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Question 4: What ethical violations has Andy Committed

Duty of Confidentiality

Issue: Did Andy breach his duty of confidentiality to C2AC in relation to advice previously given?

Rules: A lawyer has a general duty of confidentiality to his clients. This duty is perpetual, and a lawyer therefore also has a duty of confidentiality to all former clients. A lawyer also has a duty of confidentiality to prospective clients, whether or not the lawyer/client relationship is actually ever formalized. This duty extends to all information shared by a client, whether or not it is named by the client as confidential. Pro-bono clients are afforded the same confidentiality duties as paying clients

Analysis: Andy previously provided legal advice to C2AC on a pro-bono basis on an unrelated corporate matter, though he didn't enter into a formal attorney/client relationship with them. Based on these facts, either C2AC is a former client, to whom Andy owes a duty of confidentiality, or, if he didn't actually represent them and just gave them some advice, they could be seen to be prospective clients, in which case he would also owe them a duty of confidentiality. The facts state the advice was in relation to a corporate matter rather than a litigation matter, so it is unclear what information he has, but Andy needs to ensure he does not breach the obligation of confidentiality as there is a risk he might do.

Conclusion: The facts do not state there has yet been an ethical violation relating to duty of confidentiality.

Duty of Loyalty

General Rules:

A lawyer has a duty of loyalty to their client, which requires them to act in the best interests of their client and avoid conflicts of interest. A conflict of interest will arise where there is a significant risk that representation of the client will be materially affected. Under ABA, if a lawyer reasonably believes that notwithstanding the conflict of interest, they will be able to adequately represent their client without the adverse interests affecting the representation, they may do so if they inform their client of the potential or actual conflict, and obtain their knowing and informed consent. In California, this informed consent must be in writing, and a lawyer must also inform the client of any other personal or financial relationships they have which might be connected to the action, whether or not they believe them to be of risk to the client. Where a lawyer's representation of a client would constitute an ethical violation, he should withdraw.

Issue: Does Andy's membership and support of C2AC constitute a conflict of interest in connection with his representation of LawnCare?

Rule: A personal relationship will be a conflict of interest if there is a risk that it could materially and adversely affect representation by the lawyer of their client. As stated above, under California law, such a relationship must be notified to the client in writing regardless.

Analysis: Andy is both a member and a supporter of C2AC, and this would infer that he has a

personal relationship with them. At the very least, he is associated with them, and believes in their purpose. C2AC have as their purpose lobbying government for environmental regulations that would remove chemicals such as LawnCare's weedkiller from the market. This is very much in conflict with LawnCare's interests. The facts state that Andy is convinced that his association with C2AC will not affect his representation of LawnCare. However, the facts do not state that he informed LawnCare about his relationship with C2AC, as required under ABA and CA law, or that he obtained their written informed consent to be represented regardless, which is a violation of both ABA and CA rules

Conclusion: There was an ethical violation by Andy because his conflict of interest was not notified to his client, and no informed written consent was obtained, and nor did he communicate the nature of his relationship with them.

Issue: Does Andy's failure to disclose his personal concerns relating to LawnCare's products constitute a conflict of interest?

Rules: In connection with the duty of loyalty a lawyer has towards his client, he has a duty to act in his best interests. A conflict will arise if the lawyer is not able to do so. A lawyer is required to provide counsel to enable client to act to their best interests in accepting any settlement, and provide advice and counsel to enable the client to understand their options.

Analysis: The question is whether Andy's personal beliefs would prevent him from being able to fulfill the above duties of loyalty to his client, he certainly seems to think he can. But we would need more facts to understand how things play out before we could analyse this, as simply having an opinion or belief is not in and of itself a violation. If he cannot act with the loyalty required, Andy should withdraw.

Conclusion: Absent further facts, we cannot say this is a violation.

Issue: Does Andy's previous legal advice to C2AC constitute a conflict of interest?

Rules: A conflict of interest can arise when a lawyer represents a client in a matter against a former client, and is not permitted unless the lawyer informs the former client and obtains their consent. In CA, this consent must be in writing. In addition to the potential conflict of interest, a lawyer must be mindful of potential for breach of confidentiality, as there is a risk that confidential information they have about the former client is relevant, and the lawyer cannot not use it without breaching duty of confidentiality to the former client, but this could have a materially adverse effect on representation of the new client. A pro-bono client is still a client, who is treated in the same way as a paying client.

Analysis: Here, the facts state that the advice Andy previously gave to C2AC was in relation to an unrelated corporate matter. Given this is a personal injury claim, ie an unrelated claim, by an unrelated plaintiff, it is unlikely that there is a conflict of interest relating to C2AC being a former client, but there is a possibility. Therefore, Andy should have obtained consent from C2AC to act for LawnCare

Issue: Does Andy's failure to disclose information about how C2AC found out about the lawsuit constitute a conflict of interest?

Rule: A lawyer has a duty to keep clients updated and informed on progress of the case

Analysis: Andy is not giving his client the full picture by not telling them about the questionnaire, and this is an ethical violation

Conclusion: This was an ethical violation

Issue: Duty of Competence

Issue: Was Andy competent to provide corporate advice to C2AC previously?

Rules: a lawyer must act with the required skill and expertise when representing a client, under ABA rules. Under CA rules, a lawyer will be subject to disciplinary action for repeated, reckless, incompetent, unqualified representation. A lawyer should decline to represent a client or provide advice when this is not possible.

Analysis: the facts state that he provided corporate advice to C2AC on a pro-bono basis previously, and is now providing litigation advice to LAwnCare. It is likely he is skilled and qualified as a litigator because the facts state that Lawncare was impressed with his reputation as a litigator. There is nothing in the facts that confirm whether Andy was competent to provide corporate advice, but if it was not within his wheelhouse, he should have sought advice from other specialists, or educated himself, or declined representation.

Conclusion: Absent more facts, we cannot know whether Andy was qualified to provide corporate advice, but if not, this was an ethical violation.

Issue: Does Andy's recommendation to Lawncare that they not disclose any details about the lawsuit constitute a breach of competence?

Rules: A lawyer must act with honesty, good faith, and without recommending fraudulent or criminal action. A lawyer must act in the clients best interests at all times, as set out above. There is no duty to talk to the press about impending litigation or provide details that could impede an action.

Analysis: Here, Andy advised Lawncare not to respond to the CEO of C2AC as to any details about the lawsuit. One question is whether Andy did this because he didn't want him to find out about his relationship with C2AC, because this would not be acting in the client's best interests and would also constitute deceitful fraudulent activity. Alternatively, there is no reason for The CEO to respond to C2AC.

Conclusion: whether or not there is a violation depends on whether there was an ulterior motive for the advice.

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END OF EXAM