

5)

### **1) Linda's ethical violations**

#### Role of the lawyer and client

Professional rules of ethics dictate that the lawyer and the client in a lawyer-client relationship are responsible for different aspects of the relationship. The client always has the right to determine the objectives of the legal relationship, while the lawyer is responsible for developing the strategy or the means to achieve those objectives. The client always has the right to decide: 1) whether to accept a settlement offer 2) whether to accept a plea deal; 3) whether to have a jury trial; and 4) whether to testify at trial. It is not the role of the attorney to undermine the client's objectives and doing so constitutes an ethical violation.

Here, there is a client who wanted to accept a plea deal because Dan was depressed over the child's death and told Linda that he wanted to plead guilty. However, Linda--a defense attorney who thinks all her clients should go to trial--acted against Dan's wishes by moving for a continuance to allow her time to hire an expert to examine the dangerousness of the road and the angle of the sun. This decision by Linda directly undermined Dan's wishes or his desire to achieve a particular objective--namely, accepting the plea deal from Prosecutor Pat.

Thus, Linda committed an ethical violation.

#### Permissive v mandatory withdrawal

An attorney may withdraw from representation of a client under either permissive withdrawal or mandatory withdrawal. There are many reasons for permissive withdrawal, including fundamental disagreement about how to proceed with the representation, the lawyer has told the client to perform some action and the client refuses to do so, the lawyer finds the client's conduct or case morally repugnant, or if the lawyer has any other good cause for withdrawing from the representation. Regardless of the reason, a lawyer may not engage in permissive withdrawal if the withdrawal will materially and adversely impact the client's rights. Mandatory withdrawal exists when the lawyer must withdraw because: 1) continuing to represent the client will result in violation of the law or an ethical rule; 2) the lawyer is no longer mentally or physically capable of representing the client; or 3) the client has discharged the lawyer. In California, a fourth reason for mandatory withdrawal is when the lawyer knows the client is only using his legal services to maliciously harm or annoy the opposing party, or if the client is pursuing frivolous litigation.

Here, Linda will argue that there is a fundamental disagreement about how to proceed with the representation because Linda wished to continue to go to trial but was denied her continuance while Dan wished to plead guilty. So, it appears that one of the reasons for permissive withdrawal is met. However, Linda's decision to withdraw materially and

---

adversely affected Dan's case because Linda not only left Dan without representation during a critical stage of the prosecution (thereby violating Dan's Sixth Amendment right), but she also left the representation before exculpatory evidence came to light regarding Dan's incident with the child. Meaning, Dan could have benefited from Linda's continued representation but did not because Linda permissively withdrew without considering how her withdrawal would materially impact Dan.

Moreover, here, there is no reason for mandatory withdrawal because: 1) Linda's continued representation of Dan would not violate an ethical rule or law; 2) Linda is still mentally and physically capable of representing Dan; 3) Dan did not discharge Linda; and 4) Dan is not using Linda's legal services for any malicious or frivolous reason.

Thus, Linda committed an ethical violation when she withdrew from representing Dan.

## **2) Pat's ethical violations**

### A prosecutor's special duties - probable cause

Prosecutors must observe special duties, alongside the other professional rules that apply to all lawyers. For example, a prosecutor can only charge a suspect with a crime if the prosecutor has probable cause that the suspect committed the crime. Probable cause means that there is a reasonable probability to believe that the suspect has committed a crime or is committing a crime. Charging someone for a crime without probable cause constitutes a violation of the professional rules of ethics.

Here, there is a prosecutor who charged a suspect with a crime because Pat charged Dan with the crime of intentional homicide. However, all the evidence Pat had available to her at that time was the fact that Dan's car struck the child and the child died. Pat had no evidence regarding Dan's intention nor did she get his side of the events. Moreover, Pat would later obtain an accident report that concluded that the angle of the sun created an especially dangerous hazard on the day of the collision. Meaning, Pat likely lacked the evidence required to establish probable cause at the time she charged Dan with intentional homicide.

Thus, Pat likely committed an ethical violation by charging Dan with intentional homicide without probable cause.

