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1. What ethical violations, if any, has Linda committed?Duty of CompetenceUnder ABA and California authorities, A lawyer must have the legal knowledge, skill, thoroughness, preparation of a reasonably competent lawyer under the circumstances. Here, Linda was an experienced criminal defense attorney and thinks all her clients should go to trial. Thus, Linda was competent.Duty of Allocation of Authority between a client and a lawyerUnder ABA and California authorities, Allocation of authority between a client a lawyer requires the client to be in charge of the objective and substantial decision of the case, where the lawyer takes care of the means and technical and legal tactics to achieve the client's objective.

Here, Dan was depressed over the child's death and told Linda that he wanted to plead guilty. against Dan's wishes, Linda 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.

Thus, Linda violated the ethical rule of allocation of authority between a client and a lawyer.

Duty of Communication

Under California and ABA authorities, a lawyer is required to keep client promptly informed of any decision or circumstances, of which the client's consent is required.

Here, Linda 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, against Dan's wishes. No fact indicated Linda communicated with Dan.

Thus, Linda failed to comply with her duty of communication.

Mandatory Withdrawal

Under ABA and California law, a lawyer is required to withdraw if his/her physical/mental condition impairs his representation.

Here, Linda did not have any physical/mental problem, yet, she decided to withdraw because of the judge's denial of her motion to continue with the trial.

Thus, Linda violated the rule of mandatory withdrawal.

Permissive Withdrawal

Under ABA and California law, a lawyer is permitted to withdraw if s/he reasonably believes continued representation would lead to violation of ethical rules.

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Here, Linda did not reasonably believe her continued representation would lead to ethical violations.

Thus, Linda violated the rule of permissive withdrawal.

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

#### Duty to Afford Accused All Constitutional Rights

Under California and ABA authorities, a prosecutor has the duty to afford the accused all constitutional rights.

Here, Pat did not explain to Dan all the constitutional rights, like right to counsel and the right to be exculpated.

Thus, Pat violated the duty to afford all constitutional rights to the accused.

#### Duty to Disclose Exculpatory Evidences

A prosecutor has the duty of disclosing exculpatory evidences to the defense and the court.

Here, after Dan pled guilty, 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 pled guilty, Pat did not produce this report to Linda, nor did he share it with the judge.

Thus, Pat violated his duty of disclosing exculpatory evidences.

#### Duty of Candor to the Tribunal

A prosecutor has the duty of candor to the tribunal.

Here, after receipt of an accident favorable to Dan, Pat did not share with the judge.

Thus, Pat violated the duty of candor to the tribunal.

3. a. Did the judge properly accept Dan's guilty plea according to California Law?

Under CA law, in case of a guilty plea, a judge is required to explain to the defendant: (1) the defendant can plead innocence. (2) guilty plea will result in no further rights of trial, (3) the defendant gives intelligent and informed understanding of the judge's explanation. Besides, the judge is not supposed to reject a guilty plea.

Here, no facts indicated that the judge ever gave the defendant the explanation.

Besides, the judge rejected the guilty plea.

Thus, the judge's failure to explain to the defendant on guilty plea was not proper. Neither was his rejection of the guilty plea.

b. Did the judge properly sentence Dan according to California Law?

CA law and Eighth Amendment

According to Proposition 8 of California law and the Eighth Amendment of the U.S. Constitution prohibits cruel or disproportionate punishment of the defendant.

Here, the judge rejected the plea bargain and sentenced Dan to the maximum term of 11 years in prison.

Thus, the judge violated Proposition 8 of CA law and the Eighth Amendment by awarding a disproportionate punishment of Dan.

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**END OF EXAM**