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Whether L may follow P's instructions to file the motion

**Duty of loyalty / Conflict of interest**

Under the ABA rules, an associate has a general duty to follow his supervisory's instructions at a law firm unless he reasonably believes that these would be unlawful and/or violate the Model Rules or the CA rules. A lawyer should put his client's interests above all interests and avoid any actual or potential conflicts of interest, unless the lawyer reasonably believes that there is no substantial risk to damaging the case and obtains informed written consent from the parties involved.

Larry (L) is an associate lawyer at ABC firm (ABC). He has started to work there recently and receive instructions that can damage the client's case. L has an actual conflict of interest because his duties to the law firm and his supervising lawyer are materially adverse to the client. First, L should do a thorough legal research to make sure that the sanctions are really likely to be issued, which apparently he did. Second, he must communicate this to his supervisor, which he did. Third, he must follow the supervisor's instructions unless this would be unlawful or any sort of professional misconduct. Here, L is in a difficult situation because P has more experience in trade secrets, which a highly specialized area, and which L had not had much experience. However, if L accepts to follow the instructions without thinking it throughly, he may violate his duty of loyalty towards Smith, with which he is in privity of contract, which he represents, and which he is already defending in an ongoing lawsuit.

An option would be for L to seek informed written consent from both the client and the supervisor determining that they are both fully informed about the consequences of the filing. Again, this would only be proper if L had done a very thorough research on the case and his conclusions were based on valid applicable law. Thus, L may follow the instructions by the supervisor as long as such consent is obtained.

L's obligations in relation to the damaging document

**Duty of fairness to the opposing party/counsel vs. duties to the client**

The duty of loyalty is presented above. Under the duty of fairness, an attorney has a general duty to act with fairness, integrity and good faith in his contacts with the opposing party, third parties, and the court.

Under L's duty of fairness to the opposing party and counsel, and given the presented facts, the

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first instinct that L may have found is that he should disclose the document to the opposing party. The circumstances indicate that his supervisor is probably being reckless, or potentially completely and intentionally disregarding the client's interest, with his instructions. However, showing the document to the opposing party may be highly prejudicial to the client. They are still in discovery and any steps taken in a compromising direction may have negative effects during trial. L's duty of loyalty to the client, here, requires him to not act against his client's interests. Thus, in this case, L may have to follow the supervisor's instructions not to damage the client's case.

### **Duty of competence**

Under the CA rules, a lawyer shall not intentionally, recklessly, or with gross negligence, fail to perform legal services with competence. Competence here includes the mental, physical, and emotional ability to represent the client with diligence and skill. The competence of an associate lawyer will be determined by comparing him to similar lawyers in the area and with the same amount of experience as him. A lawyer who is not competent on the matter may associate with another lawyer who he reasonably deems competent.

Here, the facts involved in the case clearly demonstrate that L's supervisor is failing to act with competence and diligence with regard to Smith v. Jones. The document did not fall in discovery and the other party requested such document. There is no basis to refuse production. Still, P told L to interpose hearsay, trade secrets, and overbreadth objections and not produce the document. L, an associate attorney without much experience in the matter, faces a difficult question of whether or not he should follow his supervisor's instructions or try an alternative way given his own findings. The L should not make any precipitated decisions and must assess thoroughly whether his competence requires him to produce the damaging document to the opposing party.

Subsidiarily, under an exception to the duty of competence L may take an alternative route: he may seek help from another attorney in the law firm (or even in another law firm), provided that the supervisor attorney has knowledge about this communication.

### **Vicarious liability**

Supervisory attorneys may be found liable for misconduct by their subordinates but the opposite, in most cases, is not true. If P is found to have incurred in professional misconduct, L would not, as a result of his employment in ABC, be found liable as well. However, if the instructions were obviously, patently violative of the ABA or the CA rules under a reasonable lawyer standard, the associate attorney may also be found to committed misconduct and be disciplined.

Ethical obligations with regard to XYZ's job offer

**Duties to the law firm**

A lawyer employed by a law firm has a duty to timely communicate/disclose to the law firm any information that may affect, even if potentially, his employment relationship with the law firm. Here, L has received an offer to work for the law firm XYZ, that is representing the plaintiff. It is irrelevant that L is not taking the offer. Since XYZ is on the opposite side of the lawsuit, it would be proper to disclose it. Thus L has a duty to inform his supervisory and the person in charge of human resources at ABC about such offer timely.

**Duties to opposing party**

A lawyer has a general duty of communication to the client, the court, and third parties. L does not have a duty to inform Smith, the opposing party, about the offer. This would be beyond the scope of his duties of communication. Thus, L did not violate any ethical obligations by not telling Smith about the offer.

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**END OF EXAM**