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Laura and Alex have committed a number of ethical violations under California (CA) and ABA authorities as explained hereon:

1. Laura's ethical violations

### **Duty of Disclosure**

Under ABA and California laws, an attorney owes an utmost duty to her/his client to disclose all the material and facts of the case. The client decides how they want to proceed with the case and if they want to admit certain documents/ testify etc. The lawyer decides the strategy of the case and advises the client based on the lawyer's judgement.

Here, Laura (L) had a duty to disclose to Wendy (W) her client about the deed she came across on Alex's (A) desk and should have let W decide if she wanted to admit it to evidence. It is W's discretion and not L's to decide if she should admit the deed to the court or not, but W's.

### **Duty of Competence**

Under ABA, a lawyer should have necessary skills, knowledge and competence to represent her client. Under CA, lawyer must not grossly or wantonly or negligently represent her client.

Here, L had a duty to W to represent her with her utmost competency. Yes, she practiced as a family lawyer and yes, she must have the necessary knowledge to defend W but competency is a broad concept. She is required to show competency by bringing necessary papers she comes across to her client and the court. She should have used her skills to make a call of producing the papers to the court and W as the facts clearly state that W received lower award of child support based on Henry's (H) incorrect financial statement. Had L presented the statement that she came across, W might have been in a better position. Moreover, L let her personal feelings for her son come into play which costed W necessary award she deserved.

### **Duty of Diligence**

Under ABA and CA rules, a lawyer should represent her client diligently.

Here, L had a duty to diligently bring the deed she saw on A's desk to W's notice, produce it in court in timely manner and should have also spoken to A about a possibility of a conflict (as discussed below). L let her personal feelings for her son come into play which costed W

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necessary award she deserved and thus breached her duty.

**Duty of Loyalty (conflict of interest)**

There is a conflict of interest when a lawyer knows or reasonably believes there is a personal manifestation which may hamper the client under lawyer client conflict of interest.

Under ABA, lawyer must not present client unless she believes she can handle the client matter with utmost competency and without any consequences that may hamper the client, she has informed consent, in writing from the client. Under CA- informed written consent where she has informed the client of the potential conflicts and the repercussions.

L and A both worked in the same office and practiced different laws. They shared conference rooms, printer and receptionist. However, they had separate letterheads, business cards, telephone numbers.

L had come to know that A was working on a case of Ginny (G). A can argue that his client was G and not H (who was an opposing party to W's case) and even then was working on a different case altogether, there were documents and facts are necessary to W's case. L had a duty to inform W about the potential conflict may arise out of this. This may seem minor as A's reasoning here can be valid, however, A's representation did hamper W as indicated and as a violation under ABA and CA for which L should have informed W and taken a written consent from W which she did not.

L also has another reason to have conflicts of personal reasons as her son was a receptionist who helped on both the cases. Here, it is indicated that L did not want her son to be in trouble so she did not mention or submit the deed and materially misrepresented W due to her personal conflict of interest. L should have a duty of loyalty to her client while she is at work and her personal conflict should not be breach her professionalism. Here, L is supposed to inform W and get a written consent of waiver of conflict. Moreover, she misrepresented W due to her personal conflict on both levels.

**Duty to Representation**

A lawyer has a duty to represent her client with utmost professionalism which includes investigation necessary to representation when she knows or has reason to know of a certain suspicions, under ABA and CA rules.

Here, W had disclosed to L that she suspected H was not being truthful about his assets and were lying in his response to request. L had a duty to investigate claim based upon W's suspicion and know the truth to help with W's case. It is clearly stated that W's cost were

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reduced because of the incorrectness of H and thus, L breached her duty to W.

### **Duty to report**

A lawyer has duty to report (under ABA) to the authorities if she knows or has a reason to know that another attorney violated the duty of conduct. This is not necessary under CA rules.

Here, L (under ABA) has a duty to report A's violations of duty of confidentiality as she discovered A's clients document lying on the printer. She did not report this and thus breached her duty under ABA model rules.

### 2. Alex's ethical violations

#### **Duty of Loyalty (conflict of interest)**

There is a conflict of interest when a lawyer knows or reasonably believes there is a personal manifestation which may hamper the client under lawyer client conflict of interest.

Under ABA, lawyer must not present client unless he believes he can handle the client matter with utmost competency and without any consequences that may hamper the client, he has informed consent, in writing from the client. Under CA- informed written consent where he has informed the client of the potential conflicts and the repercussions.

L and A both worked in the same office and practiced different laws. They shared conference rooms, printer and receptionist. However, they had separate letterheads, business cards, telephone numbers.

L had come to know that A was working on a case of Ginny (G) and found a document which hampered W's case. A can rebut that his client was G and not H (who was an opposing party to W's case) and even then he was working on a different case altogether. Moreover, he had no knowledge or a reason to believe that L was working on a case of W who's opposing party was H- a boyfriend of G's. The facts are bit unclear if A had come to know or not because they shared the same receptionist and other means in the office and possibility of knowing is highly likely. However, based on what we know that L never disclosed the document, we can either assume, A had no reason to know or if he had a reason to know, he should have gotten a written consent from G, disclosing the potential conflict.

#### **Duty of Confidentiality**

Under ABA and CA, a lawyer has a duty not disclose any material information during the course of representation and should take utmost care of the disclosures unless the representation is in adherence to fraud or misrepresentation, bodily injury (under CA).

Facts indicate L saw and read a document addressed to A left on printer by Sam (S), which was confidential matter of his client. L should not have come across the document in first place. A may reason saying it was left by S and not him.

However, under ABA and CA, a lawyer is responsible for his subordinates and the non lawyer staff he hires to work on his cases.

Here, A breached the duty by not keeping the document safe- by letting S loiter with his client's personal documents and thereby breaching his duty to G.

Question #2 Final Word Count = 1338

**END OF EXAM**