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1) The issue is whether Larry may ethically follow Peter's instructions to file the motion to compel discovery.

Duty to Supervise

Under the ABA and California (CA) rules, a lawyer has a duty to supervise an associate lawyer. The supervisor lawyer may be liable for any rules that the associate lawyer violates. If a supervisor lawyer instructs an associate lawyer to perform a task and the associate lawyer disagrees to do so and raises his/her concerns with complying with the instructions, the supervisor lawyer may again request the associate lawyer to complete the task but will be liable for any violations as a result of the associate lawyer's actions. An associate may comply with an attorney with more experience in a matter without violating the Rules of Professional Conduct.

Here, Peter is a partner of the ABC firm (ABC) and Peter is the partner supervising Larry at ABC in the Smith v. Jones Case. Peter may ask Larry to perform tasks for him. However, Larry may perform his own research to determine whether the task complies with the Rule of Professional Conduct. Peter instructed Larry to file a motion to compel discovery of documents that Smith claimed contains trade secrets. Larry researched the matter as any competent lawyer would. When Larry discovered that he thought the motion would be denied and may give rise to sanctions, he immediately told Peter about it. Peter knew of Larry's concerns, but has more experience with trade secrets and instructed Larry to file the motion. If the court finds that the motion filed by ABC gives rise to sanctions, Larry would likely not be found to violate any rules under both the ABA and CA rules, and Peter would be responsible for Larry's actions as his supervisor. Larry has more experience in trade secrets, it is appropriate for Larry to file the motion even though he believes there would be sanctions. Peter, as the supervising lawyer, has a arguably has a duty to that the Motion to compel discovery that he is requiring Larry to file does not violate the rules under both ABA and CA.

Therefore, under the ABA and CA rules, Larry may ethically follow Peter's instructions to file the motion.

Duty of Competence/Care

Under the ABA and CA rules, a lawyer must comply with the duty of competence and care. Under the ABA rules, a lawyer must represent the client with the appropriate skill, thoroughness, preparedness, and knowledge. Under the CA rules, the same rules apply, however, the attorney

must also have the emotional, physical, and mental ability to represent the client. Additionally, under the CA rules, a lawyer must not act intentionally, negligently, grossly negligently, and/or repeatedly fail to competently represent his/her client.

Here, Larry must comply with the duty of competence/care and ensure that he is representing Jones with the appropriate skill, thoroughness, knowledge, and preparedness. Larry complied with his actions because he researched the matter and told Peter his thoughts. Under the CA rules, it does not appear that Larry nor Peter lacks the emotional, physical, and mental ability to represent Jones. Additionally, under the CA rules, if Larry or Peter fails to comply with the rules of professional conduct or repeatedly fails to produce documents that are required to or file motions that a reasonable attorney would find to violate the RPCs, then they lawyer's would be found to violate the rules of professional conduct.

Therefore, under both the ABA and CA rules, Larry complied with the Duty of care/competence and may ethically follow Peter's instructions.

2) The issue is whether Larry is obligated to produce the damaging document

Duty to Comply with the Law

Under both the ABA and CA rules, an attorney must not violate the rules of discovery. A lawyer who does so will be subject to sanctions. If a lawyer knows that a the law requires compelling documents under discovery, the attorney must do so.

Here, Larry found a damaging document that he found in the Jones file that would be very helpful to Smith's case. Larry knows that the document has not been produced in discovery and that the document falls under the class of papers that Smith has requested in the case for failure to properly manufacture tools ordered by Smith. Larry also knows of no basis to refuse production of the document. Regardless of what Peter instructs Larry to do, he is legally obligated to produce the damaging document to Smith no matter how damaging it would be to Jones' case.

Therefore, Larry must comply with rules of the law and produce the document.

Duty to Report Misconduct

Under the ABA rules, an attorney has a duty to report any misconduct that he/she has knowledge of regarding another attorney's ability to practice law. Under the CA rules, an attorney only has a duty to report misconduct if he/she reasonably believes that another lawyer has engaged in/performed activities that questions the attorney's compliance with the rules of

the profession. A lawyer's failure to report the information could lead to sanctions.

Here, Peter has instructed Larry to interpose hearsay, trade secrets, and overbreadth objections and not produce the document. Under the CA rules, if Larry reasonably believes that Peter has violated his duties as an attorney in the Smith v. Jones case, then Larry may report Peter to the appropriate authorities. Failure to do so would cause Larry to be sanctioned. Under the ABA rules, if Larry knows that Peter has violated the rules of professional conduct, he may choose to report Peter. It would be in Larry's best interest to report Peter's misconduct under both ABA and CA rules to avoid liability.

Therefore, Larry must produce the document and may even report Peter's misconduct of failing to properly supervise him.

3) The issue is whether Larry may accept the attractive job offer from XYZ.

Duty of Loyalty

Under the ABA and CA rules an attorney owes a duty of loyalty to clients, opposing counsel and parties, the court, and the jurors. Under the **ABA** rules for the duty of loyalty, a lawyer must not engage in activities that constitute a conflict of interest. A conflict of interest arises if the attorney's representation of the client would be materially limited by the lawyer's personal interests. A lawyer may represent a client if he/she reasonably believes that he/she can competently and diligently represent the client in the matter and receives the client's informed consent, in writing. Under the **CA** rules, there is no reasonable attorney standard and the attorney must receive the client's informed written consent of the conflict. Additionally, in **CA**, if the lawyer has a personal, professional, or business relationship with a client's spouse/family member, the client's counsel and/or the client's counsel's spouse/family member, then the lawyer must provide the client with written disclosure of the relationship.

Here, if Larry accepts the job offer from XYZ, he must inform any clients that he would represent as an XYZ lawyer who is suing/has a cause of action against a client or attorney in ABC. He must provide written disclosure under the CA laws. He must also receive informed consent in writing under the ABA and informed written consent from future clients in CA related to any matters involving XYZ.

Therefore, Larry may accept the job but must comply with the rules of professional conduct under both CA and the ABA.

Additionally, under both the ABA and CA rules, if an attorney represents one client, but decides to join the firm of the opposing counsel, the party must be imputed from all representation related to the suit and must not receive any fees. Here, if Larry accepts the job offer from XYZ

he must be imputed from the Smith v. Jones suit and not collect any fees. Larry cannot provide an information to XYZ that is related to the Smith v. Jones case. Otherwise, he would violate the Rules of Professional Conduct.

Duty of Confidentiality

Under the ABA rules, the duty of confidentiality lasts forever. Under the CA rules, the duty of confidentiality lasts until probate or when property has been distributed.

Here, if Larry takes the job, under the ABA he may never disclose any confidences to anyone related to the Smith v. Jones case. Under the CA rules, he may reveal confidences once the case has concluded.

Duty of Diligence

Under the ABA and CA rules, a lawyer must represent a client with diligence and complete the representation in a prompt manner.

Here, Larry, as the counsel for Jones Manufacturing, Inc. (Jones) has already begun his representation of Jones. To comply with the duty of diligence he should likely complete his representation with Jones before accepting the job offer from XYZ or notify XYZ that he would accept the offer but not begin working from them until the Smith v. Jones matter has concluded.

Additionally, Larry must also comply with the **duty of competence and care** with any client he represents in XYZ.

Overall Conclusion

Therefore, these are the rules that Larry must respect with regard to XYZ's job offer.

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