

1)

What ethical violations, if any, has Andy committed?

Attorney Client Relationship

An attorney client relationship is formed when a client seeks legal advice from an attorney and retains the attorney for legal representation. A corporation can be a client of an attorney and the loyalty of the attorney is to the representation of the corporation.

Here, Lawncare ("L") entered into a valid retainer agreement with Andy ("A") to defend L in a personal injury action filed by Paula ("P") on behalf of her children who developed breathing problems after L's weed killer was applied to their lawn. Thus, a proper attorney client relationship has been formed.

Scope of Representation

Under the scope of representation the attorney will be responsible for all substantive decisions such as case filings and motions and the client will be responsible for all decisions regarding the direction under which they would like proceed in the case.

Duty of Loyalty

An attorney owes a duty of loyalty to their clients to represent their client's interest to the best of their ability and to avoid all conflicts of interest. A conflict of interest arises when the interest of the client is adversely affected by the attorney's interest or the interest of a 3rd party. An attorney may still represent a client despite a conflict of interest if the 1) attorney informs the client of the conflict 2) the client's interest is not directly adverse to other party 3) the attorney reasonably believes that he can properly represent the client despite the conflict and 4) the representation is not against the law. Under the ABA, an attorney is required to notify a client of all potential conflicts on the case and request that the client seek independent counsel to review and the client can agree to proceed with the representation. In California, the client's consent to the representation despite the conflict must be in writing.

Here, A is in a conflict of interest because he is a member and financial supporter of Citizens Concerned About Chemicals (C2AC) a consumer group that lobbies for environmental regulations that would remove chemicals such as Lawncare's weed killer from the market as unsafe. Additionally this conflict places A directly in conflict with L's interests because A financially supports and is a member of a group whose interests are directly adverse to L. Moreover although C2AC may not necessarily qualify as a "paying client" they are a client nonetheless because A has provided pro bono legal advice to C2AC ("C"). Under the duty of loyalty A is required to inform L of the conflict and although A reasonably believes he can still represent L despite the conflict because the facts indicate that "A is convinced that his association with C will not affect his representation of L, he is required to inform L of the conflict. The representation of L by A is not against law because the facts do not indicate anything illegal, A is nonetheless required to inform L of the conflict and he has failed to do so. Moreover, informing L of the association with C would have likely changed L's position in hiring A because A did not want to discuss his private concerns with C and if C had been informed, C most likely would have withdrew from hiring L. Because L did not want to jeopardize losing L as a client, A

has placed his interest above the interest of L and thus violated his duty of loyalty.

The court will likely find that A has violated his duty of loyalty to his client L under both the ABA and CA authorities.

Mandatory Withdrawal

If an attorney's interest are directly adverse to that of the client and there is a conflict of interest, the attorney must withdraw from representation.

Here, A has violated his duty of loyalty and hold interests against his own client because he is a member of a group and financially supports said group that lobbies and wants products like L's removed from the market as unsafe. Additionally, A is aware that the lawsuit is a result of an injury to children and thus may harbor bias toward his own client because his organization lobbies against the very thing that his client is being sued for.

A is required to withdraw from the representation of A and is in violation of both the ABA and CA authorities if he does not do so.

Duty of Confidentiality

An attorney shall not reveal confidential information involving the representation of a client without the client's consent. In CA the consent must be in writing.

Here, A may argue that he did not violate the duty of confidentiality because the information disclosed in the anonymous questionnaire was publicly available information. Additionally, A will argue that he did not provide any additional information other than the information already publicly available. A was required to inform L of the questionnaire and obtain L's consent to disclose the information. Because A did not obtain L's consent and further lied to C when the CEO contacted A regarding the released information, A has thus breached the duty of confidentiality. Additionally, L was contacted by a representative of C (the organization that A belongs to and financially supports) and thus the information was disclosed in breach of the duty of confidentiality because A is a member of C and represents L and as a result C obtained confidential information about L and the lawsuit.

The court will likely find that A violated the duty of confidentiality to C.

Duty of Disclosure/Communication

An attorney has a duty to disclose all pertinent information regarding the representation of the client to the client.

Here, A failed to communicate and disclose to the CEO of L that he was a member of C and financially supported C. Additionally, A lied to the CEO and did not disclose that he answered the anonymous questionnaire disclosing the public information about the lawsuit. A further lied and committed an ethical violation because he misrepresented to his client that he did not know where C would have received the information.

The court will likely find that A committed violations under both the ABA and CA authorities.

Duty of Fairness to Client

An attorney owes a duty of fairness and ethics to his clients and to the legal profession. Here, A has repeatedly failed to inform his client L regarding the conflict in his representation in the lawsuit against L by P. Moreover, A is a member of an organization that lobbies to prevent the type of harm suffered by P and L manufacturers and sells a liquid weed killer for lawn care that is the type of chemical that the consumer group seeks to remove from the market as unsafe. Moreover, after disclosing in an anonymous questionnaire to C the information regarding the lawsuit, A further lied to his client and did not inform them that he had provided the information regarding the case to C because he told the CEO that he did not know where C would have received the information and recommended that they not disclose any details about the suit.

A has likely committed an ethical violation in not disclosing to his client in fairness under the ABA and CA authorities.

Duty of Care

An attorney shall exercise the due care in the representation of a client and shall not grossly or recklessly misrepresent the client.

Here, A has not exercised due care because he has repeatedly failed to disclose to his client that he is involved in a group directly adverse to their interest. Additionally, A has repeatedly lied and misrepresented to the client pertinent information involving the representation of the client because he has not informed them of his affiliation. Additionally that affiliation can cause bias against his own client because the lawsuit involves children and the development of breathing problems as a result of L's weedkiller. Lastly, A's disclosure of the case information to C is not exercising care and then advising his client to not speak to them regarding the any details about the lawsuit is reckless.

Thus, A likely violated the duty of care to his client under the ABA and CA authorities.

Conclusion: A violated the duty of loyalty, confidentiality, communication, care, fairness to client under the ABA and CA and should have withdrawn from representation.

Question #1 Final Word Count = 1395

END OF EXAM