

2)

===== Start of Answer #2 (1110 words) =====

1. Can the court compel Luke to testify?

At issue is whether Luke, who was Don's attorney, can be compelled to testify as to what Wendy, who was Don's sister, told him

Parties can seek discovery of any information that is non privileged and that is relevant to a claim or defense in a case. Discovery must be proportional to the needs of the case. The information sought need not be admissible, as long as it is reasonably calculated to lead to the discovery of admissible evidence that could be used to support a claim or defense in the case. All communications between the attorney and client is privileged and the attorney cannot be forced to disclose that information; but under CA rules the attorney-client privilege ends when the client dies, his estate is distributed and the executor discharged.

Here, Claire is compelling Luke to testify as to what Wendy told him. Wendy had relevant information that Claire could use for her defense. The facts state that Don died and that he settled the claim against Don but not against Home Inc., thus, the executor has not yet been discharged and the attorney-client privilege still applies.

The information was given by Wendy, Wendy is not a party to the case. Thus, the attorney-client privilege does not apply and the court can compel Luke to testify.

2.

a. Can the court compel Luke to produce the memo to the extent that it recounts what Wendy told him?

- At issue is whether the part of the memo that recounts what Wendy told Luke is privileged information

During pre-trial disclosure, parties are required to disclose all information that could be used to support a claim or defense in the case, as long as the information is not privileged.

Wendy told Luke that Don had admitted to her that he defrauded Claire. This information is an admission by Don; and thus, relevant to Claire's defense that Don, in fact, defrauded her.

Here, Claire is compelling Luke to testify as to information obtained by him through an interview to Wendy. Wendy is not a party to the case. Wendy could have also been interviewed by Claire if during the pre-trial disclosure Luke had disclosed to Claire Wendy's name and address so she could also interview her.

Because, Wendy is not a party to the case, the attorney-client privilege does not apply as to what she communicated to Luke. And because the information given to Luke by Wendy was not privileged, Luke can be compelled to testify as to what Wendy told Luke.

b. Can the court compel Luke to produce his memo that expresses his belief that Wendy would be a good witness for Claire?

- At issue is whether the memorandum is work-product and if it is whether Claire can nonetheless compel Luke to produce it.

Under CA rules, work product is all work/documents generated by the attorney or his agents in anticipation of trial. Parties can be compelled to produce documents that were prepared in anticipation of litigation if the adversary does not have any other means to obtain that information or if it would impose a substantial burden on her. Some work-products are deemed to be absolute products; such as documents that contain mental impressions, opinion, legal theories to be used at trial, among others. Parties cannot be compelled to produce work-products that are absolute.

Wendy is not a party to the case. The memo that Claire is compelling Luke to disclose contains a belief (opinion) that Wendy would be a good witness to Claire.

Because the memorandum contain an opinion by Luke it is an absolute work-product and as such, it cannot be disclosed. Court cannot compelled to produce that part of the memorandum.

### 3. Ethical violations CA

At issue is whether Luke violated any ABA rules or under the CA rules.

#### Retainer Agreement

- At issue is whether Luke commiyed any ethical violation by not making the agreement in writing

\*CA rules and ABA rules require that a fee/retainer agreement be in writing. The writing must state the amount of the fees and how it will be calculated.

The CA rules additionally state that the writing requiement does not apply if the fee is less than \$1,000, the client is a corporation, the services renderes is routine service for a regular client or if there is an emergency that would make in impractical to make an agreement in writing prior to the representation.

The facts state that the reatiner agreement is valid. Thus, if the agreement was in writing and contained all the required information, Luke did not violate the CA or ABA rules. If the agreement was oral and not in writing, Luke committed ethical violation under both, the ABA and CA rules.

#### Fairness to adversary

\*Under the CA and ABA rules, lawyers owe a duty of fairnes to the adversary. This means that attorney cannot interfere with the adversary's right to fair trial.

cannot obstruct access to evidence or destroy evidence.

Here, Luke by not producing the memorandum that contains what he recounts what Wendy told him, he is obstructing access to evidence and because the information is relevant to Claire's defense, he is also interfering with Claire's right to fair trial.

Luke, by not producing the part of the memorandum mentioned above, has violated his duty of fairness to the adversary under the CA and ABA rules.

#### Duty of confidentiality

At issue is whether Luke violated his duty of confidentiality by telling Wendy that Don admitted to him that he defrauded Claire

Under CA and ABA rules, lawyers owe a duty of confidentiality to their clients. Lawyers must refrain from disclosing any information that they acquired about their client throughout the representation.

Don admitted to Luke that he had defrauded Claire, this information was given to Luke while he was still representing Don. Thus, the information given to Luke by Don was confidential. Then, Luke disclosed this confidential information to Wendy when he interviewed her.

Because Don's admission was confidential, he violated his duty of confidentiality under the ABA and CA rules when he disclosed it to Wendy.

#### Duty of loyalty

\* At issue is whether Luke violated his duty of loyalty when he disclosed confidential information to Wendy

Under the ABA and CA rules, lawyers owe a duty of loyalty to their clients. Duty

