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1. May Larry (L) ethically follow Peter's (P) instructions to file the motion?

Supervising and Associate Lawyer Ethical Duties to The Profession

Both a supervising lawyer and his associate owe ethical duties to the profession which include refraining from requesting knowingly, any information in the discovery process that privileged or would be unethical to request. An associate will be in violation where his actions that are known to be in violation of his ethical duties even when requested by a supervising attorney makes the request. Here, L is aware that filing a motion to compel discovery of documents would likely be denied and could impose sanctions for asking for privileged information such as trade secrets. Because L is aware that he would be breaching a duty to the profession of requesting a trade secret through discovery, he would be liable for ethical violations. The fact that P is instructing L to commit a known violation (based upon L's own research in the matter) is not a defense to a violation and L would not escape violating his ethical duties.

Furthermore, an attorney in CA may not subject opposing counsel with discovery that is a waste of time, privileged information, or does not appear to be relevant or lead to any admissible evidence. Therefore, if L does attempt to compel trade secrets upon Smith he would be in violation.

Duty of Competency

An attorney must be competent as an attorney which requires that he have the necessary skill, thoroughness, preparedness and knowledge necessary to represent a client. Here, as a defense, L will maintain that he used his thoroughness and advanced his knowledge as to trade secrets and subjecting ABC to sanctions. That although he is only an associate with limited experience, he fulfilled his duty by telling his boss L of the risk and that it would lead to sanctions and that he simply took instruction from L because he was his boss and more experienced in these matters. However, L's lack of competency will not allow him to take refuge since he will be held to the same standard as any experienced attorney. Therefore, he will be in violation.

2. What are L's obligations in relation to the damaging document?

Duty of Fairness to the Profession and Court

A lawyer is required under both ABA and CA regulations to observe fairness as to the opposing party, be honest and to not commit perjury. Here, L has an ethical duty to respond honestly

with XYZ's request even if such documentation requested is exculpatory evidence in nature. Although the documentation requested does not specifically ask for the damaging document that L has found in the Jones file because it was requested in discovery within a class of papers that have been requested, L is obligated to produce the documents subject to certain conditions.

As to L interposing hearsay, trade secrets, and using overbreadth objections in order to not to produce the documents, is a violation because a lawyer has a duty to act honestly, and with full candor to the court. Since discovery may be used in court this would qualify as to committing perjury on the court by attempting to be so evasive in his interpositions. The use of overbreadth objections are a violation to his ethical duty because he must state why the request is objectionable as to its nature or privilege. To merely oppose the discovery based upon objections that are not reasonable is a violation of the duty of fairness to the profession and to the court. Therefore, these would be unethical responses.

Duty of Confidentiality

An attorney takes an oath to preserve inviolate all communications even at the peril to himself to protect the client that are within the attorney-client relationship where the client expected the communications or documents to be confidential. Here, although L may be obligated to produce the documents is is also obligated to preserve evidence and/or communication per the privilege. L will argue that he is not required under both ABA and CA authorities to produce information that was gathered or created in preparation for trial. If the exculpatory evidence was created in preparation for this trial it can excluded from production. However, Smith (XYZ) will counter that the discovery information cannot be categorized as attorney client privilege or confidentiality protections if the documentation existed prior to preparation for this trial. Simply stating that it is now privileged information is not the standard to determine its confidentiality limitations to a privilege. L would need to show that the exculpatory, damaging information requested was only created for preparation of this case. Therefore, unless L is able to maintain through proof the document is privileged as stated, he must turn it over.

3. What Ethical Obligations must L respect with regard to XYZ Job Offer?

Conflict of Interest and Confidentiality Duties

An attorney must prevent any conflict of interest of a client that may have an adverse affect on a client or has a significant risk of maintaining the best interest of his client due to an existing client, or a third party. Here, if L takes the job offer with XYZ he has an obligation to Jones to not

allow his new position to injure Jones as a result of having information that would be of beneficial use to XYZ in the case. L is aware of the documents that is beneficial to XYZ's case and L would be in violation in CA and ABA for discussing what he knows about the information, or any information that would be harmful to Jones.

L would hold that this could be accomplished by being screened off from any involvement with respect to the Jones case, and would not provide any information that is privileged to benefit XYZ. He could not take any fees regarding this case as well. Any other course of action that would lead to placing Jones' interest in jeopardy of divulging privileged documents would be a direct violation by L. Therefore, as long as L maintains confidentiality and is screened off he would not be in violation.

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