

Question
2.

~~Ellen contacted Linda and asked Linda~~

An attorney's Duty of loyalty requires that a lawyer be loyal to her client's interests. If any potential conflicts arise, the attorney must inform the client and have an informed written consent from the client, in CA, if an actual conflict arises between clients, the attorney must withdraw ^{or not take the case,}

Here, Ellen contacted Linda on behalf of Nonprofit's request to make an ^{employment} agreement with Ellen. By accepting the matter and not memorializing the agreement in writing, Linda has ^{not} violated her duty of loyalty in not informing the client of the concurrent conflict and by not getting the informed written consent ^{nonprofit} because Ellen is Nonprofit's only employee.

Additionally, there ^{is no} concurrent conflict ~~with~~ Nonprofit and Ellen. ^{if Linda was representing nonprofit's Board and Ellen} ~~And by~~ ^{then} ~~meeting with the Nonprofit Board,~~ Linda ^{would give} violated her attorney-client relationship with Ellen. ~~if she did not tell Ellen about the meeting~~

Duty of Confidentiality

Lawyer duty of confidentiality is broader than

the lawyers attorney-client privilege.

Herz lawyer met with nonprofit Board and discussed the terms of Ellen's employment - which went against Ellen's request to not have Linda discuss the source of the survey data. If Linda, in fact, discussed that with nonprofit. The facts are unclear if this was part of the discussions between Linda and Nonprofit.

Therefore, Linda has ~~likely~~ ^{not} breached her duty of loyalty ^{to Ellen} ~~and~~ ^{likely has breached her} duty of confidentiality ^{to her client Ellen.} (See last pages for continued discussion)

Duty of Competency

Lawyer must be competent in taking a client's matter, using the legal skill, knowledge and experience to dutifully represent the client.

Here, Linda is experienced in representing small business, both non and for profit businesses. And in taking on this

2 case dealing with nonprofit, she was competent

to handle the case, ~~as well as dealing with~~
~~the empty~~ because she is experienced in representing small businesses.

From the facts, it is unclear if Linda was competent to deal with ^{formal} employment agreements. The facts are unclear as to Linda's experience with employment ^{agreements &} contracts.

Under ABA and CA, lawyer can work with a competent lawyer ^{experienced in the specialty} or learn without undue expense and time the subject matter ~~is~~ in order to represent the client. And under rare cases in emergency situations.

Here, more facts would be needed to know whether Linda was competent in negotiating employment agreements. Linda was however competent ~~is~~ and experienced in ~~is~~ representing small businesses.

Therefore, Linda may have breached her duty of competency to Ellen - more facts would be needed. However, she was competent to deal with the nonprofit matter.

Duty to Communicate

Lawyer has a duty to communicate with her client about her case.

Here, Nonprofit asked Linda to invite Ellen to attend their meeting to discuss the terms of Ellen's employment agreement. The facts do not indicate, ~~that~~ ^{whether} Linda communicated this to Ellen. Here, the facts are also unclear as to whether Linda told Ellen about her plans to meet with the nonprofit board.

Thus, Linda may have ~~violated~~ ^{breached} her ^{ethical} duty to communicate with her client.

Duty to Zealously Advocate for Client

Lawyer has a duty to zealously advocate, for the best interest of her client.

Here, Linda saw more favorable provisions for her client in the draft agreement and did not have any duty, ^{to point them out as a zealous advocate for Ellen since it was in her best interest,}

Therefore, lawyer did not violate ^{any} ethical duty to zealously advocate for her client.

(Cont from Page 2)

Attorney - Client Privilege

A lawyer cannot help their clients in facilitating ^{the client's} unethical actions.

Ellen, as Nonprofit's only employee, contacted Linda on behalf of NonProfit to develop a formal employment agreement with Ellen to make her Executive Director of the ^{Nonprofit} company.

Linda may have breached her duty if

Ellen, as Director, was breaching her own duty of care to Nonprofit, and Linda was ^{facilitating} _{thus.}

Business Judgment Rule and Duty of Care

~~Attorney~~

Directors have a duty of care to their company. They must exercise good Business judgement for the care of the company by making sound decisions and to not self deal when making decision for the company.

Here, Ellen as officer of the company could have been breaching her own duty of care by asking Linda to not disclose the source of the survey data ^{to the Board} which was the underlying basis of

her salary.

Therefore, ~~Linda~~ Linda breached her attorney-client duty by facilitating wrongful action of her client.

Confidentiality as to source of salary data

Linda, as Ellen's lawyer, did not breach her confidentiality as to the source data ~~data~~^{only}, if she was not helping Ellen in facilitating a crime or furthering Ellen's breach to the Board as Director of Nonprofit