

5)

1.

Competence

Under ABA, a lawyer must have knowledge, skill, thoroughness in preparation of representing a client. Under California Ethic Code (CEC), a lawyer shall not intentionally, recklessly, repeatedly fail to act competently. Lawyer may become competent with reasonable preparation or consulting with other lawyers.

Here, Linda (L) is likely has knowledge, skill and thoroughness since she is experienced criminal defense attorney.

Thus, L is competent.

Scope of Representation

Under ABA and CEC A client controls determination whether enter into plea bargain. Lawyer who acts out of scope of representation is subject to discipline.

Here, L acted out of scope because although Dan (D) wished to plead guilty to voluntary manslaughter, L moved against D's wishes and continued to expert examination.

Thus, L subject to discipline.

Conflict of Interest

Under ABA and CEC a lawyer shall not represent a client if lawyer's interest is adverse to the client or, representation will materially effect the lawyer's judgement. Lawyer may continue representation if she reasonably believes that she can competently represent.

Here, L and D's interest are adverse to each other because L as an experienced criminal defense attorney, she thinks all her clients should go to trial. However, D wishes to reduce his sentence by pleading guilty. It is unlikely that L can continue representation since there is material disagreement.

Thus, she should withdraw.

Mandatory Withdrawal

Under ABA and California a lawyer must withdraw if continuing representation will result in violation of ethical rules or any other rule, client uses lawyer's services to commit a crime or fraud. Under CEC if client insist to assert a claim without probable cause.

Here, as stated above L must withdraw because continuing will result in violation of ethic rules.

Permissive Withdrawal

Under ABA lawyer may withdraw if doing so will not harm the client. Under CEC lawyer may not withdraw just because it will not harm the client. Lawyer may withdraw from if court orders to do so or representation of the client make the representation unbearable.

Here, L's representation of D will be unbearable since there is material disagreement whether continue the suit without entering plea bargain.

Thus, L may withdraw.

2.

Duty of Present Evidence

Under ABA and CEC prosecutor has duty to disclose newly discovered evidence that will materially effect to outcome of the lawsuit.

Here, the new evidence is substantial to outcome because Pat received an accident report concluding that the angle of the sun created an especially dangerous hazard on the day of the collision. However, P failed to disclose the evidence with court since D already pled guilty. Moreover, although P argued that the evidence of D's guilt was consistent with an intentional act, he must disclose to new evidence with the court.

Thus, Pat violated his duty.

3.

a. Plea

Under CEC the judge has discretion whether he may accept or reject defendant's plea bargain based on totality of circumstances.

Here, the judge likely did not properly rejected the plea bargain because the judge previously denied L's motion for continuance and released her from representation. However, the judge now sentenced D without due process.

Thus, the judge abused his discretion.

b. Sentence

Under CEC, the judge must not violate defendants right of representation, due process and the judge cannot give disproportionate sentence with the crime.

Here, although the facts are silent whether new counsel had been appointed to D, the judge likely abused his discretion when he sentenced D with maximum term of 11 years

of prison because the judge did not evaluate all possible evidences. The sentence is also likely unconscionable under the totality of circumstances.

Thus, the judge violated his duty.

Question #5 Final Word Count = 606

END OF EXAM