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**===== Start of Answer 6 (1076 words) =====**

**1. Representation of ABC Development Corp.**

The first issue is whether Len's representation of ABC Development Corp. ("ABC") is an ethical violation because it is adverse to Equal Ownership Inc. ("Equal"), an organization of which Len is a member.

Under both the ABA and California ("CA") rules, an attorney cannot represent a client whose interests are adverse to a former client unless the attorney gets the former client's informed written consent to the representation. Additionally, in CA, the lawyer must not undertake the representation, even with the client's consent, if he has reason to know of any of the former client's confidential information that might be used to that former client's disadvantage in his current representation of the new client.

Here, Len has never worked as an attorney for Equal and is only a member of that organization. Len has been asked to represent ABC in an action challenging a statute that Equal helped enact. Even though Equal is not a former client, Len still cannot use any confidential information he has about Equal against it. The facts do not specify whether Len has any confidential information about Equal that he could use against it in his representation of ABC. Accordingly, because Equal is not a former client and Len does not appear to have any confidential information about Equal that could be used against it in ABC's action against Equal, Len's representation of ABC is not an ethical violation under either the ABA or CA rules.

**2. Len's Personal Position Against ABC's Interest**

The second issue is whether Len is committing an ethical violation because he personally supports the statute ABC is challenging and secretly hopes ABC is not successful in its lawsuit.

Under the ABA rules, a lawyer must competently represent his client. Under the CA rules, a lawyer must zealously represent his client. Under both rules, a lawyer may personally support a position adverse to a client, but must not let his personal beliefs affect his representation of the client. If the lawyer finds that his beliefs make him unable to competently or zealously represent his client, the lawyer must withdraw from the representation in manner that does not prejudice the client. In order to avoid prejudicing the client, the lawyer may be required to get court permission to cease representation. If the lawyer's withdrawal will materially prejudice the client, the lawyer must continue representation until another competent attorney can take his place.

Here, under the ABA rules, Len has not committed an ethical violation if he can competently represent his client. There are no facts indicating that Len will try to

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sabotage the case or intends to provide insufficient representation even though he "secretly hopes" ABC is unsuccessful. As long as Len believes he can competently represent ABC and intends to do so without letting his beliefs prejudice his representation, he has not committed an ethical violation.

However, under the CA rules, it seems likely that Len is committing an ethical violation because he is actively hoping his client is unsuccessful. If Len is hoping his client loses the lawsuit, it is unlikely his representation of ABC is zealous. Accordingly, Len should never have taken ABC's representation and must withdraw if he is able to do so without prejudicing ABC.

Accordingly, Len is committing an ethical violation under the CA rules by representing ABC, but not under the ABA rules.

### 3. False Reports

The third issue is whether Len committed any ethical violations by failing to take action with respect to Pat's admission of filing false reports with the State Environmental Protection Agency ("EPA") in the past and his plan to file another false report in the future.

#### Past False Reports

Under the ABA rules, a lawyer must disclose confidential client information if the client's conduct is substantially likely to create a financial injury to another and the client has used the lawyer's services in furtherance of this motive. Under the CA rules, a lawyer's duty of confidentiality is much stricter and a lawyer may only disclose a client's confidential information to prevent another's death or substantial bodily harm.

Here, Pat, the President of ABC, told Len that he filed false reports with the State EPA in the past regarding the disposal of non-hazardous waste. Filing a false report makes a person and his or her employer liable for a substantial civil fine. Even though the past reports have already been filed, they could still expose ABC to liability. However, Len did not violate the ABA rules because Pat did not use Len's services in furtherance of his past conduct filing false reports. Len also did not violate the CA rules by failing to report Pat's past acts because of Len's strict duty of confidentiality. Disclosing Pat's past actions would be a breach of his duty of confidentiality.

Therefore, Len did not commit an ethical violation by failing to take action with respect to Pat's admission of filing false reports with the State EPA in the past.

#### Future False Report

Under both the ABA and CA rules, a lawyer for a corporation is that corporation's lawyer and owes a duty to the corporation. A lawyer must take action in the best interests of the corporation and protect the corporation's



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interests. Lawyers who are aware of or suspect wrongdoing within the corporation must report it up the chain of command as high as the board of directors if necessary. Under the ABA rules, if the board of directors refuses to take action, the lawyer can report the wrongdoing outside of the corporation. Under the CA rules, the lawyer cannot report the wrongdoing outside of the corporation and must "loudly" withdraw. A lawyer loudly withdraws by withdrawing as counsel for the corporation and disclaiming any opinions or representations he made with regard to his representation of the corporation.

Here, under the ABA rules, Len has committed an ethical violation because Pat's action could expose the company to financial harm, a substantial civil fine. Len has a duty to protect the corporation and must take action to prevent Pat from filing a false report that could expose ABC to liability.

Under the CA rules, Len needed to loudly withdraw. Because Len did not take any action with respect to the impending filing of the false report, Len has committed an ethical violation under the CA rules.

Therefore, Len's failure to take action to prevent Pat from filing a false report violates both the ABA and CA rules.

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Question #3 Final Word Count = 1076

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**END OF EXAM**