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1. Linda's Ethical Violations

Scope of Representation

Under the ABA and CA rules, once an attorney-client relationship has been formed; the client controls the objectives of representation while the attorney facilitates the means to reach the goals such as providing the strategy.

Here, Linda is an experienced criminal defense attorney representing Dan after the judge appointed her to Dan's case. Dan is charged with intentional homicide by the county prosecutors office after he struck a five year old child with his car because she ran into the street. Dan was blinded by the sun and could not see. Here, Dan was depressed over the child's death and wanted to plead guilty. Dan's goal was to plead guilty, and Linda had a duty to provide him with the means to do so. However, Linda wanted him to go to trial and did not want him to plead. Her wishes were materially different to Dan. However, as the client, Dan controls the objectives and Linda's failure to provide this representation violates the scope of the attorney client relationship.

Thus, Linda will likely be in violation of both the ABA and CA authorities.

Duty of Loyalty

The duty of loyalty requires an attorney to act with their client's best interest and put their client's interests above their own personal benefit. The duty of loyalty requires an attorney to avoid conflicts of interests.

Here, Linda put her own interest above Dan's when she moved for a continuance against Dan's wishes so she would have more time to have an expert examine the conditions of the roadway. While the accident report may be important, Linda's intentions for seeking it were not necessarily to benefit Dan as this is against Dan's wishes, rather since she believes all of her clients should go to trial,

Therefore, Linda is in violation of the duty of loyalty under both authorities.

Potential Conflict of Interest

Under the ABA, potential conflicts do not amount to a conflict of interest, including a personal conflict. However under the CA rules, an attorney has a personal conflict of interest when the representation of their client will be materially limited due to the attorney's personal beliefs and the conflict prevents the attorney from providing competent and diligent representation.

Here, a potential conflict of interest exists because Linda believes that all of her clients should go to trial. While under the ABA rules, there may only be a potential conflict, Linda's request for a continuance, coupled with her personal beliefs and conduct in court will likely have this become an actual conflict of interest.

Therefore a potential conflict of interest exists under the CA rules.

Actual Conflict of Interest

An actual conflict of interest when an attorney reasonably believes that she will not be able to provide competent and diligent representation because of current conflict of interest prevents her from providing the requisite skills necessary to effectively represents the client.

Here, an actual conflict exists because the potential conflict has amounted to an actual conflict by preventing Linda from providing the representation required for Dan.

Therefore, under both the ABA and CA rules, an actual conflict exists.

Waiver of Conflicts

Under the CA rules, conflicts of interest can be waived if the attorney reasonably believes that she can provide competent and diligent representation, the attorney provides notice of this conflict, and the client provides informed consent, confirmed in writing of the representation.

An attorney may permissively withdraw if she has reason to believe that she will not be able to provide competent representation and that the client will not be harmed. Here, Dan pled guilty right after Linda requested to permissively withdraw. At this point, Linda was unable to permissively withdraw because her absence would materially affect Dan. Dan was up for a criminal trial and was about to plead, however he needed competent representation at this stage.

Therefore, Linda's withdrawal is a violation of both the ABA and CA rules.

Permissive Withdrawal

An attorney may voluntarily withdraw from representation if her personal conflict materially limits her ability to provide competent representation, and the withdrawal will not materially affect the client in a negative way. Under the ABA, this client must give informed consent, while under the CA rules, this must be in writing and confirmed through signature.

Therefore, Linda will be in violation of both the ABA and CA rules.

2. Pat's Ethical Violations

Duty of Candor

The duty of candor requires an attorney to make honest representations to a tribunal. Under the ABA and CA rules, an attorney must make fair and accurate depictions of evidence he reasonably believes to be as true, not knowingly and intentionally provide a tribunal with incorrect case law or fail to provide law that is contrary if he reason to know that it exists.

Here, Pat received an accident report after Dan pled guilty that concluded that the angle of the sun created an especially dangerous hazard on the day Dan collided with the child. However, Pat did not produce this report to the judge because Dan had already pled guilty. Instead, at sentencing Pat argued that the evidence of Dan's guilt was consistent with an intentional act. Pat's misrepresentation regarding this argument despite the accident report violates the duty of candor because Pat knowingly withheld relevant information for sentencing from the judge and further lied about the cause of the collision by

attempting to implicate Dan.

