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## Hypothetical – Legal Ethics For Government Lawyers

1. As an attorney for a federal agency, your responsibilities include drafting, reviewing and implementing policies and programs that further the agency’s legislative mandate. You conclude that one of the policies being implemented by your Agency does not promote the goals of the Agency and in fact may violate those goals and the public welfare. You write an impassioned memo setting forth the legal grounds for your opposition to the policy. Your supervisor disagrees and is determined to push the policy through.
  - a. *What are your obligations?*
  - b. *What if the policy directly conflicts with judicial interpretations of the Agency’s enabling statute?*
  - c. *In a subsequent lawsuit challenging the policy, is your memo discoverable by the plaintiffs?*
2. In your conversation with your superior he lets slip that his father-in-law’s business will benefit from the policy change.
  - a. *Are you required to report this information to anyone?*
  - b. *Does it matter whether your superior is an attorney or not?*
3. After leaving the Agency for a career in academia, you publish an article in your University’s law review criticizing the policy, citing many of the same reasons in your original memo.
  - a. *Have you violated any ethics rules by publishing the article?*
  - b. *Can you serve as an expert on behalf of the plaintiffs in the lawsuit?*

4. As an attorney with your state's transportation agency, you are involved with a project to upgrade the state's high speed rail system. In the course of negotiating a contract with one of the contractors on the project, you notice that, in a recent exchange of drafts, the contractor's attorney inadvertently deleted an indemnification provision that was supposed to protect his client.
  - a. *Are you obligated to point out the mistake? Are you permitted to do so?*
  - b. *You decide to point out the mistake to the lawyer, and he is so impressed with your integrity and brilliance that he says "if you ever decide to go into private practice, I would be interested in having you interview at my firm." In fact, you have been considering a move and think the firm would be a good fit for you, once your work on the project is done. What should you do?*
  
5. You are a Deputy County Attorney for Wisteria County, New York. Under local law, your office is required to provide legal representation to Wisteria County and all of its employees in connection with civil matters arising from their official duties and responsibilities. You are assigned to defend both the County and a Wisteria County police officer, Officer Impetuoso, in a lawsuit filed by a local resident, Owen Handsy. Handsy claims that he attended at an office Christmas party where Officer Impetuoso's wife (a co-worker) was also present. After Ms. Impetuoso became tipsy, Handsy offered to drive her home. After driving for several miles, Handsy stopped the car and made a pass at Officer Impetuoso's wife. As it happened, Officer Impetuoso was patrolling the neighborhood and witnessed the incident. He dragged Handsy out of the car and the men came to blows. Handsy was arrested and detained overnight, but the charges are subsequently dropped. Handsy is suing the County and Officer Impetuoso for \$50 million alleging violations of 42 U.S.C. Section 1983.
  - a. *Can you represent both Officer Impetuoso and the County in the lawsuit?*
  - b. *What, if anything, should you advise Officer Impetuoso about the confidentiality of your communications with him?*
  
6. During your representation of Officer Impetuoso, you have developed a strong rapport with him and he has grown to trust you. One day, you receive an e-mail from him telling you that he is worried sick because for the past year he has been involved in a bribery and extortion scheme at the police department. You are aware that your office is part of a joint task force with the District Attorney's office investigating a bribery and extortion ring in the police department, although you are not a member of the task force.
  - a. *What advice should you (or can you) give Officer Impetuoso?*
  - b. *Are you permitted to disclose his confession to the District Attorney's office? Are you required to do so?*

- c. *What, if anything, might you have done at the outset of the representation to avoid this situation?*
7. After you leave the County Attorney's office for private practice, Officer Impetuoso contacts you. He is now being prosecuted in the bribery and extortion case and he wants you to defend him.
- a. *Can you represent Officer Impetuoso? If not, can another attorney in your firm represent him and under what conditions?*
- b. *Assume you decide to represent Officer Impetuoso and you realize that some information you learned while at the County Attorney's office would be helpful to Officer Impetuoso's defense. Can you disclose that information to Officer Impetuoso? Are you obligated to disclose it? Can you continue to represent him?*