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**Larry's Ethical Duties Regarding Peter's Instructions to File the Motion**

An associate generally follows the instructions of supervisory attorneys and partners within a law firm. However, associates, supervisory attorneys, and partners are all bound by the same ethical rules under the ABA and CA authorities. Here, the facts state that Larry, an associate, "thought" the motion to compel documents related to trade secrets would be denied and give rise to trade secrets. After Larry explained his concerns to Peter, the partner supervising Larry, Peter told Larry to file the motion. Thus, any ethical violations under the ABA and CA would be attributed to both Larry and Peter.

Under Rule 37 of FRCP sanctions for improper discovery requests are available. However, there are not enough facts to determine whether sanctions would be appropriate. Further, there are no ethical violations for filing motions that have a low chance of success, only frivolous motions. If the court deemed the motion to compel frivolous the Larry and Peter would both be subject to ethical violations under the CA and ABA.

Under CA, a lawyer must not harass. Thus, if the motion was viewed as harassing Smith by attempting to get information that was confidential because it is a trade secret, then both Larry and Peter are subject to violations under the CA rules.

A lawyer has a duty of competence and care. This duty includes that a lawyer must act with the knowledge, skill, preparedness, and thoroughness required for representation. Under CA rules, this duty further includes diligence, mental, physical, and emotional well being. Here, it appears that Larry might not know enough about trade secrets to adequately represent Jones. If Larry is not acting with the required knowledge and skill to represent Jones then Larry has violated his duty of competence and care under both ABA and CA rules.

**Larry's Obligations in Relation to the Damaging Document**

Under ABA and CA, a lawyer owes a duty of fairness to opposing counsel. A lawyer may not improperly withhold documents without a good faith legal basis. Here, Larry knows of no legal basis as to why the damaging document should be withheld. However, this does not mean that Larry's analysis is correct. As explained earlier, Larry is an associate and Peter is a more experienced attorney supervising him. Peter may have correctly raised the hearsay, trade secret, and overbreadth objections. However, if these objections have no good faith legal basis, then both Larry and Peter are in violation under CA and ABA authorities.

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Although Larry owes a duty of loyalty to his client, Jones, Larry must not violate the ethical rules. A duty of loyalty requires a lawyer to put the interest of the client above everything and to avoid conflicts of interests. Here, although Peter may be acting under a duty of loyalty to Jones, Larry must not violate other ethical rules in representing Jones, even if the supervisory attorney Peter instructs otherwise.

The ABA and CA have reporting duties for ethical violations. Under the ABA, a lawyer must report a violation of the rules. However, under CA rules, a lawyer may report a violation. Thus, if Larry truly knew Peter simply made up the objections, Larry would be obligated to report the violation under the ABA and it would be up to Larry's discretion under the CA rules to report the violation.

### **Larry's Ethical Obligations Regarding XYZ's Job Offer**

Conflicts of interests arise when there is a significant risk that representation would be materially limited due to the circumstances surrounding the conflict. Within a lawyer's duty of loyalty, a lawyer must not represent a client if a conflict of interest arises unless certain parameters are met. Here, Larry is representing Jones at his current firm ABC. Larry has done substantial work on the case, including responding to discovery requests and finding a "damaging document." Thus, if Larry took the job at XYZ, Larry would have a direct conflict because firm XYZ represents Smith, the company which sued Jones over failure to properly manufacture.

Conflicts of interests are generally imputed to the entire firm. However, there are exceptions for when a lawyer is new to the firm and has a conflict from a past firm. If a firm can build an "ethical wall" to prevent a lawyer from creating a conflict of interest then the duty of loyalty will not be affected under the ABA and CA rules. However, where as here, a lawyer is given an attractive job offer from a firm that is currently representing in the case (Smith) and Larry is currently representing the defendant in the case (Jones), Larry will likely be in violation of his duty of loyalty to Jones by accepting employment at XYZ. Thus, Larry should decline employment at XYZ at least until the Smith v. Jones matter is resolved.

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