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Linda's Ethical Violations

Duty to follow Client's Instructions

Under the ABA and CA, a lawyer must abide by the client's decisions regarding the objectives of their representation. This includes when to settle, whether to take a plea deal, whether to testify at trial.

Here, Linda is Dan's criminal defense attorney who thinks that all her clients should go to trial. However, Dan wanted to plead guilty. Although Linda believes that her clients should go to trial, she has a duty as Dan's attorney to abide by his decisions regarding his representation including if he wants to take a plea deal. Additionally, Linda did not abide by Dan's decision when she went against his wishes and requested a continuance. Linda asked for a continuance to allow her time to have an expert examine the dangers of the road, which is something she would be doing to gear up for trial when Dan wanted to take a guilty plea. Because of Linda going against Dan's wishes and pushing for trial, she is in violation of her duty to follow her client's instructions regarding representation.

Withdrawal

Under both the ABA and CA, a lawyer may withdraw from representation if the client agrees, for good cause, if the client insists on a criminal or fraudulent matter. Under the ABA, the lawyer may also withdraw if they have a fundamental disagreement with the client or finds repugnant. Under CA, a lawyer may also withdraw if the lawyer believes that continuing representation is likely to violate the rules. Under both ABA and CA, if a lawyer wants to withdraw from a case they must seek permission from the court, notify the client and give them time to retain new counsel, return any files and protect the client's interests.

After the court denied Linda's motion for continuance, she correctly sought permission from the court to be relieved as counsel. Linda's reasoning for wanting to be relieved, that Dan wanted to plead guilty and her thinking that all her clients should go to trial would not rise to the level of a fundamental disagreement or repugnant under the ABA rules. Dan was not insisting on a criminal or fraudulent manner, he simply wanted to plead guilty. Linda's withdraw may fall under good cause, because she believed that her clients should go to trial and that was adverse to what Dan wanted to do. As mentioned, she correctly sought the courts permission to withdraw, but the facts do not indicate whether she notified Dan or he had time to retain new counsel. Linda is not likely to have violated any ethical violations for her withdrawal.

Duty to Expedite Trial

Under the ABA and CA, a lawyer has a duty to expedite trial.

When Linda learned Dan wanted to plead guilty, she moved for a continuance to gather information from an expert. By asking for a continuance, especially after Dan wanted to plead guilty, that is prolonging the case. Which is adverse to Linda's duty to expedite trial and is likely in violation of this duty.

Competence

Under the ABA a lawyer has a duty to represent with skill, knowledge, thoroughness, and preparedness to reasonably represent the client. Under the CA rules a lawyer may not intentionally, recklessly, with gross negligence, repeatedly fail to represent the client with competence.

Linda is a experienced criminal defense attorney and Dan's case is a criminal case regarding homicide. Linda intended on

Pat's Ethical Violations

Prosecutors Duties

Under the ABA and CA rules a prosecutor has a duty to pursue a case with probable cause, protect the client's right to counsel, not to make any extrajudicial comments with bias, turn over any evidence that is favorable to the defendant. Under the CA rules, if the prosecutor finds any evidence that relieves the defendant of guilty, they must turn the evidence over to the judge and if the action is in the prosecutors jurisdiction, they must turn over all the evidence to the defendant and their counsel.

Pat is a prosecutor who received evidence, an accident report, that concluded the angle of the sun created an especially dangerous hazard on the day of the collision. Dan is being tried for intentional homicide and the evidence that Pat found could potentially negate the intentional state of mind act, because he was blinded by the sun and could not see. The report showing that the sun actually did create a dangerous hazard is favorable to Dan and could relieve him of guilt for intentional homicide. Because Dan already plead guilty, Pat did not want to bring the evidence to Linda or the judge. Pat had a responsibility to bring this evidence forward as a prosecutor and because it was favorable evidence to the defendant. Even if Pat did not bring the evidence to Linda, because she was relieved from representing him, she should have a least brought it to the judge. Pat violated her prosecutor duties.

Duty of Candor to the Tribunal

Under the ABA and CA rules, a lawyer has a duty to not knowingly (1) make a false statement of fact or law, or fail to correct it, (2) offer false evidence, or (3) not disclose adverse controlling law.

At sentencing for Dan, Pat argued that Dan's guilt was consistent with an intentional act, yet she discovered evidence that showed on the day of the collision the angle of the sun created an especially dangerous hazard. By Pat arguing that Dan's guilt was consistent with an intentional act, she was making a false statement of fact, because she knew that there was evidence that could relieve him of the intentional element, due to the dangerous conditions. Pat's reasoning was because Dan already plead guilty, but that is no excuse. Pat had a duty to the tribunal to not knowingly say that Dan's guilt was consistent with an intentional act when she knew that there was evidence that could prove otherwise and that rather there was a dangerous condition and is in line with Dan's defense that he could not see.

Dan's Guilty Plea

Prop 8

Under Prop 8 in a criminal case all relevant evidence is admissible even if it would not be admissible under the CEC. There is an exception for hearsay, privileges, exclusionary rule under the US constitution, and subject to the probative value balancing test (CEC 352).

Guilty Pleas

For a guilty plea to be valid the judge must address the defendant in open court. The judge must make sure the defendant understands the nature of the charge, its elements, the minimum and maximum sentence, make sure its voluntary, and understand they are waiving a right to a jury.

Here, the facts do not indicate that the judge in this case followed the formalities of entering a guilty plea. The judge, without further inquiry allowed Dan to plead guilty. The judge did not address Dan, make sure he understands the charges, sentences, etc. The judge therefore did not properly accept Dan's guilty plea.

Sentencing

The prosecution can offer the defendant a plea bargain that is based on good faith and its terms are reasonable. The judge may alter the sentencing if they deem that it was unconscionable.

Here, Pat recommended 5 years and the judge rejected it and raised it to the maximum term of 11 years. There is not indication that the judge should have raised

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