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1. May Larry (L) ethically follow P (P)'s instructions to file the motion?

Formation of the Attorney Client Relationship

According to both CA and the ABA, the attorney client relationship forms when the the client reasonably believes that the relationship exist.

Here, L is an associate working for Jones. Jones is being represented by ABC Firm (Firm). L has not been shielded from the files or in any manner separated from matters pertaining to the case. Therefore, it is reasonable for Jones to believe thats L (as an associate of Firm) is also his representative and is thusly bound by the ethical codes of the ABA and CA ethics.

Thus, there is a valid attorney client relationship.

Duty of Candor to the Tribunal

The Duty of Candor to the Tribunal requires that an attorney not make any knowingly false, misleading or fraudulent statements of untruth to the court, particularly when the attorney either knows or has reason to know the falsity of the statements and or representations.

Here, Peter (P) is L's supervisor. P has told L to obstruct the opposing party's motion to compel by filing motions of "hearsay", "trade secrets" and over breadth motions that will make it such that there will be significant delay in the timely of the opposing party (OP) receiving the documents that they have likely requested in good faith. If L is to file the motions, particularly with the knowledge that he has no good faith basis for doing so, L will be committing a fraud upon the court.

Thus, L would likely violate his duty of candor to the tribunal.

Duty to Avoid Frivolous Claims

A lawyer must not file, assist in filing, or take on a cause of acting involving a claim that bears no legal or factual basis.

Here, Jones (J) is being represented in a matter where Smith (S) has asserted that J has failed to properly manufacture tools. There are no facts present to indicate that the claim or the defense of the cause of action (being represented by Firm) has no merit or factual basis in law.

However, L did become aware that there were some damaging documents concerning J's file. If the damaging documents made it such that the claim or defense arising on behalf of J failed to maintain a basis in law or fact, then continuing with the case would be an ethical violation.

However, L must know or have reason to believe that the claim or cause of action is frivolous. Here, the facts do not arise to the level of knowledge, and likely do not rise to the level of "should have known" either.

Thus, L has not violated his duty not to submit a frivolous claim.

Duty to Supervising Attorney's

A lawyer may follow the instructions of a leading or supervising attorney. However, a Lawyer may only do so if the lawyer is acting in good faith or has reason to believe that the supervisor is acting in good faith.

Here, L became aware of disparaging information concerning "damaging documents" related to the representation of J. L reported to P, the supervisor, and P instructed L not to comply with the request for discovery pertaining to those documents. L acted in good faith by reported up to P.

However, does L have reason to believe that P is acting in good faith by denying a a discovery request? Likely not, because such would excuse P from his ethical compliance to the opposing party and also to the court. There are no facts present to suggest that L could reasonably rely on such a blatant ethical violation, particularly when L knows or should know that both he and P are held to a standard.

Thus, L may not shield ethical liability by asserting his compliance with his duty to his supervisor.

Duty to Report Misconduct of Others - ABA

Under the ABA,

Duty to Report Misconduct of Self- CA

Duty of Competence- ABA

Under the ABA, A lawyer has a duty to provide sound, knowledgeable and skilled representation.

Here, L found disparaging documents and failed to conduct any research into the matter. L further failed to consult with the client regarding his position. Such research would be indicative of an attorney is using his skill soundly in furtherance of ethical representation.

Thus, L failed his duty of competence under the ABA.

Duty of Competence- CA

Under CA, a lawyer must not act with gross negligence or recklessness pertaining to the presentation of a client.

Here, there are no facts present to indicate that L acted with gross negligence. When L discovered the documents, he immediately reported them to his supervisor. Such actions are not indicative recklessness.

Thus, Under the CA, L did not violate his duty of competence.

Duty of Diligence

A lawyer has a duty to be timely and efficient.

Here, S has requested damaging documents and L has failed to comply. Further L has been instructed to file several motions that have no good faith basis. These actions are both waste time and fail to provide the client the reasonably efficient representation that he is entitled to.

Thus, L has breached his duty of diligence

2. What are L's obligations in relation to the damaging document?

Duty of Candor to the tribunal

(see rule above)

Duty of Fairness to the Opposing Party

An attorney must behave with all ethical compliance and fairness to an opposing party and must do so in a manner that does not harm or unjustly prejudice the OP with out cause.

Here, S is the OP. S is likely being represented by counsel. L has been given instruction to file a motion to compel discovery. L has researched the matter and told P that he believes the filing of the motion will give rise to sanctions. Filing such a motion, would not only waste the courts time, but would waste the time of OP who also has a duty of diligence to his client. If P files the motion without a good faith basis for doing so, he runs the risk of placing OP in the position of being harmed and unduly prejudiced by a warrantless motion.

Further, although the document is purportedly damaging, OP has a right to receive it though discovery. To unjustly prejudice OP right to receive it in a timely manner, or perhaps even his right to receive it all all, would not be faith to the OP.

Thus, P has violated his duty of fairness to the OP.

Duty to Comply with Court Orders

A layer has a duty to comply with all court orders.

Here, S has requested the document that is purportedly "damaging". The document has not yet been produced in discovery. Discovery is a court mandated process, and a lawyer has an ethical duty to make all good faith efforts to reasonably correspond. L knows that there is no basis to refuse the request of S. Therefore, refusing the request would not be in good faith.

Thus, L has likely violated his duty to comply with corrt orders.

3. What ethical obligations must L respect with regard too XYZ's job offer?

Fiduciary Duties of as Associate

Conflicts of Interest - Attorney to Former Firm

Conflicts of Interest - Attorney to Former Clients

Duty of Communication

Under the ABA an attorney must make all efforts to inform, update, and consult with a client about all matters pertaining to the clients representation. Under the CA, an attorney must reasonably consult with the client regarding all necessary matters pertaining to representation.

Here, if L intends to take a job offer with another firm, L must consult with any current and previous clients whose representation may be effected by his transfer.

Thus, L has an ethical obligation to communicate his departure from the firm to all clients.

Duty of Loyalty

L has a duty to inform Firm of the offer, make all reasonable efforts to provide firm with timely notice if he decides to accept XYZ's offer.

Here, L has received an offer. There are no facts present to indicate that L has accepted the offer.

However, according to L, the offer is an "attractive offer". L must reasonably inform Firm of his decision in a timely manner so that Firm may determine the course of action that is best for both Firm and their clients.

Duty not to Usurp Opportunities

L has a duty not to solicit Firm's current clients, or to in any manner infringe upon the attorney client relationship with Firm and their clients.

Here, L has worked for Firm and has likely built a relationship with Firm's clients--particularly those whose cases L has been assigned to (i.e. J). If L decides to take the opportunity to work with XYZ, L may not force or coerce thw clients into coming with him to his new firm.

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However, L may inform the clients that he has accepted a new opportunity and may also give them a way to contact him in the event that they wish be transferred to XYZ as his personal clients.

Thus, L may not usurp an opportunity to represent the clients but may reasonably communicate the circumstances.

Duty to Shield

Duty to Former Clients

Duty to Prospective Clients

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END OF EXAM