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### **1. Whether Larry can ethically follow Peter's instructions to file the motion?**

#### **Duty of confidentiality**

While there is a duty to keep client matters confidential, lawyers can consult other lawyers in their firm for advice, as is the case here, the duty of confidentiality was not breached by Larry discussing the case with Peter.

#### **Duty to be a zealous advocate**

Lawyers have a duty to be a zealous advocate for their clients, this does not mean that they must make every argument. In fact, it is a violation for them to just throw out every argument and "see what sticks."

#### **No frivolous claims**

Lawyers have a duty not to file frivolous claims. A claim is frivolous if the lawyer cannot even make a good faith argument as to the validity of the claim.

Here, Larry is a lawyer being supervised by Peter. Peter instructed Larry to file a motion to compel discover on matters that Larry believes would give rise to sanctions. Supervisors are liable for violations by their employees, unless, the employee knew that the act was a violation. In this case, if Larry were to file the motion to compel, should sanctions be brought, Larry would be liable on his accord and would not be able to hide behind "Peter told me to do it."

Therefore Larry cannot ethically follow Peter's instructions to file the motion to compel when he has a belief that the motion would give rise to sanctions after having done his research.

#### **Duty of competence**

Lawyers owe a duty of competence, while they do not have to take the case with a full understanding, they can become competent. They must be reasonably prepared for the matter at hand. Lawyers may also work with someone who is competent on the matter.

Here, there is no indication that Larry was not competent on his own, but he further is supervised by Peter who has more experience than him with trade secrets.

Larry has satisfied his duty of competence.

#### **Duty of loyalty**

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Lawyers owe a duty of loyalty to their clients, which means they must put their client's best interest first, and take reasonable care to ensure they are doing what is best for their client.

## **2. What Larry's obligations in relation to the damaging document are?**

### **Duty of Confidentiality**

see above

### **Compliance with rules of court**

Lawyers have a duty to comply with the rules of the court. In this case, there is a duty to make disclosures, unless there is at least good faith argument as to why the the disclosure should not be made, and then the judge will decide.

Here, Larry's client has a damaging document that he believes would be helpful to the opposing side's case. However, opposing counsel has already requested the document, and Larry knows of no basis to refuse the production of the document. However, Peter suggests hearsay, trade secrets and overbreadth in order to not produce the document.

If Larry believes that there is a good faith argument for any of what Peter has suggested, he may impose them. However, if Peter does not believe that any of Peter's arguments could be made in good faith, they would be frivolous, and he would have a duty to turn over the damaging document.

### **No frivolous claims**

see rule above.

If Larry believes that the claims suggested by Peter would be frivolous, he must comply with the rules of court, and turn over the document to opposing counsel.

## **3. What ethical obligations Larry must respect with regard to his job offer from XYZ?**

### **Withdrawal**

Lawyer MAY withdrawal with the permission of the court. A lawyer may withdraw only with the permission of the court, and if the withdraw will not materially affect the representation of the client.

If the case is in discovery, it is likely that the court will find it would not materially affect the representation of Jones and allow Larry to withdraw from the case under the "other good cause" allowance for permissive withdrawal. Finding that moving to another job would be "good cause."

### **Conflicts of interest**

A lawyer has a duty to avoid conflicts of interest, where the representation of a client would be materially limited.

A lawyer may still represent a client, so long as both clients are not directly opposing one another, so long as he (1) reasonably believes that the representation of either client is materially limited, (2) all affected clients give written and signed consent to the representation, and (3) the representation is not prohibited by law.

California, further requires the disclosures be in writing signed by the client.

Here, there is no indication that if he were to take the job at XYZ that Larry would even work on the Smith v. Jones case. It would be an ethical violation for him to work on the case because in working on the opposing side of the case, Larry has obtained information that would materially affect the outcome of the case and violate his duty of loyalty as well as his duty of confidentiality to Jones.

### **Consent to conflict**

In the abundance of caution, Larry should make a written disclosure to both Jones and Smith, indicating his prior position as Jones' lawyer, and the fact that he would be then working for XYZ, and be screened from the case, and apportioned none of the fee from the case. Both parties would have to be given enough information to make give informed consent to the conflict.

### **Screening**

When there is a conflict of interest, the conflict is imputed on to the lawyer's firm. Unless, the lawyer is timely screened and is apportions none of the fee from the matter.

Here, since there would be a conflict of interest, as Larry is coming from a firm directly adverse to a client XYZ is representing, Larry must be screened and apportioned none of the fee.

### **Duty of Confidentiality**

A lawyer has a duty of confidentiality. An exception to confidentiality, is disclosures needed for conflicts of interest checks.

Larry may make disclosures to the extent reasonably necessary to ensure there are no

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conflicts of interest if he takes the job at XYZ.

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**END OF EXAM**