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Primary Legal Topic: Professional Responsibility

**Issue: Was there a conflict of interest?**

Rule: Conflict of Interest - Concurrent Clients: a lawyer may not represent a new client if (1) representation would be adverse to another client or (2) if another lawyer in the firm is representing an adverse client.

ABA: However, a lawyer may represent currently conflicting clients if (1) the lawyer reasonably believes he can do so diligently and competently; (2) the representation is not illegal; (3) the clients are not directly adverse in an ongoing litigation or matter before a tribunal; and (4) he received informed written consent from each affected client.

CA: Additional: Lawyer must provide written disclosure if (1) the lawyer knows or reasonably should know that he is related to a lawyer on the opposing side; lives with a lawyer on the the opposing side; or has a past or current client conflict, has a third party conflict, or has a personal interest in the case or (2) another lawyer at the primary lawyer's firm is representing an opposing client or is a witness in the same issue.

CA requires informed written consent, including written disclosure to the client and informed written consent from the client, except in the "additional" matters above that pertain only to CA, which require only written disclosure, but not informed written consent from the client.

**Issue: Was the duty of confidentiality violated?**

Rule: lawyers have a duty to keep-safe and confidential all communications with the client that (1) concern the legal matter at issue and (2) for which the client reasonably believes lawyer-client confidentiality exists.

**Issue: Was the duty of competence violated?**

Rule: Duty of Competence: a lawyer must act with skill, knowledge, expertise, and thoroughness regarding all client matters.

CA Additional: a lawyer must not behave with intentional, reckless, recurring, or gross

negligence with regard to client matters.

**Issue: Was the duty to communicate violated?**

Rule: Duty to Communicate: a lawyer has a duty to communicate regularly with the client, including any material updates the case (ABA + CA).

**Issue: Was the duty of diligence violated?**

Rule: Duty of Diligence: a lawyer has a duty to be diligent and prompt in his work for the client (ABA + CA).

CA: Additional: a lawyer must not act with intentional, reckless, recurring, or gross negligence with regard to client matters.

**Issue: Was the duty of loyalty violated?**

Rule: Duty of Loyalty: a lawyer must not usurp the client and must do things directly adverse to the client's interests (ABA + CA).

**Issue: Was there a duty to withdraw?**

Withdrawal: a lawyer **may** withdraw if the lawyer can no longer effectively represent the client.

**1. What ethical violations has Laura committed?**

Lawyer Laura has committed numerous ethical violations. The rules are stated above.

a. Duty of Confidentiality

Lawyers Laura and Alex technically run independent law practices: they have separate letterhead, business cards, and telephone numbers. While their practices are separate by all outward facing indicators, they work in the same office, have the same secretary (Sam, Laura's son), and use the same printing and other office resources. While they are not

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precluded from sharing certain office resources, they are obligated to take appropriate measures to safe-keep and keep confidential all client matters. Laura violated this duty by sharing a secretary with Alex.

Here, Laura likely violated her duty of confidentiality in several ways:

(i) Sam as Secretary: While some office resources can be shared, Laura and Alex likely (although not definitively) violated their duty of confidentiality by sharing a secretary who was presumably privy to both of their client confidences. If, in fact, Sam performed strictly office management duties and did not engage in any client matters, then he might be an appropriate shared resource. But, the fact that Sam was responsible for printing client matters for both Laura and Alex (as evidenced by the fact that Sam left a confidential client document of Alex's in the printer) suggests that Sam was likely privy to client matters. If Sam *is* to be a shared resource, there need to be clearly delineated parameters around his work for Laura and Alex, and ways of keeping their client matters separate, safe, and confidential. There is no indication that any such steps were taken by Laura.

(ii) Laura Read Alex's Confidential Document: Laura violated her duty of confidentiality when she intentionally read a document, left in the printer by Sam, that was expressly addressed to Alex. Lawyers have a duty to stop reading a document as soon as the lawyer has (1) reason to believe he mistakenly received/has access to the document that (2) believes the document might be confidential. The document left in the printer was expressly addressed to Alex. That alone should have been sufficient reason for Laura not to take/touch the document, to alert Alex and Sam that the document had been left in the printer, and most importantly, *not to read the document*. Laura violated the duty of confidentiality by reading a document she had reason to believe was confidential and for Alex, only. She also violated the duty by then failing to alert Alex that she had seen/read the document.

b. Conflict of Interest -- Concurrent Clients.

See rule above. Technically, Laura and Alex run independent law firms. So, Laura's representation of Wendy and Alex's representation of Henry should not create a concurrent client conflict of interest. However, a concurrent client conflict of interest was created when Laura became aware that Alex was representing Henry in a matter that directly affects Laura's representation of Wendy.

Under the ABA, Laura may still represent Wendy, even after being made aware of the conflict, if

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she (1) reasonably believes she can competently represent Wendy, (2) the adversity is not illegal, and (3) the clients were not directly adverse to one another in ongoing litigation, then representation would be allowed with written informed consent of the client. Here, Laura is representing Wendy in her child support request against Henry. Alex is managing Henry's taxes and a new house deed, which directly speak to Henry's personal assets, and personal assets are directly at issue in Wendy's child support claim. Under both ABA and CA law, there is some dispute as to whether Laura should have known that Alex was representing Henry. Because Laura and Alex run separate firms, they are required to keep their client matters confidential. But, because they share an office, secretary, and resources, they also have a duty to disclose the conflict (orally under the ABA and in writing under CA). Under CA, a concurrent client conflict of interest would require Laura to disclose the conflict in writing to Wendy, which she did not do, and seek written informed consent from Wendy, which she also did not do.

c. Duty of Competence.

See rule above. Laura violated her duty of competence when she failed to represent Wendy to the full extent of her skill, expertise, and knowledge. Because Laura did not want to get her son, Sam, in trouble, she did not represent Wendy to the full extent of her knowledge. This is a violation of her duty of competence to Wendy.

d. Duty of Communication.

See rule above. Laura had a duty to notify Alex when she read the confidential document concerning Henry's property deed. She violated this duty. Laura also had a duty to communicate material updates to the case with Wendy. She violated this duty by not telling Wendy that she had read a document re: Henry's property deed. Even though her duty to Alex would have prevented her from discussing the content of the document with Wendy, Laura still had a duty to notify Wendy that new, material information was obtain.

e. Duty to Withdraw

See rule above. Under both the ABA and CA, Laura had a duty to withdraw when it became clear that she could no longer provide her client with competent representation. Because the litigation was already underway, she would have required permission from the court, but should have sought that permission, which she did not.

**2. What ethical violations has Alex committed?**

a. Duty of Confidentiality

Alex violated the duty of confidentiality by not taking proper measures keep-safe and keep confidential his client, Henry's, information. As a lawyer, Alex is responsible for violations of confidentiality made by those he supervises, including non-attorneys like Sam. When Sam left the document re: Henry's property deed in the printer, Alex is vicariously liable for the mistake and assumes the violation against Henry's confidentiality. Alex should have taken proper measures to ensure that confidential client documents were not at risk of sitting in the printer.

b. Conflict of Interest.

Like Laura, Alex had a duty to know, because he and Laura were working in the same office, that their clients were not directly adverse to one another. By not being aware that his work on Henry's deed was directly adverse to Laura's work on Wendy's child support suit, he inappropriately assumed

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**END OF EXAM**