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The ABA governs the rules of professional responsibility for lawyers. The most important duties that a lawyer has to his clients are: (1) The Duty of Confidentiality; (2) Duty of Loyalty; (3) Financial Duties; and (4) Duty of Competence. A lawyer also have duties to other parties and to the court: (5) Duty of Candor; (6) Duty of Fairness; and (7) Duty of Dignity to the Profession. If a lawyer violates any of these duties, he may be subject to discipline. Those applicable will be discussed.

### **1. May Larry ethically follow Peter's Instruction to File the Motion**

#### **Duty of Competence**

A lawyer must have the legal knowledge, skill, preparation, and thoroughness necessary to represent his clients. If a lawyer is not competent, then the ABA and the CA rules allow the lawyer to research and become competent or associate with someone who is competent. In CA, a lawyer will be liable to discipline only if he reckless and continuously acts without the necessary competence. Under this duty, there is also the duty of diligence. It is not clear how long L researched the motion that P asked him to file. However, even if he did not do much research, Peter is a partner in the firm and the facts state that he had more experience with trade secrets than L. This will satisfy that requirements that L associate with another lawyer that is competent in the matter. If L would have filed the motion on his own without the necessary competency required, then he would have breached this duty. Because he followed an instruction from his partner who has experience with trade secrets, it is unlikely that L breached this duty.

#### **Duty of Dignity to Profession**

Under the Duty of Dignity, a lawyer has a duty to not instruct another lawyer to commit an act that will violate the rules or the law. Under this duty, a supervisor and, importantly, the acting attorney, may be liable for breaching this duty if the act in question did in fact violate the rules. Here, Peter (L's Supervisor) instructed L to file a motion to compel discovery of documents that Smith claimed contained its trade secrets. After researching, L believed the motion will be denied and may give rise to sanctions. L was instructed to file the motion anyways. It is not clear if there has been a breach here. Even though L is an attorney, the facts state that Peter had more experience with trade secrets. It is reasonable to believe that Peter, who has more experience, knows something that L doesn't know regarding the issue in question.

Also under the Duty of Dignity to the Profession, a lawyer must report misconduct from another

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lawyer if he knows that the lawyer is acting wrongfully, violating the rules. It is not enough to have a mere suspicion or a hunch. Here, there does not seem to be misconduct from either party to implicate a breach of this duty.

### **Duty of Candor to Tribunal**

A lawyer has a duty to act truthfully when it comes to dealing with the courts. A lawyer must not file any motions that he believes that are frivolous, false, or misleading. If he does, he will be liable to discipline. Here, as stated above, it is not clear how long L researched the matter. The facts also state that L thought that the motion would be denied. This "thought" will not be enough to rise to the level of false or misleading filings. It is reasonable to think that L was not well versed in the subject matter, in which Peter was, and therefore, it is reasonable that he would file the motion.

Thus, there seems to be no breach of a L's duty if L follows Peter's instructions.

## **2. What are Larry's Obligations in Relation to the Damaging Document**

### **Duty of Fairness**

L told Peter about damaging document found in the Jones file that would be very helpful to Smith's case. Under this Duty, a L must share incriminating evidence if the evidence will make it likely that the other party was right in the lawsuit. However, this issue also brings up the Duty of Confidentiality discussed below.

L most likely breached this duty because L knows that the document has not been produced in discovery even though the document falls into the the class of papers that have been requested by Smith.

Under the Duty of Fairness, A lawyer must not tamper, hide, or mislead the opposing party about evidence. Larry has breached this duty.

### **Duty of Confidentiality**

Under the Duty of Confidentiality, a lawyer may not share any information regarding the representation of his client. This is true even if the client does not request confidentiality. The Duty attaches when the client-lawyer relationship begins and under the ABA, it lasts indefinitely. In CA, this duty last until the dead client's estate is settle.

This duty is much more broad than the attorney-client privilege. The attorney-client privilege is an evidentiary privilege that will allow a lawyer or a client and their agents to not testify about confidential communication. This is more narrow because it only applies to the Lawyer and his

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client and the L's agents. Under the Duty of Confidentiality, the scope is between even third parties.

Here, L shared confidential information to Peter. Although Peter is his partner and supervising, it is not clear if ABC and Peter have a client-lawyer relationship. However, since Peter and L work in the same firm, it is unlikely that this disclosure would breach L's Duty of Confidentiality.

However, there are exceptions to this rule. A lawyer may reveal confidential information if he reasonably believes that disclosure would prevent seriously bodily harm or certain death; if it is court ordered; if the client consents; if it is to defend one's self in a malpractice case; and finally, if a client is using the lawyers services to implicate a crime of fraud that will cause serious financial loss. In CA, a lawyer must first persuade the client and inform him about his intent to reveal. It is not clear what the documents says or even if L is thinking about revealing. Therefore, this duty is not breached.

#### **4. What Ethical obligations must Larry Respect with Regard to XYZ's job offer**

##### **Duty of Loyalty**

Under this Duty a lawyer has a duty to avoid any conflicts of interests. Lawyers may receive job offers from any firms. However, here, Larry received a job offer from XYZ, which Larry was going up against in Smith v. Jones. Because Larry is a lawyer in a current claim, the duty of loyalty and the duty of confidentiality are implicated. A conflict of interest exists when a L's interest, a third parties' interest, or a former client's interest materially limit or averse to loyal representation of his client. A lawyer may still take on representation if he reasonably believes that he can competently represent the client despite these conflicts. Conflicts can be Potential and Actual. In CA, a lawyer must inform all the effected parties of the conflict and get their consent in writing in order to continue representation. If the L cannot get the consent, he must withdrawal.

Here, the duty of loyalty is implicated because the L's interest of receiving an attractive job offer from XYZ is adverse or at least will materially limit the representation of his client, Jones. It is likely that L, after receiving this offer, he will find XYZ more likable and not represent his client to his full capabilities. Nevertheless, there is a conflict here and L must inform his client and get written consent. Here, it doesn't seem that he did. Therefore, he has breached this duty.

##### **Duty of Confidentiality**

The Duty of Confidentiality may be implicated here too. As discussed above, a L may not reveal confidential information regarding his client. It can come up if L accepts the job offer from XYZ. It is reasonable that XYZ would expect to profit from the information that L knows from

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representing Jones. However, nothing in the facts state that L has revealed information or if intends to; therefore, the duty is not breached.

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**END OF EXAM**