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**===== Start of Answer #2 (1444 words) =====**1. Should Luke be compelled to testify about what Wendy told him?Attorney-Client Privilege

Under the privilege, attorneys cannot reveal any information relating to the client's case to a third party without the client's consent. Under California, the attorney needs to disclose to the client and obtain written consent in order to disclose such information. The privilege will surpass the death of the client and ends when the estate of the decedent has been divided.

Here, Luke (L) was first retained by Don (D) because Claire (C) has brought a claim against D and his company, Home Inc. (Home) for being defrauded. After entering into a valid retainer agreement with D, L then interviewed D.

Subsequently, L interviewed Wendy who is D's sister. In the interview, W told L that D had admitted to her that he had defrauded C. The information that L learned of through the interview is confidential as it pertains to L's representation to D. Furthermore, L may not disclose any information he learns of without disclosing to D and obtaining consent from D.

In this case, D has died unexpectedly. C will raise the argument that since D has died and also, D fired L prior to trial, he is no longer representing D or his estate. However, under California, the attorney-client privilege surpasses death and only ends when all estate has been divided. Further, C will argue that in closing of D's estate, the executor has settled with C against the estate and thus, there should be no attorney-client privilege.

The Court may agree with C's argument that because the executor of the estate has settled with D in regards to the claim. However, there is no indication that the estate of D has been completely settled and divided because Home is owned by D and the claim against Home is still ongoing. Although L was retained to

represent D only and not home, L may have learned of information from W that may be confidential pertaining to Home.

### Conclusion

Thus, the prevailing argument will be in favor of L that he should not be compelled to testify about what W told him due to attorney-client privilege.

### 2. Should Luke be compelled to produce his memorandum?

#### Work Product

Under California, an attorney's work product cannot be discovered or provided to the other party. There are two types of work-product: qualified and absolute. Qualified work product may be discoverable if the other party shows that they cannot obtain the information without it being unduly burdensome. Absolute work product is never discoverable because they are the mental impressions of the attorney.

#### 2a. Compelling Luke to produce his memorandum to the extent it recounts what Wendy told him

#### Attorney-Client Privilege

See above.

As discussed previously, L cannot be compelled to testify about what W told him due to attorney-client privilege. L cannot testify to what he has learned through the interview as it involves confidential information that he acquired during his representation to D. It is likely that L can assert the same privilege when the Court compels him produce his memorandum of what L recounts what W told him.

Qualified Work Product

Here, the work product is the memorandum with the portion of which it recounts what W told L during the interview. L simply wrote down what he had talked to W about during the interview. Such details are not L's mental impression and do not qualify as an absolute work product.

Here, L will claim the qualified work product for his memorandum recounting what W told him. C, will move for the court to compel L to produce that segment of his memorandum. In C's request, she will have to show that she cannot obtain the same information without any extreme difficulty or having it be unduly burdensome on her. L will argue that D has died but there is no indication that W is dead. Furthermore, there are no facts indicating W's unavailability that would make it impossible for C to interview W as well.

Under California, a witness is unavailable if she lives 150 miles away or further from the place of interview. It does not appear that W is far away if L was able to interview her during his representation to D.

Subpoena Duces Tecum

Since W is not a party to the action, C will have to send her a subpoena duces tecum prior to deposing her. The subpoena duces tecum will provide W with notice and information of where she should appear for the deposition.

Since it does not appear that it will be unduly burdensome for C to interview W, L's memorandum qualifies as work product and L cannot be compelled to produce such memo.

2b. Compelling Luke to produce his memorandum to the extent he expresses his belief that W would be a good witness for Claire

Absolute Work Product

Under California, absolute work product are mental impressions of the attorney and should never be discoverable or produced.

Here, L will claim that the part of his memorandum of expressing his belief that W would be a good witness to C is absolute work product. The information was learned by L from his interview with W. Additionally, his beliefs are considered his mental impressions and such information, should never be discoverable. C may argue that the belief should be produced because the information is in favor of C and will likely help establish her claim that Home and D did, in fact, defraud her. However, L's argument will prevail because L was representing D at the time of the interview and his interest should only be for the benefit of D, despite him expressing his belief that W would be a good witness for C.

The part of memorandum of L's belief that W makes a good witness for C is considered absolute work product and L cannot be compelled to produce that part of his memorandum.

3. What ethical violations, if any, has Luke committed?Duty of Confidentiality

Under ABA, an attorney has a duty of confidentiality to the client in that he should not reveal any information related to the representation to the client. Under California, there is no duty of confidentiality but attorneys do take an oath to uphold confidentiality to the same effect.

Here, L told D during the interview that he did in fact defraud C but he has not defrauded anyone else. Subsequently, L interviewed D's sister, W, and when W told L that D had admitted to her that he did defraud C, L told W that D had admitted the same to him. Such information should have been kept confidential even if D had told the same information as W was telling L. As D's attorney, L

owed a duty of confidentiality to D even if W is D's sister and a potential witness.

It is likely that L breached his duty of confidentiality to D under ABA and under CA, violated the oath he took.

#### Attorney Client Privilege

Under ABA and CA, attorneys cannot reveal any information relating to the client's case to a third party without the client's consent. Additionally, in California, the attorney needs to disclose to the client and obtain written consent in order to disclose such information. The privilege will surpass the death of the client and ends when the estate of the decedent has been divided.

Here, L revealed with D had told him to W during the interview. D did not disclose to L that he was going to disclose such information to W and did not obtain any written consent from D. As such, L is in violation of the attorney-client privilege to D in revealing such information to W during the interview with W.

#### Duty of Loyalty

Under ABA and CA, an attorney has a duty of loyal to his client and thus, acting in the benefit and best interest of his client.

Here, D is L's client and and thus, D owed a duty of loyalty to D only. However, L told W information that may not have been in the best interest to D when revealing that D also admitted to L about defrauding C. Additionally, D wrote that W would be a good witness to C. D is not representing C and he should be aware that his representation should go to D's best interest. Thus, it was not likely that he was acting in the best interest of D when during the interview and when drafting his memorandum about W being a good witness to C.

Under ABA and CA, L has breached his duty of loyalty to D.

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