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Duty to Corporation

An attorney of a corporation has a sole obligation to the corporation and not its employees. The attorney should not falsely represent him/herself as representing an employee and should make it clear that their sole obligation is to the corporation.

Here, Laura is general counsel for MoreHome, a California corporation. As general counsel for MoreHome, Laura's sole obligation is to MoreHome and not to the employees of MoreHome. When Eric approached Laura and gave Laura a package of documents that he obtained through his position at MoreHome. Documents demonstrating that MoreHome employees are falsifying the financial history of many mortgage applicants so they can qualify for mortgages they could not otherwise obtain and showing that MoreHome's policy is to push risky mortgages onto unsuspecting customers. Eric confided in Laura that he was troubled to have learned of these practices and wanted Laura's legal advice on what to do. At the point where Eric approached Laura and gave Laura such documentation and especially, when Eric began to confide in Laura, that is when Laura should have made it abundantly clear that she does not represent him. At that point, Laura should have stated clearly to Eric that she represents MoreHome, as its general counsel and not Eric. Instead, Laura told Eric that she would think about their discussion and get back to him. This was unethical because it gave Eric the impression that Laura was potentially representing Eric and did not clearly indicate or assert that Laura had a sole obligation to MoreHome.

Duty of Loyalty: Conflict of Interest

An attorney has a duty of loyalty to their client to avoid anything that may materially impact their representation of the client. If however, the attorney is able to demonstrate the following, then there may not be a conflict of interest: (1) attorney reasonably believes that they can adequately represent the client; (2) representation is not prohibited by law; and (3) attorney is not representing parties in the same litigation that are on opposing sides.

Here, when Laura did not stop Eric when he began to confide in Laura and share with Laura the documentation showing that MoreHome employees were falsifying the financial history of many mortgage applicants and pushing risky mortgages onto unsuspecting customers this created a conflict of interest. At that moment, Laura may have presented herself as representing Eric. Moreover, when Eric stated that he did not want the CEO of MoreHome to learn of their discussion, without stating that she does not represent him, Laura created the appearance that she represents Eric. This creates a conflict of interest because she is the general counsel of MoreHome. Laura cannot reasonably believe that she can represent Eric and MoreHome because first, her sole obligation is to MoreHome, and second, the information that Eric is confiding in Laura disfavors MoreHome. So, she cannot adequately represent Eric's concerns with MoreHome's practices and at the same time represent MoreHome against claims that its practices are disfavored. This would be equivalent to representing opposing parties in the same litigation. Thus, Laura has potentially violated its duty of loyalty to MoreHome by not clearly stating to Eric that she does not represent him.

Duty of Competence

An attorney has a duty to act with knowledge, skill and competence when representing its client. If the attorney does not have the knowledge or skill to adequately represent its client, then it may do so by taking the time to learn up on those skills and knowledge or it may partner with an attorney that does have such knowledge or skill.

Here, Eric provided Laura with documentation that demonstrates that MoreHome employees are falsifying the financial history of many mortgage applicants and that MoreHome has a policy of pushing risky mortgages onto unsuspecting customers. Laura knows that the practices shown in the documents and described by Eric constitute a crime under state law. Laura also knows that the State Attorney General is aggressively investigating similar practices by mortgage companies in the state, although Laura is not aware of whether MoreHome has been identified as a target for investigation. Laura in this case should first verify that the documentation provided by Eric does in fact evidence that MoreHome employees are falsifying the financial history of many mortgage applicants and that MoreHome has a policy of pushing risky mortgages onto unsuspecting customers. Without first verifying that such documentation is true and instead providing copies of the documentation to the State Attorney General, Laura did not act with the knowledge, skill and competence an attorney in her position would, which is to first investigate such allegations before raising them to a higher official. The fact that Eric is an entry-level mortgage advisor at MoreHome is even more reason to investigate because arguably Eric may not have the full picture or may misunderstand the practices and policies of MoreHome that may at face value be misinterpreted by him. As analyzed below, Laura is first to report up within the corporation before reporting out. Moreover, Laura should have taken the time to investigate in MoreHome is in fact a target for investigation and if so, take measures to research how MoreHome can become compliant with the State law as opposed to directly going to the State Attorney General. Thus, Laura has violated her duty of competence to MoreHome.

Duty to Report Up

An attorney has a duty to first report up within the chain of the corporation before reporting out to law enforcement.

