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===== Start of Answer #2 (1445 words) =====

Attorneys in California are governed by the California Rules of Professional Conduct (RPC). Duties to clients, may continue even after death of the client, or end of representation.

There are very few exceptions to when an attorney may disclose the confidences of his client. Such as when a fee dispute occurs between the attorney and client, or when a case of malpractice against the attorney is brought by the client. Occasionally as to competency of a person (now deceased). Or if the Attorney reasonably believes that disclosure would prevent physical harm /death of client/another or if information is provided in furtherance of a future crime.

It would go against public policy for an Attorney not to be able keep a clients confidences/secrets.

1. SHOULD THE COURT COMPEL LUKE TO TESTIFY ABOUT WHAT WENDY TOLD HIM?

Representation of Don by Luke

Luke represented Don not Don's company Home Inc (HOME). As such, Luke owes his duties to Don, not to Home, Wendy or Claire. The facts state that Claire settled with Don's estate for her claim against Don, however not against HOME, which is the active litigation at hand.

Luke although fired by Don (prior to trial, and his subsequent death) still owes a duty to Don not to disclose his confidences. Luke under any circumstances, cannot disclose that Don directly told Luke that he admitted to defrauding Claire,

or that he had never defrauded anyone else, before or since. This again, would go against public policy.

Disclosure of information to 3rd party

However, here, the facts state that Luke told Wendy, that Don had admitted it to him also. (this was likely a breach of Luke's duty of confidence to Don.

Discussed further in C Supra. Had Don disclosed to Luke in front of Wendy the defraudment, then the information would no longer be confidential, because Wendy's presence would cause a break in the confidentiality, and thus, Luke may be able to testify about what Wendy told him.

Generally 3rd parties, in litigation break the confidentiality duty. Exceptions to this rule, are for when Corporations are involved, and a representative of the corporation (in house counsel / CEO etc. or a person that the corporation has authorized the attorney to talk to/ obtain information from an employee is involved. There, additional parties, are then covered by the attorney client privilege for confidentiality.

The facts do not state that any of these exceptions apply. Wendy was Don's sister, it does not say that she worked for Home Inc. or had any other privileges that would allow her statements to Luke to be covered under this exception.

Representation of Don, not Home

Further, the facts state that Don, specifically hired Luke as HIS attorney, not an attorney to defend his Company, which in this instance further highlights, Don's intent to keep his private representation and his business' representation separate; perhaps to avoid any conflict of interest, or to make certain that Don didn't impart liability onto Home that was he was personally liable for.

Luke interviewed Wendy, likely in preparation for trial. He does not have a direct duty to Wendy, as Wendy is not his client, however information learned in his interview, would be protected work product, if he was planning on using the information as preparation for possible trial. Because an attorney is fired/resigns from representation, does not remove the duty to continue to keep his clients confidences confidential.

As such, if Luke was still Don's lawyer, and they were going into trial on the action against Don claim, Don would be able to claim the attorney client privilege (Client holds the privilege, although the attorney may assert it on behalf of the client). Because Don is deceased, Luke may continue to assert the privilege on behalf of Don.

During the course of the relationship, an Attorney had a duty to zealously represent their client, and as such, Luke would be prohibited from disclosure. However, here the A/C relationship had ended, and as such, Luke need only maintain his duty of confidences.

This is different then if Don or Wendy had brought in documents for Luke to review (such as business documents or a contract concerning the dealings with Claire) Many documents do not fall within the A/C privilege, and would thus need to be turned over to the opposing party during discovery. Again, such is not the case.

Continuing duty to former clients

Typically, a lawyer cannot testify on behalf of his client as a witness. Here, Luke was fired by Don, and Don is deceased, and his estate is no longer a party to the case at hand. However, Luke is still under the duty to protect any confidences that were shared with him by Don during the time of representation, and the ending of the A/C relationship or death of the client does not change that fact.

If the court compels Luke to testify about Wendy told him, as she was not his client. Here the information is like whipped cream in a can, what came out, may be disclosed, but what is left in the can, is still confidential. It would be very limited as to what he could say. Luke's testimony would likely be subject to objections for hearsay on the part of Home.

Further, it appears that Don had published the 'confidence' to a third party, which removes the confidentiality of the statement (as to Luke) There is nothing in the facts however stating that the court could not compel Wendy to testify as to what Don told her, and what she told Luke. Wendy is not under the same duties as Luke.

While an attorney does have a duty of candor to the court, the court cannot compel him to breach his confidences of his former client of Don, especially to which the matter in which Luke formerly represented Don on, has been settled. Here Luke is under no duty to the court to correct any falsehoods or representations made by his Client to the court, because he is no longer the attorney for Don, nor is Don alive and/party to the matter. The court should sustain Luke's objection to testify based on the attorney client privilege.

2. SHOULD THE COURT COMPEL LUKE TO PRODUCE HIS

MEMORANDUM:

The court should not compel Luke to produce his memorandum, this is attorney work product. The memorandum reflects his personal thoughts, mental impressions, beliefs, and insight into the case. The subjective thoughts of the attorney, in his file notes are attorney work product under the RPC, and are not subject to discovery by the other side, unless it is a case against the attorney for malpractice, and/or fees.

The Attorney holds the privilege to his work product.

A. TO THE EXTENT IT RECOUNTS WHAT WENDY TOLD HIM?

The court should not compel Luke to produce his memorandum regarding what Wendy told him, as again, it was his personal notes, and as such falls within the attorney work product doctrine privilege. (supra) Further, this same information, may be able to be brought in through oral testimony of Luke and or Wendy.

B. TO THE EXTENT IT EXPRESSES HIS BELIEF THAT WENDY WOULD BE A GOOD WITNESS FOR CLAIRE?

The court should not compel Luke to produce his memorandum regarding his belief that Wendy would be a good witness for Claire. His writing contains his mental impressions of the case, which are absolute privilege of the attorney, under the work product doctrine. His impression that she would be a good witness is subjective, and maybe a reflection of what Luke's trial strategy planning.

3. WHAT ETHICAL VIOLATIONS, IF ANY, HAS LUKE COMMITTED?

Luke may have breached his ethical duties to Don, by informing Wendy that Don had also admitted to Luke that Don had defrauded Claire. It is unclear if Luke volunteered this information first to Wendy, or if it was said in response to Wendy telling Luke Don's admission. It is also unclear if Don had given his permission for Luke to share with Wendy that Don had admitted defrauding Claire. If Don had given his permission for Luke to share this information with Wendy, then it would not be a breach of his duty. However, as the facts are silent, taking the over all information into consideration, this would likely be a direct breach of Lukes duty of confidence to Don. This also may be a breach of

Lukes duty of Loyalty to Don, by the same disclosure to Wendy. The violations would hinge on whether or not the fact that Don had published the information to the third party (Wendy) broke the confidence held between the attorney and the client.

Question #2 Final Word Count = 1445

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