

3)

WHAT ETHICAL VIOLATIONS HAS LAURA COMMITTED:

Attorney-Client Relationship

An attorney-client relationship exists when a client seeks representation (to provide legal services) from the attorney.

Here, Laura is general counsel for MoreHome Mortgage Company (MoreHome), There was an established attorney-client (an organization) established. Laura's duties of professional responsibility will be to MoreHome and not its staff, officers or directors.

Duty of Loyalty / Conflict of Interest

A lawyer (L) has a duty of loyalty to her client. A L must not accept or continue a representation if it is directly adverse to or materially limits the representation of another client, former client, third party or interest of the attorney.

Potential Conflict: Eric Wanting Laura's Legal Advice

A potential conflict exists if the L reasonably believes a conflict exists but it has not yet materially limited the representation.

ABA: requires no disclosure or consent

CA: requires an informed written consent

Here, M, the organization is L's client. There is a potential conflict between Eric (E)'s interests and Morehome's (M) interest because. E confided with L and wanted L for legal advice because he was concerned about M's policy to push risky mortgages on unsuspectig customers.

Although E claims he has never engaged in these practices himself he does not want to tell Mianne the CEO. Because M has an aggressive policy, and E is claiming that perhaps this is why the employees are falsiyng the financial history of the mortgage applicants. He "confided" to L because he did not to be implicated in the questionable practice. This is a potential conflict because E wanted L for legal advice that may be against the interest of M. Under ABA, L did not need to obtain a disclosure or consent from her client Morehouse about the potential conflict before she gave E legal advice . Under CA, L need an informed written consent. from M.

Although L did not obtain an informed written consent from Morehouse regarding giving E legal advice, she did tell him that she would think about it and get back to him. L instead went to consult outside counsel.

Actual Conflict: L Going Against Mianne's instructions

An actual conflict exists if the representation is directly adverse to or materially limits the representation of another client, third party or interests of the attorney.

Here, L called M and informed her of E's visit and his concerns. Mianne instructed L not to do anything with the documents and to give them to M instead.

M's advice to L is directly adverse to the interest of the company. By not doing anything and leaning on Mianne's instructions, however, L consulted with outside counsel regarding what to do with the documents and provided documents to the State Attorney General. Thus L preserved her duty to Morehouse by seeking its interests over Mianne's. L knew that the State Attorney General is aggressively investigating similar practices by mortgage companies, but she did not know whether Morehouse has been targeted for investigation.

Generally, L should present a conflict issue to the highest authority in the company, but because Mianne is the CEO she could not go any higher. She instead did what was appropriate and sought outside counsel and presented the issue and the documents.

L protected the rights of Morehouse by doing so

L did not breach her duty of loyalty to Morehouse.

Duty of Confidentiality

L has a duty to not disclose confidential information obtained from the representation of a client.

A L may only disclose if she receives informed written consent, or a client is using representation to perpetrate a crime-fraud to prevent financial loss or to prevent death and serious bodily harm.

In California, a L must in good faith, beseech client not to commit the crime or fraud, if the client refuses then she has a duty to inform the client that she will reveal the confidential information.

Here, L was given documents that she knows might constitute a crime under state law. One could argue that she should have followed Mianne's advice and not do anything with the documents which would probably result in the company's aggressive practice to continue and the falsification by applicants to continue. However, this would eventually place MoreHouse in jeopardy with the law. L presented the case to the State Attorney General to redress the issue - her disclosure of the crime under state law is justified

Under California L, she probably should inform the CEO not to continue before going to the Attorney General, and if he refuses then to send the documents (copies) to the State.

Thus, L may not have breached her duty of confidentiality but under CA she might have breached it, should have given the CEO a chance to redress the practice within the company before going to the State.

Duty of Competence

An L must use the knowledge, skill, thoroughness and preparation in representing a client.

Here, L consulted with outside counsel especially after she spoke with Mianne who instructed her to do nothing which might have placed MoreHouse in a compromising situation or status later. Because she used judgment and discernment a competent attorney would use by going to outside counsel,

L did not breach her duty of competence

Duty of Candor/Duty to Present Facts Truthfully

L has a duty to present facts and evidence truthfully to the tribunal.

Here, L provided copies of the documents as instructed by outside counsel to the State Attorney General. Giving the documents to the SAG and performing her duty to present facts and evidence truthfully supercedes her duty of loyalty and duty of confidentiality to her client.

L may not be liable for a breach of candor.

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END OF EXAM