Here, Laura called Mianne and informed her of Eric's visit and about Eric's concerns. As analyzed above, this again creates a conflict of interest because Laura not only did not clearly state to Eric that she did not represent him, but took the information he revealed through their discussion and brought it forth to the CEO of MoreHome. This creates an appearance that Laura is representing both parties, which is not possible because they are essentially opposing parties given that Eric is trying to expose the falsification of financial history of mortgage applicants by MoreHome employees and MoreHome's policy of pushing risky mortgages onto unsuspecting customers and MoreHome has an interest in preserving the state of its corporation from being criminally prosecuted. When Laura called Mianne (CEO of MoreHome) and informed her of Eric's visit and about Eric's concerns. Mianne instructed Laura not to do anything with the documents and give them to Mianne. Based on these facts, it is ambiguous as to what Mianne was going to do with the documents. Mianne could have taken the documents and instructed Laura not to do anything because Mianne as the CEO was going to address the problem and immediately address the falsification of financial history of mortgage applicants and extinguish the policy to push risky mortgages onto unsuspecting customers. Or Mianne investigate if this was truly happening at the company. There are no facts indicating that Mianne wanted to keep the situation undercover and under wraps. If there were such facts then if Mianne was the highest authority in the corporation that Laura could report to,

Laura would be entitled to report out to the State Attorney General. Without more facts, Laura breached her duty when she reported out to the State Attorney General.

Duty to Report Out

An attorney may report out to law enforcement if reporting up the chain of corporation does not result in action to stop or prevent the continuance of fraud.

Here, as analyzed above, Laura breached its duty when it reported out to the State Attorney General because there are no facts to indicate that Mianne was going to allow the falsification of financial history of many mortgage applicants or the policy of pushing risky mortgages onto unsuspecting customers to continue. Mianne merely instructed Laura not to do anything with the documents and to give them to Mianne. If Mianne had dismissed Laura when she brought forth the documentation or clearly stated that she was not going to do anything about it, then Laura may have had grounds to immediately report out, especially if Mianne was the highest authority at MoreHome. Thus, Laura should have waited to observe if Mianne was going to do something with the information shared before reporting out to the State Attorney General. Thus, Laura breached her duty when she reported out to the State Attorney General.

Duty of Diligence

An attorney has a duty to act with good faith and act in a timely manner when representing its clients.

Here, Laura called Mianne immediately after Eric left her office and informed Mianne of Eric's visit and about Eric's concerns. Laura calling Mianne "immediately" evidences that she did act with diligence because she acted in a timely manner to bring the concerning matters before Mianne, without delay. Thus, Laura did not breach her duty of diligence.

Duty to Communicate

An attorney has a duty to communicate with its client any material matters that are occurring with respect to representation of the client.

Here, as analyzed above, Laura called Mianne "immediately" after Eric left her office. Given that Laura is the general counsel of MoreHome, she has a sole obligation to Eric. So, Laura has an obligation to communicate with MoreHome any material matters that relate to representing MoreHome. Laura did exactly that when she immediately called to Mianne's attention that there were such concerns of falsification of financial history of many mortgage applicants and MoreHome's policy of pushing risky mortgages onto unsuspecting customers, which are material matters to the representation of MoreHome because it could expose MoreHome to criminal liability under the State law.

Conferring with Outside Counsel

An attorney is allowed to confer with other attorneys when seeking advice on how to go about a matter.

consulted with outside counsel regarding what to do with the documents provided by Eric. Laura, as an attorney, is allowed to confer with other attorneys when seeking advice on how to go about a matter. This contributes to her duty to act competently and diligently because

she is seeking advice from outside counsel on how to handle the matter before here which constitutes as taking time to research the situation and ensure that she is acting with the reasonable skill and knowledge that a competent attorney would. Moreover, in doing so Laura was acting in a timely manner and in good faith because she was consulting with outside counsel on what to do with the documents as opposed to ignoring her discussion with Eric and waiting an unduly long time before addressing the issue. Thus, Laura was entitled to confer with outside counsel.

Duty to Not Engage in Fraud

An attorney may not provide their services to support or further the fraudulent acts of its clients.

Here, Laura may argue that after receiving the documents that demonstrated that MoreHome employees are falsifying the financial history of many mortgage applicants and that MoreHome has a policy of pushing risky mortgages onto unsuspecting customers and bringing the matter to Mianne only to have her instruct Laura not to do anything with the documents and to give them to Mianne, that by providing the copies of the documents to the State Attorney General, she was acting in accordance with her duty not to provide her services to support or further the fraudulent acts of MoreHome. If the Court were to find facts that evidenced that first, MoreHome was in fact engaging in practices of falsifying the financial history of mortgage applicants and pushing risky mortgages onto unsuspecting customers and two, Mianne was going to allow such actions to continue within the company, then Laura did act in accordance with her duty to not support or further the fraudulent acts of MoreHome. However, as analyzed above (under Duty to Report Up) there are no facts indicating that first, the documentation was verified to evidence such practices and second, Mianne was going to allow such actions to continue. Without further facts, Laura providing the copies of the documents to the State Attorney General was a violation of her duty to first report up before reporting out.

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