

3)

Laura=L

Morehomes (MH)

Eric= E

To determine the ethical duties of L, it is important to know that L was MH's attorney and not C's attorney. With this in mind, we can show that L breach the following ethical rules.

Duty of loyalty

L had a duty to work in the best interest of her client, HM. L must not represent the party where the representation is directly adverse to her own client or there is substantial risk that the representation of the client will be materially limited by her own interest, interest of another party.

Here, L was MH's, a corporation lawyer. When E approached him to give him the package of the documents that shows the falsifying the financial history of many mortgage applicants. E was an unexperienced employee he did not know who he had to talk to since he thought L is his attorney. L responded that she would think about and get back to him. Talking to E about this can be in violation of her duty of loyalty because there could be the substantial risks that would limit her representation of MH. It is important to note that for the legal relationship, the writing is not required. The attorney client relationship might have formed when E talked to L and asked for her opinion about the documents. The strong argument L can make is that she did not help E nor gave him any legal advice. She was only listening and not gave him any advice. However, there can still be legal relationship because L told E that she would think about it so she wanted to investigate before helping E. Thus this is clearly in violation of duty of loyalty. L can still represent C if she can show that she can represent him diligently, the representation does not involve a claim of one party against another party, the representation is allowed by the law, and and if she receives the informed consent (ABA) of HM and written informed consent of MH. However, this is not seem to be effective since the materials are confidential L already received and kept the documents from C. She did not act diligently when she kept the documents. There is not facts showing that she gets the consents according to ABA or CA.

Duty to corporation

In ABA, when the lawyer of the corp knows that the employee is committing the act that substantially harm the interest of the corporation financially and non-financially, he must report up to the board and may report out to the state. In CA, because the confidentiality of the corp is very important, the lawyer must urge the employee to stop the act or if not happen, she may report up to the board but she must not report the act to the state. She may withdraw under CA.

Here, under ABA, because L knew that the documents were considered the crime under the state law that would substantially harm the corp, she could have reported to CEO as she did. She was told not to do anything by the CEO and gave the all material to him. So L acted ethically when she brought it to CEO's attention. When they decided not to take care of the process since she knew the importance of the issue that the state was aggressively

investigating on the issue on similar practices, she could have reported to the state which was she did here. However, under CA, L violated her duty by reporting to the state. She should have stopped when CEO told her to not do anything with the documents. She could have urged CEO to refrain from the activity or could have told CEO about the consequence of violating the criminal act but she should have not reported to state under CA law. L should have withdraw as explained later.

Duty of communication

L has the duty to inform her clients of all substantial steps she is taking in the case. L did not breach her duty by talking to CEO and having a conversation with corp about the E's documents and her conversation with him.

Duty of competence

L must act competently in representing her clients with knowledge, skills, promptness. In CA, L must not fail to represent the client repeatedly with gross negligent.

Here, L breached the duty of competency by reporting the documents to the state in CA, because she acted negligently. She could have received help from another skillful attorney or she could have read the CA law and get educated about her dealing with the documents.

Also, L breached the duty of competency when she kept the documents from E because she was likely formed the attorney client relationship with E when she kept the document. She could have asked for help from more experienced lawyers.

Duty of confidentiality

In CA, the L has the duty to keep all the materials related to the client in confidence and not reveal the confidential information. There are some exception to the rule as when the client consents to releasing the information or waive it. In ABA, L can release the information if she reasonably believes that information will result in substantial death or bodily injury. In CA, the L can release the information is she reasonably believes that the representation will result in criminal act that would cause the substantial death or injury.

Here, L had a duty to keep the material confidential and not release it to the state unless the exception applies. Under ABA, L knew that the documents was a crime under the state law. If continuing working as a corp under the same situation would result in substantial bodily harm, she could did not violated the duty of confidentiality. However, her clientis a corporation and there is no substantial bodily injury involved. Thus, it is likely she breached the duty of confidentiality under ABA. In CA, although, there was a criminal act but it did not result in substantial harm of bodily injury to the client. The worst injury was financial. Thus, L breached the duty of confidentiality.

Withdrawal

L can withdraw (mandatory and permissive) if representation will result in the violation of ethical duties. Under ABA, the L must withdraw and in CA, the attorney must and may withdraw when the representation results in violation of ethical rules.



As state above, L under CA, must withdraw because she violated the duty to her client by reporting the confidential information to the state. Under ABA, while she did not violate the ABA rule, she may withdraw because the representation of the corp will be unreasonably difficult and resulted in a serious disagreement with the constituent of the corp.

Here, as stated, L must withdraw in CA. Under ABA, she may withdraw because her conduct was showing the serious disagreement with the CEO. The CEO asked her to not do anything with the documents but she went instead release the document to state. This is a serious disagreement between the L and Corp which made the representation unreasonably difficult for L. As a consequence, when L withdraw, she must return all the documents to the corp. She must return the unearned part of retaining fee, in CA she can keep the true retainer. And she must give the reasonable opportunity to the corp to find another lawyer.

Question #3 Final Word Count = 1230

END OF EXAM