### A prosecutor's special duties -- providing opposing counsel with exculpatory evidence and the Brady Rule

Prosecutors have a duty to provide defense counsel with exculpatory evidence (evidence that tends to prove the defendant did not commit the crime or evidence that reduces that harshness of the crime) when that evidence comes into the hands of the county prosecution's office/district attorney's office. Moreover, prosecutors have a duty to comply with the Brady Rule, which requires prosecutors to hand over exculpatory evidence to defense counsel as that evidence may play an essential role in mitigating or eliminating

---

the defendant's guilt. A failure to comply with the Brady Rule and the duty to provide opposing counsel with exculpatory evidence violates the professional rules of ethics.

Here, there is a prosecutor who refused to provide defense counsel with exculpatory evidence because Pat received an accident report that concluded that the angle of the sun on the day of the incident created an especially dangerous hazard. Although Pat might argue that she did not have a duty to turn over the evidence because Linda no longer represented Dan, Dan had already pled guilty, and Dan did not appear to have a defense counsel, Pat's argument fails for several reasons. First, the accident report clearly exculpates Dan's guilt by demonstrating that he lacked the intention to hit the child with his car and that the collision resulted because of the sun and light conditions on the road that day. Second, it is not within Pat's discretion as to when to hand over such exculpatory evidence--she is required to not only under the professional rules of ethics but also under the Brady Rule (case law). Finally, her decision not to share the report with the judge also implicates this ethical rule (as well as another discussed below)

Thus, Pat's failure to turn the accident report over to Dan, Dan's new legal counsel, or the judge constitutes a violation of the rules of ethics and the Brady Rule.

#### Duty of candor to the court

Every lawyer has a duty to be honest and to act with candor toward the court. This includes disclosing exculpatory pieces of information to defense counsel, as well as to the court. Moreover, this duty of candor requires the lawyer disclose adverse evidence to further the truth-seeking function of the court and to ensure justice is delivered fairly. Furthermore, a lawyer cannot rely on evidence known to be false or untrue.

Here, there is a lawyer who failed to failed to disclose exculpatory pieces of information to defense counsel and the judge because Pat did not produce the accident report for Dan's defense counsel nor the judge after Dan had already pled guilty. Moreover, there is a lawyer who failed to disclose adverse evidence to her case (thereby undermining the truth-seeking function of the court) because Pat argued at sentencing that the evidence of Dan's guilty was consistent with an intentional act, despite knowing that Dan likely was blinded by sunlight prior to the incident. This action not only undermined the truth-seeking function of the court but it also shows that Pat relied on evidence known to be false or untrue in prosecuting Dan. Consequently, Dan received the maximum 11 years rather than a reduced amount--and, as such, justice was not delivered fairly.

Thus, Pat violated her duty of candor to the court.

#### **3a) Whether the judge properly accepted Dan's guilty plea**

A judge can allow a defendant to plead guilty only if the judge can show that the defendant fully understands the nature and consequences of his action. Moreover, a defendant who is not represented by defense counsel must be competent to stand pro se and to accept a guilty plea on his own behalf. A judge will make the determination as to whether the defendant is

---

competent to stand pro se (representing oneself without a lawyer) and accept the guilty plea.

Here, the judge did not make any further inquiry into whether Dan understood the nature and consequences of his action by accepting the guilty plea. A judge typically will ask questions to test the competency of a defendant, especially one that is pro se. Here, because the judge did not test the competency of Dan before accepting the guilty plea, the judge likely violated his ethical duty.

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

**3b) Whether the judge properly sentenced Dan**

A judge may sentence a defendant to the maximum amount permitted by the law. However, if exculpatory evidence exists as to the defendant's guilt, then a judge should account for that exculpatory evidence--if the evidence is known to the judge. A judge cannot overturn a defendant's guilty plea, unless for good cause.

Here, the judge sentenced Dan to the maximum amount permitted by law. However, the judge did so only after rejecting Dan's guilty plea. Here, because the judge did not have good cause to justify overturning the guilty plea, the judge did not act properly in sentencing Dan.

Thus, the judge did not act properly in sentencing Dan.

Question #5 Final Word Count = 1656

**END OF EXAM**