Therefore, Pat violated both the ABA and CA authorities.

Prosecutor's Special Duties

A prosecutor owes a duty to ensure that all relevant evidence is presented to the tribunal and defense counsel even if the evidence is exculpatory.

Here, Pat failed to provide the accident report to Linda. However, at this point Linda was no longer Dan's attorney. Pat still had a duty to disclose this relevant information to the defense. Because Linda was no longer the attorney on record, Pat should have disclosed this information to Dan.

Therefore, Pat violated the special duties he owed under both the ABA and CA standards.

Duty to Disclose Evidence Pointing to Innocence

A prosecutor owes the duty of good faith and fairness which requires him to disclose evidence even after a plea has been accepting or after a defendant has been convicted by a judge or jury evidence that has a reasonable likelihood of pointing towards innocence.

Here, although Dan had already pled guilty, Pat should have provided this report to the tribunal and Dan. This information would have been relevant at sentencing because without the accident report, it appears that Dan, although in accident intentionally struck the child. Additionally, Pat argued that Dan did voluntarily do so, when the accident report contradicts this by stating that there was a hazard.

Therefore, Pat had a duty to disclose this evidence.

Overall, Pat is in violation of both the ABA and Ca rules.

3a. The Judge Did Not Properly Accept Dan's Guilty Plea

Dan's Right to Counsel

The 6th Amendment provides that a person accused of a crime is entitled to an attorney to assist him in the criminal matter at all stages of the litigation. The court may appoint the attorney in reasonable circumstances, or the defendant is entitled to reasonable time to seek outside counsel.

Here, the court appointed Linda as Dan's lawyer after he the county prosecutor's office charged him intentional homicide, however Linda permissively withdrew from representation prior to the sentencing. The judge allowed Dan to plead guilty to voluntary manslaughter with no further inquiry after Linda was recused. Here, the judge should have either appointed a new lawyer to represent Dan, postpone the proceeding for a reasonable time and allow Dan to seek outside counsel, or receive a valid waiver from Dan that he would like to proceed in pro persona and without an attorney. Rather, the judge accepted a plea from Dan without verifying his competence and granting him his right to counsel per the US Constitution.

Therefore, the judge did not properly accept Dan's guilty plea because of his absence of counsel.

Acceptance of a Plea Without Counsel - Competence

A defendant is not required to have an attorney, however prior to accepting a guilty plea the judge must ensure that the defendant knowingly and voluntarily accepts the plea, often through admonishment. The judge must ensure that the defendant is competent at the time of sentencing and is able to enter into a plea on his own behalf.

Here, the judge accepted Dan's guilty plea without admonishing Dan. The judge did not ask any preliminary questions to determine whether Dan was competent at the time of pleading guilty. Nor did the judge verify whether Dan's plea was made knowingly and voluntarily in light of the consequences. Additionally, the judge accepted Dan's plea right after he relieved Linda as his counsel. The judge prior to Dan's plea denied Linda's request for a continuance, however the judge did not allow Dan to have any time prior to pleading guilty. In doing so, the judge failed to see whether Dan was competent to plead guilty, and subsequently failed to accept a guilty plea that was made knowingly and voluntarily.

Therefore, the judge did not determine whether Dan was competent prior to accepting his plea.

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

3b. The Judge Did Not Properly Sentence Dan

6th Amendment - Cruel and Unusual Punishment

The 6th Amendment prohibits the use of cruel and unusual punishment in criminal cases. A sentence is cruel when it imposes the death penalty on a non-dangerous felony, is disproportionately longer sentence than statutorily required, or under the totality of circumstances is more harsh than necessary.

Here, the judge rejected the plea bargain and sentences Dan to the maximum term of 11 years for the voluntary manslaughter of the child. The prosecutor offered a 5 year prison sentence for a guilty plea of the same crime. Here, 11 years is over twice as many years as the original offer presented by the prosecutor.

Therefore, the judge did not properly sentence Dan.

Question #5 Final Word Count = 1668

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