

6)

Possible ethical violations committed by Len (L):

Duty of Loyalty: avoid actual and potential conflicts of interest

Under both the ABA rules, an attorney owes a duty of loyalty to his/her clients to not engage in actual conflicts of interests (COI) or potential COIs that may arise due to personal interests and associations.

Here, ABC Development Corp hired L to represent ABC in challenging a statute enacted that requires all new residential developments contain a certain percentage of low-income housing. However, L is a member of Equal (E), a nonprofit organization and helped enact the statute at issue. L does not represent E, however he has personal interests at stake. This shows an actual COI if L takes on the representation, as he as agreed to do.

Instead, L should have disclosed his involvement with the enactment of the statute and his interests in the organization, and not taken on ABC as a client.

Thus, E violated his duty of loyalty to ABC.

Duty to Communicate / Client's Informed Decisions

Under both the ABA and CA rules, a lawyer has a duty to communicate and disclose all necessary facts that will allow client to make informed decisions that will affect his/her case.

Here, L did not disclose his personal interest and involvement with E, and his involvement with the statute specifically. Even if he did not represent E, he still had a duty to disclose such information to ABC so ABC could make an informed decision on whether to hire L to represent ABC, or not.

Thus, L violated his duty to communicate and fully disclose crucial information of

such personal interests and COIs.

Duty of Competence: adequate representation

Under the ABA rules, a lawyer must have the legal skill and knowledge reasonably necessary to perform legal services required for adequate representation of his/her client(s).

Here, L seems to have the legal skill and knowledge to represent ABC, especially since he helped enact the statute that ABC wants to challenge. However, L does not personally agree with ABC's objective, when he takes on the representation, which shows he will not be able to provide ABC adequate representation. Thus, L violated duty of competence under the ABA.

Under the CA rules, a lawyer must not knowingly, recklessly, or repeatedly fail to perform legal services necessary for adequate representation.

Here, in addition to the facts above, L also secretly hopes that ABC is not successful in its lawsuit, which shows that he may act in an intention, reckless, and repeatedly cause ABC's case to fail or fall short. Thus, L will be found to have violated the CA duty of competence, too.

Zealous Advocate / Must Not Self-Serve

Under both the ABA and CA rules, a lawyer must zealously advocate for his/her clients. This means that no personal interests may conflict and the lawyer must take all necessary steps to ensure the clients best interests come first. In addition, a lawyer may not self-deal or self-serve his own interests before the client's interest.

Here, similarly to the facts above, L is unable to zealously advocate for ABC because he does not personally agree with ABC's objective, which is not

necessary of a L; there is no requirement that the L must agree with the C's views or decisions, however, this will prevent L from zealously advocating since it is his personal interest and hours of work that come into conflict with ABC's best interest.

Moreover, L believed the statute is a good law, which shows direct conflict of interests of the L and ABC and that he is likely to put his interests before ABC's interest in challenging the statute. Additionally, L secretly hopes that ABC is not successful in its lawsuit, which single-handly shows L's intent not to zealously advocate for ABC.

Therefore, L violated his ethical duty to zealously advocate for his client and not self-serve his own interests.

Duty of Candor and Truthfulness

Under both the ABA and CA rules, a lawyer owes a duty not only to his/her client, but also to courts, opposing counsel, and third parties to act in an honest manner, to not provide false or misleading facts or statements.

Here, L was not honest to ABC, but also he is not misleading E since he is now representing ABC who is trying to strike down the statute. These facts do not show L to be acting in an honest manner, providing full disclosure, and in fact, misleading either his client, the opposing party, the E organization, or potentially all parties.

Therefore, L has violated this duty.

Duty of Confidentiality

Under the both the ABA and CA rules, a lawyer may not reveal any communications made during the attorney-client relationship. An exception under the ABA rules are such a lawyer may reveal if there the lawyer reasonably

believes there is a risk of substantial financial harm or substantial bodily injury or death.

Here, L was informed by Pat, ABC's President, that he has filed false reports with a State Agency regarding disposal of non-hazardous waste, and plans to file another false report next month. L has a duty to reveal this information necessary in order to prevent the substantial civil fine that ABC will incur which will result from P filing a false report as ABC's employee. This falls within the substantial financial harm exception. Moreover, L must reveal this information in order to prevent any possible substantial bodily injury or death from the hazardous waste that is actually being dumped, instead of the *non-hazardous* waste that P is filing false reports about. This hazardous waste may have potential of causing substantial injury or death, and thus L must reveal this information in order to prevent such from occurring.

However, L has not taken any action with respect to this information P shared on the grounds of the financial harm nor the bodily injury/death.

Thus, he has violated this duty under the ABA rules.

Under the CA exceptions to the GR of confidentiality, a lawyer may reveal to the extent necessary to prevent substantial bodily injury or death, however, must first (1) try to convince the client to not take the actions that will cause this result, and (2) disclose that said information may be revealed under these circumstances.

Here, all the facts above are applicable, which show that L has a duty to try to convince P from filing another false report and disclosing that he may reveal the information P shared with him in order to prevent the harmful results. However, since L has not taken any action. He is also found to violate the CA rules.

Thus, L violated the CA rules of confidentiality as well.

Duty to Report Up an Organization

Under the ABA rules, a lawyer must report up to the highest level of an organization or corporation (board of directors) regarding any harmful actions that the employees are making or might make that go against the corporation's best interest. If the board of directors does not take preventable or reasonable action, the lawyer may reveal this information outside the organization.

Here, P filing the false reports will cause financial harm if the ABC incurs a substantial civil fine. Additionally, the false reports may be causing bodily harm or causing death to the community members. Thus, L must report up to the BOD, and if P is the highest level, then L has a duty to report outside of the organization to prevent such harm. He has not does so.

Therefore, he has violated this duty.

Under the CA rules, a lawyer may **never** reveal confidential information outside of an organization even if the BOD fails to take necessary action. Here, L may not report outside of the organization, however if P is the highest level of the organization, then L must terminate his representation. Thus, L has violated this duty under the CA rules.

Duty to Terminate Representation

A lawyer has a duty to withdrawal and terminate representation when he cannot provide adequate representation or if the client is committing a crime under the L's representation and services. Here, L not ithdrawn his representation of ABC. Thus, he has violated terminate his representation of ABC for the reasons discussed above.

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END OF EXAM