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Concurrent Conflict of Interests

Attorney should refrain from representing a client if the representation is materially limited by the attorney's interests regarding a former client, another client, personal interests. Here, Len is the attorney and he agreed to represent ABC in the suit to challenge the statute in question. The statute was helped to be passed by Equal, a non-profit organization that Len is a member of. Because Len's representation of ABC would run contrary to his interest in the membership of Equal, there is a conflict of interests. Furthermore, because Len does not think that the statute is god law and secretly hopes that ABC is not successful in representation, the interest of his client, ABC is adverse to his personal interest. Therefore, a conflict of interests exists.

Addressing the concurrent conflict of interests

ABA rules follow the reasonable attorney standard that states that an attorney can continue with representation if the attorney reasonably believes that he can provide competent representation despite the existing conflict. The attorney must obtain a written consent of the client to proceed with representation. Here, Len will argue that his interest in the membership with Equal does not impair his ability to competently represent ABC. He will argue that his prior exposure to the the statute will in fact help him competently represent ABC because of his knowledge of the content and possible including in the efforts to pass the statute. However, once determined that he secretly hopes that ABC fails and his personal belief about the adequacy of the statute is exposed, it will be unlikely that Len will be able to demonstrate that he reasonably believes that he can competently represent ABC. Furthermore, he has not obtained a written consent from ABC to represent them despite the conflict.

In California, Len would need to obtain a written consent of the client regarding

the actual conflict of interests. He will possibly need to disclose potential conflicts of interest that may arise from his representation of ABC if it rises out of his membership with Equal. Alternatively, at least, Len will need to disclose in writing his personal interest in Equal because he does not represent Equal. There are no indications of a signed waiver here.

Len is in violation of concurrent conflict of interest rules under ABA and CA rules.

Duty of Competence

Attorney must act competently. Competent representation involves utilizing the knowledge, skills, thoroughness and promptness necessary for the representation. In CA, attorney shall not intentionally, recklessly or repeatedly fail to act competently. Furthermore, the attorney must have the physical, mental and emotional ability for representation.

The facts are silent about Len's education and knowledge. The fact that Len does not agree with ABC's objective is not enough to conclude about Len's competence. Len promptly filed the complaint indicating his promptness and diligence and knowledge. He is likely in compliance with the duty of competence under ABA.

The facts are silent about reckless or repeated incompetence. Because it can be argued that Len's personal belief that the statute is good and his secret hope that ABC fails can affect his emotional approach to the zealous representation of his client, it can be argued that Len cannot competently represent ABC in California. Further facts will need to be established to prove his intentional desire for ABC to fail. If so, he may be found to act incompetently in California.

Duty of Candor

Attorney shall not present evidence to the court that the attorney knows or reasonably should know to be false. If the attorney knows that the information is false, attorney must take reasonable remedial steps to avoid presentation of false information. Here, Pat informs Len that Pat filed a false reports with State EPA regarding disposal of non-hazardous waste. Because this was done in the past, Len will have the duty to persuade Pat to inform the EPA about the past reports. But because this was done in the past, it does not account for current knowledge of the information that is intended to be filed. Hence, it will be up to Pat to decide how to proceed.

Pat also informed Len that he intends to file another false report next month. It is within Len's duty to persuade Pat to refrain from filing of the report. Failure to act will result in a violation of the rules.

Mandatory/Permissive withdrawal

If attorney knows that the client intends to submit a false report and the attorney knows that the report is in fact false, attorney may withdraw from representation if the withdrawal will not create an unusual hardship for the client. The attorney will need to provide sufficient time for the client to obtain another counsel and return all client's documentation. If Len knows that the contents of the report are in fact false, Len may have to withdraw from representation of ABC.

Duty of confidentiality

Attorney has a duty to hold confidential information and communication gathered in representation of the client. In CA, attorney may disclose confidential information if attorney reasonably believes that the disclosure is necessary to prevent a criminal act the attorney reasonably believes will result in death or substantial bodily injury. Before disclosure, attorney must inform the client about the possibility of disclosure and try to persuade the client from taking the action. Here, the criminal act is the disclosure of the report to EPA by Pat, president of ABC. The report contains information on non-hazardous waste. It is unlikely

that Len can reasonably believe that the non-toxic waste can result in death of substantial bodily injury. Therefore, Len is under no obligation in CA to disclose this information.

Under ABA, confidential information cannot be disclosed by attorney, unless it is necessary to prevent death or bodily injury, or to prevent financial injury to another. Here, Len represents ABC. Filing a false report makes a person or his or her employer liable for a substantial civil fine. ABC is Pat's employer and ABC can be injured if Len does not disclose the information. Therefore, Len will be justified in disclosing the information about the filing of a false report with EPA.

Reporting up

Under ABA, Attorney may report misconduct within the organization if attorney believes that the misconduct will harm the organization. Here, the filing of false report by Pat can harm ABC because of the substantial civil fine that can be imposed on ABC. Len will be able to report the misconduct to the board of directors. If the board of directors does not address the issue Len may report to EPA.

In California, attorney may report up the chain of the organization, but may not disclose confidential information if the upper management level does not address it in the way desired by the attorney. Hence, Len can go up the chain of command of ABC (board of directors), but disclosure of the information about the report outside of the company will be a violation of the duty of confidentiality.

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