

HARVARD LAW SCHOOL

CLINICAL CONFIDENTIALITY POLICY

Purpose

This policy defines the confidentiality and disclosure practices at HLS clinics to ensure effective representation of clients and compliance with legal ethics guidelines. Given the frequent turnover of students, transfer of cases between students and supervisors, extensive communication among students, clients and supervisors, and the challenge of limited physical space, clinics must have put in place systems to ensure compliance with legal ethics guidelines. This policy is specifically intended to address the scenarios involving students and supervisors that pose the most common threats to the confidentiality of cases and clients in clinical representation at Harvard Law School.

This policy is drafted in the most generic form possible to provide wide application to all programs and instances of clinical practice by students at Harvard Law. Each clinic should adopt these policies, adding specifics that pertain to its individual clinic's circumstances.

Persons affected

All HLS staff, temporary staff, students, co-counsel, and volunteers who engage in any kind of official or unofficial work within the clinical program.

Policy statement

Confidentiality is the foundation of trust between the lawyer and the client. Students and supervisors shall abide by the ABA Model Rules of Professional Conduct and the rules of any jurisdiction in which the clinic practices.

Definitions

Confidential information may be, depending on the client's perspective and situation, any information relating to the representation of a client or case. With the exception of information that is already a matter of public record, confidential information could include anything that would make the case or client identifiable to anyone not involved in the client's representation. Some information is public record, but if obtained in the course of representation must be considered confidential. HLS staff, temporary staff, students and volunteers shall not disclose information (including, but not limited to case strategy, privileged communications, facts of the case, and any agreements) to anyone unless the client gives express permission or the disclosure is appropriate to further the goals of the representation.

Clients may consent to disclosure of confidential information either orally or in writing. Confidentiality extends beyond the period of representation in perpetuity.

High Risk Confidential Information (HRCI) includes a person's name in conjunction with the person's Social Security, credit or debit card, individual financial account, driver's license, state ID, or passport number, or a name in conjunction with biometric information about the named individual. High-risk confidential information also includes personally identifiable medical information.

Metadata refers to the embedded stratum of data in electronic files that may include such information as who authored a document, when it was created, what software was used, any comments embedded within the content, and a record of changes made to the document that are still discernable through generally available technology within an electronic document.

Individuals involved in representation include any staff, students, faculty, interns, co-counsel, outside consultants or experts, volunteers or temporary staff working with the client on their case. It also includes clinical staff and students who share work space with other clinics.

Responsibilities *(From April 2, 2012 forward)*

To ensure confidentiality and to abide by the **ABA Model Rules of Professional Conduct** and the rules of any jurisdiction in which each clinic practices, all individuals involved in representation must agree to the following statements.

If anyone is uncertain or unclear about any aspect of the confidentiality policy, it is his responsibility to consult with a supervising attorney.

1. Individuals involved in representation must not share any case or client information that reveals legal strategy, identifiable facts, or other information critical to the representation of a client with anyone outside the clinic without prior authorization from the supervisor. Individuals involved in representation must not disclose confidential information in any form, including orally, via email, through social media, over the phone, or in written or faxed communication, to their friends, family, roommates, or others unless such persons are involved in representation of the client. This includes, but is not limited to, high risk confidential information (HRCI).
2. Individuals involved in representation must not disclose confidential information outside of the team involved in representation unless authorized by the supervisor or the client consents to the disclosure orally or in writing. Students and staff must explain fully to the client in writing what information will be disclosed and to whom prior to obtaining the client's consent and must ensure that the client understands the potential ramifications of the disclosure. Students must consult with supervisors before making disclosures authorized by a client.
3. Individuals involved in representation must not discuss confidential information in a location where someone not involved in the client's representation could overhear

them. To do so would automatically constitute a breach of confidentiality. Examples of locations in which conversations could potentially violate confidentiality include lounges, dining commons, elevators, restrooms, public transportation such as the subway or bus, courthouses, or other public places. In clinical work space shared by two or more HLS clinics, individuals must maintain as confidential the information seen or heard belonging to the other clinic or the other clinic's clients. In such cases, it is recognized that the prohibition against discussion of information is impractical.

4. Individuals involved in representation must not leave written confidential information such as paper documents, computer screens or PDAs open and unattended in shared spaces, including the individual's place of residence. Individuals must not leave written information in fax machines, copiers, or printer trays in public spaces. Mail should be delivered to a secure area. In clinical work space shared by two or more HLS clinics, individuals must maintain as confidential the information seen or heard belonging to the other clinic or the other clinic's clients.
5. Individuals involved in representation must confer with their supervising attorney before contacting former clinical students. As a general rule, it is acceptable for current students and staff to ask former students for information about past representation if current students and staff have the same clients. It is not acceptable for current students to share updates on the status of a case with former students unless the client gives explicit consent.
6. Individuals involved in representation must review metadata and scrub data where appropriate before transmitting electronic files outside of the clinic.
7. Individuals involved in representation who receive a confidential communication not intended for them and to which they are not a party must immediately report it to their supervisor. Their supervisor will determine how to proceed.
8. Individuals involved in representation performing clinical work must abide by the Harvard Law School clinical email policy.
9. Students placed at externship organizations or firms must abide by the security and confidentiality rules of those organizations or firms. If there are no explicit confidentiality rules or policies, they will abide by the policies set forth in this document.
10. When individuals involved in representation are no longer working on a case, or are no longer involved in the representation, they must continue to preserve confidentiality, extending in perpetuity after the case itself has been closed or terminated. This rule applies to writing samples provided to employers and discussions in job interviews and career advising. All work products from clinical cases belong to the clinic; any sample of work from a case requires the permission of the supervisor on how it can be used

outside of clinical work. The duty of confidentiality prohibits submission of any names (including clients, opposing parties) to future employers.

What to Do If a Breach Occurs

If a breach of confidentiality occurs, the onus is upon the student or other individual to bring it to the supervisor's attention. The supervisor is then responsible for advising how to rectify the breach and/or for determining whether the Office of Clinical and Pro Bono Programs and/or the Harvard University Office of General Counsel needs to be made aware of the breach. If the student is no longer in the clinic, or if the student's supervisor has left, the student should bring the breach to the attention of the current director of the clinic.

Consequences of Violating Policy

Any student, volunteer, or other individual who is not an HLS staff member who violates this confidentiality policy may be forced to withdraw from the clinic, banned from participating in future clinical programs or student organizations, and/or be taken to the Administrative Board.

Any staff member or attorney who violates this confidentiality policy may face disciplinary sanctions with the clinic or the bar.

Related Policies

[HLS Clinical Email Policy](#)

[HLS Clinical Conflicts Policy](#)

[ABA Model Rules of Professional Conduct](#)

[Massachusetts Rules of Professional Conduct](#)

[American Bar Association Metadata Ethics Opinions Around the U.S.](#)