injuries were not immediately life threatening, but they seriously impacted on her quality of life and were very embarrassing. Debbie met with Lisa Lawyer, and although Debbie was first very hesitant to speak about her injuries, she opened up to Lisa after Lisa told her that "everything you tell me is completely confidential." Debbie retained Lisa to represent her against her employer on a 30% contingency fee basis. Lisa then met with Jill Jazz, an associate at Lisa's firm. Lisa had a concern about the statute of limitations and wanted Jill to do some legal research on this issue. Lisa told Jill about Debbie's injuries "to provide background and context." Jill completed the research and informed Lisa that the case was not time barred. Lisa then dictated to her secretary, Bob, a demand letter to be sent to the employer's liability insurance carrier in which Lisa offered to settle the case for \$100,000. The letter set forth all Debbie's injuries. Bob typed the letter, and it was sent to Tom Vicks, the claims representative for the insurance company who was handling the case. Tom reviewed the letter, and sent a counteroffer of \$20,000. In his response, Tom wrote, "I suggest you and your client consider what your client will have to go through in open court discussing those injuries before you decide not to accept my offer." Discuss the ethical obligations regarding confidentiality in this problem.
9. Michael Cohen, an attorney for Donald Trump, was being investigated by the U.S. Attorney's Office for several crimes, including tax evasion. Bank records indicated that Cohen deposited a check for \$130,000 written from Trump's personal checking account with the notation "for legal services rendered." Cohen did not report this amount as income on his tax return. The prosecutors alleged that Cohen willfully failed to declare income to avoid paying taxes. Cohen disclosed to the prosecutor that this money was not for legal services rendered, and thus was not income that needed to be reported, because the check was reimbursement by Trump for money Cohen had paid out of his own account to Stormy Daniels, a movie actress who alleged an affair with Trump. Trump tweeted, "Attorney-client privilege under attack. Cohen (who I hardly know) unethically disclosed." What confidentiality issues are presented here?
10. Lisa Lawyer represented Paul Manafort in a criminal case alleging that Manafort had laundered money through several foreign banks. Manafort provided Lisa with a list of the foreign bank accounts he controlled. Two accounts in Malta were held by Manafort under fake names. Manafort reached a plea deal which resolved the criminal case. When Lisa sent Manafort her bill for legal services rendered, Manafort replied that he had no money to pay her. Can Lisa attempt to seize funds from the Malta accounts in the fake names by disclosing that the money in the accounts belongs to Manafort?

11. Assume the same facts as in #10, but instead of resolving the case in a plea deal, Manafort decided to go to trial. At the time Manafort retained Lisa Lawyer, she was a partner in Lawyer and Baker. Shortly before trial, Lisa was contacted by Vivian Vance, managing partner of the law firm Vance and Dance, who offered Lisa a position at Vance and Dance. While discussing the possible change of firms, Lisa told Vivian that "I represent Paul Manafort in a money laundering case involving banks in Malta and accounts with fake names. Does your firm represent any banks in Malta?" Did Lisa act properly?