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1. Should the court compel L to testify about Wendy told him?

Discovery

Under California rules, all evidence that is real and relevant is permissible to be discovered unless it is privileged.

Here, the information of what W told L would be relevant to the matter because it is relevant to the ultimate issue of the case, namely that D did or did not have a propensity to defraud customers.

Thus, the evidence is relevant.

Motion to Compel

A motion to compel discovery is used when one party seeks discoverable information from the opposing party and the party has not disclosed it. A court will grant a motion to compel only if the party can show that (1) the information is relevant and (2) that the party would not be able to obtain the information without undue burden.

Here, C will argue that the information is relevant to her case regarding defrauding her. As analyzed above, the information would be relevant. However, C must also show that there is no way to obtain this information without causing undue burden on her. L can argue that the information she requested is privileged as part of the duty of confidentiality. Further, C would be able to obtain the information through other reasonable means such as a deposition, or simply calling W to the stand to have her testify as to her knowledge of D's past conduct.

Thus, C will be able to obtain the information through other reasonable discovery methods without forcing L to testify .

Attorney Client Privilege

The attorney client privilege protects communications made between client and attorney for the purpose of legal representation. This privilege extends out to third parties including (1) employees working for the attorney and (2) investigators. _

Information that is privileged is not discoverable unless the client waives the privilege. Under CA rules, the duty of confidentiality last up until the client has died.

Here, the information that W told L was acquired during the representation of D. L has a duty to keep all information regarding the representation of a client confidential. However, under CA rules, the duty of confidentiality lasts only up until the death of the client. This would mean that L cannot use the attorney-client privilege to deny C the information.

Thus, the information sought by C is privileged and therefore should not be discoverable.

2. Should the court compel L to produce his memo:

a. What W told him?

Discovery

See rule above.

The information that C is seeking is relevant to the case because it contains notes on what W told L about D's past conduct. However, it is privileged under the work product doctrine.

Motion to Compel

See rule above.

Similar to above, the information contained in the memo would be discoverable through other means of discovery without having to compel the information. C can simply call W as a witness to state what she knows about D.

Thus, C could find other means to discover this information without a motion to compel.

Attorney Client Privilege

See rule above.

Here, L is attempting to deny the memorandum he made regarding W's interview based on the attorney client privilege. However, the attorney client privilege only extends to information shared between the client and the attorney, that was made for the purpose of legal representation. Here, W is not the client of D, she is someone who L has interviewed.

Thus, because W is not a client, then L cannot assert the attorney-client privilege regarding the information in the memo.

Work Product Doctrine

Under CA rules, all materials created in the course of representation or

preparation of trial are privileged. This includes the attorney's impressions or legal theories of the case.

Here, the memo that C is seeking is L's work product doctrine because it was created during the representation of D. This memo included his interview notes, as well as his impressions that W would make a good witness if called to the stand. Further, because it was created in anticipation of litigation with C, the memo would be work product.

Thus, the memo is privileged under the work product doctrine.

b. W would be a good witness

Discovery

See rule above.

Here, L can argue that the fact that W is a good witness is not relevant to the case. However, C can argue that her credibility as a witness and whether she would make a good witness is relevant because she would make a good witness to call to the stand.

Thus, the information of whether W is a good witness is relevant.

Motion to Compel

See rule above.

Here, L can argue that C can obtain this information herself through other means of discovery. However, C can argue that the fact that she is good witness might not be discoverable through other means because the impressions might be

different. Regardless, C would have to prove undue burden, and there appears to be no undue burden to have C simply discover whether W is a good witness through other means.

Thus, a motion to compel would not force L to produce the memo.

Attorney Client Privilege

See rule above.

Similar to above, W is not the client of L, and thus the attorney client privilege does not extend to W. Further, the information was an impression of W as a witness and had no bearing on communications between D and L.

Thus, the information is not protected by the attorney client privilege.

Work Product Doctrine

See rule above.

Here, the memo contained L's belief that W would make a good witness. L's impressions of the case, including W, would be classified as impressions and be classified as work product doctrine.

Thus, C would not be able to compel the disclosure of the memo because it is protected by the work product doctrine.

3. What ethical violation has L committed?

Duty of Confidentiality

Under the ABA, an attorney has a duty to not disclose any confidential information to outside parties unless (1) the client consents (2) to prevent crime or fraud (3) to prevent substantial financial harm or (4) during any disputes between client and attorney over fees.

Under CA rules, the attorney can only disclose information if it will prevent death or substantial bodily injury.

ABA

Here, D cannot consent to L disclosing any information regarding the representation because D is dead. Further, there is no evidence to show that disclosing this information would prevent a crime or fraud because the fraud had already occurred. Also, the information would not prevent substantial financial injury.

However, L has violated the duty of confidentiality because he told W when he was interviewing her what D had told him. This would be a violation of the duty of confidentiality because what D and L spoke about is confidential. Further, D did not consent to L disclosing this information to W. Even though L thought this might be a harmless error because they are related, it still does not change the fact that L should not disclose confidential information between D and L to W.

Thus, L violated the ethical duty of confidentiality when he told W what D had told him

CA

Here, there is no evidence that disclosing the information would prevent death or substantial bodily injury resulting from a crime.

Thus, L violated his duty of confidentiality under CA rules.

Conclusion

L is subject to discipline for violating both ABA and CA rules regarding the duty of confidentiality.

Duty of Loyalty

An attorney owes a client the duty of loyalty. This requires that the attorney act in the best interests of the client.

Here, L did not act in the best interests of D when he told W what he had told him. Further, if L is required to disclose information this would not be in the best interest of D or D's estate.

Thus, L has violated a duty of loyalty.

Mandatory Withdrawal

Under the ABA and CA, an attorney must withdraw from representation if (1) the attorney is fired (2) the attorney's physical or mental condition materially limits the and (3) continued representation would result in violation of ethical duty or law.

Here, L was fired by D, so L must withdraw from representation. Further, there is no evidence to suggest that L did not withdraw immediately.

Thus, L did not violate the duty to withdraw.

Duty of Fairness

Under the ABA and CA, an attorney owes a duty of fairness when interacting with opposing counsel. This requires the attorney to not make false statements, mislead opposing counsel, or withhold any information that is relevant or required by the other side.

Here, L is denying C the ability to discover any information with regards to what W told L, as well as the information regarding whether the W would make a good witness. As discussed above, the information requested regarding L's memo would be privileged under the work product doctrine. However, C can argue that if L was intending to call W as a witness, then he had a duty to disclose that information to C for preparation of trial. But, at this point the information only regarded L's impressions of whether W would make a good witness or not. If L ever decided to call W as a witness then he would have the duty to ensure that C is informed of his intent to call her as a witness.

Thus,

Duty of Candor to the Court

Under the ABA, an attorney owes the duty of candor to the court by not (1) making false statements of law or fact to the court (2) misrepresenting any claims in pleadings and (3) to act with honesty when dealing with the court.

Under CA, an attorney's duty of candor to the court additionally requires that the attorney does not file frivolous claims.

Here, L has stated that he is privileged from testifying as to the confidential communications he had with W. As analyzed above, the duty of confidentiality under CA rules lasts only up until death of the client. Since D is now deceased,

this would be a false statement to the court that he is privileged from disclosing this information.

Thus, L has violated his duty of candor to the court under both ABA and CA for stating that the information is confidential when the duty of confidentiality expired along with D's death.

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