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1.) What ethical violations, if any has Linda committed? Discuss

Linda's violations

Linda has violated the following ethical duties to her client Dan both under California (CA) and the ABA Authorities.

Duty to Communicate

Under both the ABA and CA rules a lawyer has a duty to communicate to her client any pertinent case information, such as settlement offers in civil cases and plea bargains in criminal cases, and the client is the ultimate person that decides on the course of the case by deciding about accepting a settlement in civil cases and a plea in criminal cases. Here the facts indicate that Dan was depressed over the child's death and told Linda that he wanted to plead guilty. As such, Dan's wishes were to plead guilty and Linda's duty was to communicate Dan's wishes and wanting to plead guilty with the Prosecutor and the judge but instead she went against his wishes and moved for a continuance in his case. Here, Linda will have violated her duty of communication as she did not Violated Dan's wishes to plead guilty by not communicating that to the court and instead moved for a continuance to allow her time to have an expert examine the dangerousness of the roadway and the angle of the sun where Dan struck the child.

Therefore, Linda violated her duty of communication.

Duty to Act in her Clients Best Interest

Here, the facts indicate that Linda was an experienced criminal defense attorney and thinks all her clients should go to trial. Even though, Linda believes all her clients should go to trial, and although she acted against Dan's wishes when she did not communicate his wishes of wanting to plead guilty, she still tried to act in Dan's best interest by trying to move for continuance in allowing her time to have an expert examine the dangerousness of the roadway and the angel of the sun where Dan struck the child. Here, Linda tried to act in he clients best interest in trying to investigate the matter further, even though the judge denied the continuance.

As such, she did not violate the duty to act in her clients best interest.

Withdrawal - Relieved as Counsel

Here, the facts indicate that Linda against Dan's wishes, moved for a continuance to allow her time to have an expert examine the dangerousness of the roadway and the angle of the sun where Dan struck the child. However, the Judge denied Linda's motion for continuance, and Linda asked to be relieved as counsel. The judge granted Linda's motion and relieved her as counsel of record.

Here, Linda did not commit any ethical violation in asking to be relieved as counsel, as she as the judge and he granted it, however the facts do not state that Linda also communicated with her client Dan about wanting to be relieved from the case and that he should ask for a new lawyer. When a lawyer wants to be relieved from a case she must ask the judge in which case Linda did here and she was granted to be relived and she must also communicate this with her client. She could be found that she violated the duty of communication as she did not communicate her wanting to be off the case and relieved from the case with Dan.

Here, Linda will have violated her duty of communication as she did not Violated Dan's wishes to plead guilty by not communicating that to the court and instead moved for a continuance to allow her time to have an expert examine the dangerousness of the roadway and the angle of the sun where Dan struck the child.

2.) What ethical violations if any, has Pat committed? Discuss

Duty to Share Evidence and Case Information with Opposing Side and the Court

Here the facts indicate that Pat received an accident report concluding that the angle of the sun created an especially dangerous hazard on the day of the collision. Because Dan had already plead guilty, Pat did not produce this report to Linda, nor did he share it with the judge. At sentencing, Pat argued that the evidence of Dan's guilt was consistent with an intentional act. Pat is in violation here as he withheld pertinent information and evidence from the police report from Linda (Dan's previous attorney) and the judge since Dan had already plead guilty. Here, Pat had a duty to communicate and be upfront about the information about the police report with the judge, and Dan at sentencing in order to have the judge see this police report prior to sentencing Dan with the maximum sentence. Instead Pat decides to argue that the evidence of Dan's guilt was consistent with an intentional act when he knew in fact that, that was erroneous and a frivolous.

As such Pat will be in violation of withholding pertinent information and evidence with court and will have violated his ethical duties under both the ABA and CA of Professional Responsibilities.

3.) Did the judge properly:

a. accept Dan's guilty plea? Discuss

Here, the judge had relieved Linda an experienced criminal defense attorney that he had previously appointed to Dan's criminal case from the case as counsel and without further inquiry, the judge allowed Dan to plead guilty. This was not proper as the judge should have either assigned a public defender and or allowed Dan to seek new counsel before

he plead guilty as that was Dan's constitutional right to have counsel present at all times of critical phases of a case in this instance Dan pleading guilty without the presence of a new criminal lawyer that is representing him. The judge should have asked Dan if he knew and was aware of what he is doing and that he is pleading guilty without a lawyer and that the law allows him to have a lawyer by his side at all times and instead of accepting Dan's guilty plea the judge should have allowed for a continuance in order for Dan to secure legal assistance either through a new court appointed criminal defense or public defender.

b. sentence Dan? Discuss

A judge has the ultimate discretion after hearing from both the defense counsel and prosecutor about plea deals to either accept a plea deal that has been reached by both sides and or rule on his own with the sentence that is proper and in the guidelines for the particular crime that the defendant has committed and is guilty of. Although in most instances judges follow and allow the plea deals that have been made by the prosecutors and honor those plea deals again the judge has the ultimate say in the sentencing. Here, again without Dan being represented by counsel and or in the presence of counsel the judge rejected the plea bargain and sentenced Dan to the maximum term of 11 years in prison. Although this in itself that the judge rejected the plea bargain and sentenced Dan to the maximum of 11 years does not constitute a violation the fact that Dan was sentenced without counsel present and was allowed to in the first place plead guilty in the first place without a lawyer present could be ethical violations that the judge may have committed as well and as such Dan could appeal those decisions.

Question #5 Final Word Count = 1225

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