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===== Start of Answer 6 (1075 words) =====

What ethical violations has Len committed?

Len has committed various ethic violations according to both the ABA and California professional conduct code. An attorney must act with the legal knowledge, skills, training necessary to reasonably represent clients. Attorneys owe duties to their clients, the court, and the legal profession. If an attorney is found to violate ABA and/or CA ethics codes they will be disciplined by the appropriate official. Generally, this means that they will have to appear before the disciplinary board and the violation may result in publication, a fee, suspension, and/or disbarment.

Representation of ABC Corp

Duty of Loyalty

An attorney owes their client a duty of loyalty. This means that they must disclose all conflicts and, under CA law, all potential conflicts to their client. Furthermore, the attorney must act with the best interest of her client in mind and not act out of self interest. Here, Len is a member Equal ownership inc., a nonprofit organization that advocated for a statute that is now being opposed by her current client, ABC corporation. Under the ABA and California rules, she may be liable for violating the rules because of a conflict of interest.

conflict

Under both ABA and CA authorities an attorney must disclose any conflicts to their clients. In California that disclosure must be in writing. It is also recommended to be in writing under the ABA but it does not have to be. A conflict of interest arises when the representation will be materially limited due to an existing conflict. This could be shown by representing clients who are now your opposing counsel. Furthermore, individual client conflicts are imputed to the firm when they switch to a new firm, although that is not at issue here. Here, the facts indicate that Len is a "member" of the nonprofit organization that advocated for the statute being opposed by ABC corporation. Len personally thinks the statute is good and secretly hopes that ABC does not win the lawsuit. Under the ABA and CA, it is fine to disagree personally with your clients position as long as it does not represent your competence in representing the client. If the attorney is grossly offended by the position of her client and cannot zealously advocate on behalf of her client, she has a conflict and must disclose the conflict to her client. Here, Len decides to move forward with the representation even though she does not personally believe in what her client wants. This is fine under both the ABA and CA codes.

However, the facts only indicate that Len is a member of nonprofit. If Len is a member of the board of the nonprofit, she may have an actual conflict and must disclose this fact to ABA in writing. Regardless of if she is a board member, under the ABA it is always better to disclose even if it is a potential conflict.

Len never represented Equal as their attorney. Thus, she does not need permission from Equal to go ahead with the representation because they are not a former client.

potential conflict

potential conflicts must be disclosed in writing under CA law. As mentioned above, Len has a potential conflict because of her involvement with Equal. Even if this is not an actual conflict, she must disclose this information in writing to ABC because she owes a duty of loyalty to her client. Len did not disclose this potential conflict, so she has violated the CA code.

Statutes and Acts

although attorneys violate the duty of loyalty when they represent new clients that conflict with their former clients, they can generally advocate for either side of an act or statute. Here, Len helped pass a statute that is now being opposed by her current client. Since she was involved with the passage of this Statute, there may be a greater call for disclosure than if she were to just have a former client that really favored the statute.

withdrawal

If during the course of representation an attorney needs to withdraw because of a conflict, she must go through the withdrawal process. An attorney can withdraw from representation anytime before a proceeding is filed. If the proceeding is active, she must obtain permission from the court. Here, if she discloses the conflicts/potential conflict to ABC and they do not want her representation, she must withdraw.

Pat's filing of false reports

Duty of Loyalty to ABC

when an attorney represents a corporation, they owe the corporation a duty of loyalty, not the president or any other director. A corporation is treated as a person and the attorney must zealously represent the corporation. Here, the client is ABC, not Pat. Thus, Len's duty of loyalty lies with ABC.

Reporting

Under both the ABA and CA rules, if during the course of representation it becomes apparent that there is something illegal or disadvantageous to the corporation being done by the directors, the attorney must act. Under the ABA, the attorney has a duty to report the misconduct to the highest authority within the corporation. If the highest authority chooses not to act, or does so ineffectively, they attorney must disclose the violations to an outside authority. Here, Pat informs Len that he has filed false reports with the State Environmental Protection Agency regarding the disposal of non-hazardous waste and plans to file more. This act makes ABC liable for the conduct of Pat. Len represents ABC and MUST act in the best interest of her client. Pat is the president of the corporation, so he may be the highest authority in the

corporation, but if he is not, Len must disclose this conduct to the appropriate official. If nothing is done, she must report to someone outside of the agency (most likely the state EPA).

Under CA rules, Len has the duty to disclose this misconduct within the agency, but does outside. Thus, because she failed to report to anyone, she has violated both the CA code and ABA.

Duty of Confidentiality

An attorney owes their client a duty of confidentiality. Anything disclosed to the attorney by the client cannot be disclosed to a third party. A client can consent to disclosure through written agreement. Here, Len must advocate zealously on behalf of her client, ABC. Pat is not her client. She will not violate the duty of confidentiality by reporting this misconduct to others in the corporation because it will harm her client, the corporation.

Question #3 Final Word Count = 1075

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END OF EXAM