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

Formation of Attorney-Client Relationship

Under the ABA and CA, an attorney-client relationship is formed when a client reasonably believes that a relationship exists and no writing is required to bind this relationship.

Here, Linda did not commit any ethical violations when forming the attorney-client relationship with Dan because Linda was appointed to represent Dan in her duty as a government appointed attorney.

Thus, Linda did not commit any ethical violations under the ABA or CA.

Duty to Communicate - Settlement Offers/Plea Bargains

Under the ABA and CA, an attorney has a duty to communicate all settlement offers to a client and only the client has the authority to accept them. Under CA, an attorney must communicate all plea bargains to the client and if the client would like to move forward with them then the attorney must do so.

Here, Linda committed an ethical violation under CA because once Prosecutor Pat offered to settle the case with Dan if he pled guilty to a lesser offense she was required to communicate this to Dan and abide by what he wished to do so. However, because Linda moved for a continuance so she could have more time to examine the evidence and did not follow Dan's wishes to take the plea guilty after he communicated this with her, she has committed an ethical violation.

Thus, Linda has committed an ethical violation under CA.

Scope of Representation

Under the ABA and CA, an attorney has a duty to reasonably achieve the client's goals but must keep the informed throughout the litigation process.

Here, Linda committed an ethical violation under the ABA and CA pertaining to scope of representation because once Dan expressed to her that he wanted to plead guilty she went against his wishes. Additionally, it was evident that Dan's goals were to find some relief from the amount of guilt he was experiencing after striking a five-year-old child and by pleading guilty he would have been able to accomplish this goal but Linda went forward without allowing him to do so.

Thus, Linda has committed an ethical violation under CA and the ABA.

Permissive Withdrawal

Under the ABA, an attorney can seek to withdraw if it can be done without causing any harm to the client. If litigation is still pending then the attorney must seek court and client approval. Under CA, an attorney cannot seek to withdraw even if it can be done without causing any harm to the

client.

Here, Linda committed an ethical violation under CA and the ABA when she asked to be relieved as counsel because litigation was still pending. Linda will argue that even though litigation is pending it is easy for Dan to receive another court appointed attorney. However, this argument will likely not stand because Dan will now face harm as Linda was already familiar with his case and was seeking an expert to examine evidence that could be favorable to Dan's case. Furthermore, Linda never gave good cause to be dismissed from Dan's case for instance she did not state that Dan is repugnant or particularly difficult to deal with and that is why she seeks to be removed from the case.

Thus, Linda has committed an ethical violation under the ABA and CA.

Mandatory Withdrawal

Under the ABA an attorney must seek to withdraw if there is a likelihood that their services are being used for crime or fraud. Under CA, an attorney must seek to withdraw if there is a substantial likelihood that the client is engaged in behavior that can lead to death or substantial bodily harm.

Here, Linda did not commit an ethical violation under the ABA or CA because Dan was not engaged in any behavior after being convicted that would result in crime, fraud, or substantial bodily harm.

Thus, Linda has not committed an ethical violation under the ABA and CA.

Duties Upon Termination

Under the ABA and CA, upon termination an attorney must return all papers and property. Under the ABA, an attorney is permitted to retain papers if there are any undisputed fees but in CA an attorney must return everything.

Here, upon termination Linda had a duty to return all papers or evidence that reasonably retained throughout the course of representation with Dan. There are no facts that allude to Linda retaining any such papers or property.

Thus, Linda has not committed an ethical violation under the ABA or CA.

Duty of Competence

Under the ABA, an attorney must represent a client with the necessary legal skills, thoroughness, and preparation. Under CA, an attorney must be grossly negligent or reckless in representing a client.

Here, Linda has committed an ethical violation under the ABA and CA because she did not represent Dan in a competent manner. When Linda became aware of the plea bargain that Dan was ready to take and after he communicated that these were his wishes she did not abide by them which proves that she does not have the necessary skills to represent a client and was negligent throughout the cross of Dan's representation. Linda will try and argue that she does have the necessary skills because she went above and beyond to hire an expert witness to ensure that Dan does not just plead guilty when there is evidence that could assist with his

case. However, this argument will not stand because it is not in accordance with Dan's goals.

Thus, Linda committed an ethical violation under the ABA and CA.

Duty of Diligence

Under the ABA, an attorney must act diligently in representing a client. Under CA, an attorney must not represent a client recklessly or with gross negligence.

Here, Linda committed an ethical violation pertaining to her duty of diligence because she did not abide by her clients wishes.

Thus, Linda committed an ethical violation under the ABA and CA.

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

Special Prosecutor Duties

Under the ABA and CA, an there are special prosecutor duties that a prosecutor must follow such as not bringing a charge or asserting a defense without probable cause. They must introduce all exculpatory evidence that can mitigate any offense. Finally, they must introduce any new evidence that disproves guilt.

Here, Pat committed an ethical violation under the ABA and CA because after Dan pled guilty Pat received new evidence that she did not produce. Specifically, Pat understood that this new evidence would prove that the angel of the sun the day Dan struck the child was especially hazardous and what ultimately led to the death of the child instead of Dan's intentional act. However, because Pat decided to not turn over this evidence either the judge or Linda she committed an ethical violation. Pat will argue that because Linda was no longer on the case she had no duty to turn this evidence over to her, however, this argument will likely not stand because Pat could have still produced it for the judge and she did not. Additionally, because Pat brought a cause of action against Dan without probable cause because she argued that Dan's guilt was consistent with an intentional act when she in fact knew that the accident was caused from mere negligence due to the sun.

Thus, Pat has committed an ethical violation under the ABA and CA.

Duty of Competence

Please see rule above.

Here, Pat committed an ethical violation under the ABA and CA because she brought lacked the necessary legal skills when representing the State of California because she brought a cause of action without probable cause.

Thus, Pat committed an ethical violation under the ABA and CA.

Duty of Diligence

Please see rule above.

Here, Pat committed an ethical violation under the ABA and CA, because she did not immediately turn over the new evidence that disproves Dan's guilt and was negligent in harboring it.

Thus, Pat committed an ethical violation under the ABA and CA.

3. Did the judge properly:

Proposition 8 / California Evidence Code 352

Under Proposition 8 in California all relevant evidence is admissible in criminal cases. However, under California Evidence Code 352 all relevant evidence must be excluded if there is a substantial risk of unfair prejudice.

Here, all evidence has been submitted and decided this Proposition 8 and CEC 352 will not apply.

a. Accept Dan's guilty plea?

Guilty Pleas

Under the California Evidence Code, a guilty plea must be accepted knowingly and voluntarily.

Here, the judge did not properly accept Dan's guilty plea because once Dan pleaded guilty he allowed him to do so without further inquiry. Due to the fact, that the judge was supposed to ask Dan if voluntarily and knowingly is submitting a guilty plea especially without counsel present and did not do so, the judge did not act properly.

Thus, the judge did not properly accept Dan's guilty plea.

b. Sentence Dan?

Sentencing

Under the California Evidence Code, a sentence must be in proportion to the charge.

Here, the judge did not give Dan a sentence in proportion to the charge because he initially rejected his plea bargain without further inquiring if there is any new evidence that could disprove Dan's guilt. Additionally, the judge gave no justification for denying Dan's plea. Finally, because the judge sentenced Dan to a maximum term of 11 years in prison solely based on Pat's argument that Dan's guilt proves that he is guilty of intentional homicide is not consistent with his charge.

Thus, the judge did not properly sentence Dan.

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