

3)

Duty of Competency

A lawyer owes a duty of Competence to his client. A lawyer must be thorough, skilled and knowledgeable. If the lawyer is not competent in an area, they may associate with another lawyer who is competent or research the area on their own.

Here, there are no facts that Laura is incompetent.

Duty of Confidentiality

A lawyer owes a duty of confidentiality to their client. An attorney should not reveal confidential information to third party's.

Here, Laura revealed confidential information to a third party because she consulted with outside counsel regarding what to do with the documents she received from Eric.

Laura, may argue that she didn't know how to react in such a situation where her employer was involved in wrongdoing. While this may be a good reason, she in fact did reveal confidential information to a third party without her employers position.

Thus, Laura did violate her duty of confidentiality.

Duty of Loyalty

A lawyer or a duty of loyalty to to clients. A lawyer should try to avoid conflict with former clients, present clients, and personal beliefs.

Potential Conflict of Interest

A potential conflict is a conflict that has not manifested into one that influences the clients decisions. In CA, the attorney should obtain consent form the client in order to continue.

Here, Laura learned that her employer is involved with wrongdoing because the company is falsifying the financial history of some of its applicants.

Thus, a potential conflict exists.

Actual Conflict of Interest

Actual conflict of interest is a conflict that may affect the lawyer's actions in representing his client. Under ABA and CA, the lawyer would need to obtain a signed written consent in order to continue.

Here, there is an actual conflict of interest because it is against Laura's belief to work for an employer involved in wrong doing.

Thus, an actual conflict exists.

Representation Despite Conflict

An attorney may continue to represent the client despite the conflict if 1) the lawyer reasonably believes that they can fairly represent the client and would not interfere with conflicts, 2) the lawyer is not representing one client against another client or clients on adverse positions, 3) the representation is not against the law, and 4) the lawyer obtained the consent of the client(s). In California, it has removed the reasonable standard (#1 from above).

Here, Laura may continue to represent MoreHome if she reasonably believes that she can reasonably represent the company to their best interest. She is not representing one client against the adverse interest of another client, and her working at MoreHome is not against the law. However, as will be discussed below, she may need to withdraw from the company if she cannot find a solution to the intentional falsifying of documents.

Organization is the Represented Entity

The attorney is representing the organization as a whole. The attorney is not representing the individual director, officer, staff, etc. Under ABA rule, if it comes to the attorney's attention that an officer, director, staff or any employee of the company is participating in any wrong doing that may hurt the organization, the attorney has a duty to report up to higher management. If reporting up does not solve the situation, the attorney may report to outside the organization such as law enforcement, SEC, government regulators, etc. In CA, an attorney is required to report up to higher management, however, a California attorney should not go outside of the organization.

Here, Laura is not representing Eric or Mianne because she is representing MoreHome. It came to Laura's attention that the employees at MoreHome are participating in wrong doing that may hurt the organization because falsifying the financial history of mortgage applicants so that they can qualify for a loan would be against the law. Furthermore, it has come to Laura's attention that it is MoreHome's policy to push these risky mortgages onto unsuspecting customers which is an unethical practice but illegal and may severely hurt the company in the future. Laura had a duty to speak with the CEO about the falsifying of the bad mortgage. However, Mianne's only instruction was "don't do anything" and just give the documents to Mianne. Here, Laura, but raise this issue to Mianne's boss' such as the Board of Directors that reside on behalf of MoreHome. If this does not work, Laura may go to State and Federal Regulators for a solution.

In CA, Laura would also speak to Mianne's bosses, such as the board of directors in order to find a resolution. However, she should not be able to speak with law enforcement outside the organization. She may have a duty to withdraw discussed below.

In summary, under ABA, Laura should raise the issue to higher management, and if nothing happens go to an outside agency. In CA, Laura should raise the issue with higher management, however, may not go to an outside agency.

Duty to Withdraw

If an attorney believes that the client is involved in material wrongdoing, and there is no resolution the attorney should attempt to withdraw.

Here, it appears that MoreHome management including the CEO in involved in falsifying the financials of prospective clients. If going to the board or higher source does not solve the situation, Laura should withdraw from her position from MoreHOMe.

Thus, Laura should withdraw from her position.

Question #3 Final Word Count = 889

END OF EXAM