

Acme – PR

(Note: For all PR essays, first identify what the attorney did wrong and then state what they should have done to abide by the ethical rules.)

1. Ethical violations committed by June in disclosing Acme’s memorandum

Under the American Bar Association’s Model Rules of Professional Conduct (the “ABA”) and the California Rules of Conduct (the “CA Rules”), a lawyer owes a client duties of: (i) confidentiality; (ii) loyalty; ~~(iii) financial responsibility (inapplicable rule)~~; and (iv) competence. Good rule statement. ~~Here, June would owe these duties to Acme. June has violated her duties of loyalty and confidentiality by disclosing Acme’s memorandum as further discussed below. (conclusory analysis)~~

(i) Duty of confidentiality? Discuss (Make sure to lay out your analysis in the same order as you’ve laid down the rule statement for cohesion and clarity purposes)

(ii) Duty of Loyalty

A lawyer owes a client a duty of loyalty which means that the lawyer must put the client’s interest before her own and avoid conflicts of interest. (Note: There are two rules for duty of loyalty here. (1) to act in the clients best interests; and (2) to avoid both conflicts of interest: (i) potential conflicts of interest; and (ii) actual conflicts of interest. A stronger answer will give each legal concept it’s own paragraph and own mini irac. See essay feedback report to see organization.) Conflicts of interest may arise with respect to a lawyer’s personal interests, current or former clients and third parties. If the lawyer has a personal interest, there is a duty to disclose such interest. Under the CA Rules, there is a duty to disclose such interest but not to obtain any consent in writing.

(NOTE: What outcome does June wish for? She’d like to withdraw from representing Acme as evidenced by her request to Acme and her petition to the court to withdraw. Further, June is so repulsed by Acme regarding the lead based paint. In other words, she wants an “out” from this case. In order to do so, she wants to prove the following in her favor: (1) actual conflict of interest, (2) Serious Bodily injury or (3) Crime. If she proves any of these successfully, there is an actual conflict of interest and then she will receive a mandatory withdrawal from the court, which ultimately is her goal. In short, she will still have to represent Acme if it is only found to be a potential conflict of interest, lacking in SBI and/or Crime.)

Potential Conflict of Interest

Here, June has been retained to represent Acme Paint Company (Acme) which has been involved in an accident with a car. June owes her client a duty of loyalty to act in the best interest of Acme and to avoid conflicts of interest. Here, ~~there may be a personal conflict of interest which should be disclosed.~~ ~~In~~ the course of preparing for the trial, June identified a document indicating that Acme is aware that its paint contains lead. June will argue that because of her June’s three-year old niece recently suffered lead poisoning after coming into contact with lead based paint, June has an actual conflict of interest here as her client’s paint contains lead. June will further argue that Aafter this incident, June was very upset and joined a local consumer advocacy group, No Lead, which lobbies government agencies to adopt stricter regulations restricting the use of lead based paints. Her involvement with No Lead is in direct conflict with her client, Acme’s, interest in continuing to put lead in their paint. In addition,

(Start new ¶) However, Acme will counter that it is only a potential conflict of interest as June undertook to perform legal research and advise No Lead concerning its tax exempt status which has nothing to do with her representation of Acme in a car accident suit. Since June became aware of the memo indicating that Acme knowingly sells paint containing lead and June was upset by her niece's lead poisoning and joined the No Lead group, June may have a personal interest that should be disclosed to Acme. (Run on sentence. Try to write in short, direct and concise sentences. Also repeated analysis from previous ¶) However, given Acme will further counter argue that although June's personal interest is related to lead based paint, she is not representing Acme in a lead based paint suit, and her research and advice to No Lead has consisted of tax advice, it may be that her personal interest is irrelevant to Acme's case which involves a car accident. (Conclusion?)

(After each fact used, ask yourself "so what"? Or rather "why are these facts or this fact important here?" This will force you to push your analysis further by drawing the inference from each fact.)

Actual Conflict of Interest

Under the ABA Rules and CA Rules, where a potential conflict matures into an actual conflict, *(What is the rule for actual conflict of interest? How do we know when potential matures into actual?)* the client must be provided with additional disclosure and consent in writing. After reading the memorandum indicating that Acme's paint contains lead, June became outraged and joined No Lead. ~~Given her extreme reaction to the content of the memorandum, it may be a~~ At this point, ~~that~~ June's personal interest should have been disclosed to Acme of her involvement with No Lead and sought their written consent to continue representation. *(Conclusion? Follow IRAC framework)*

~~Further, the because the~~ memorandum's effect on her could be said to have developed into a significant risk that the representation of the client will be materially limited by June's interest. June's personal interest (i.e., in her niece's poisoning and No Lead) has resulted in her disclosure of Acme's memorandum to the media and No Lead. June has therefore violated her duty of loyalty to Acme by disclosing the memorandum. *(Discuss the importance of the facts of June "anonymously" disclosing of the memo)*

(I) Duty of Confidentiality

~~(R)~~ Under the ABA Rules and CA Rules, a lawyer owes a client a duty of confidentiality. ~~A duty of confidentiality~~ requires the lawyer to keep confidential matters relating to the representation of the client. ~~(R)~~ This duty can attach to matters disclosed to the lawyer either before, during or after the representation and is wider than attorney-client privilege. ~~(A)~~ Here, June found a memorandum in the course of reviewing Acme's records in preparation for trial. ~~(A)~~ Thus, the memo would fall within the remit of matters disclosed to June during the course of her representation of Acme. ~~(A/C)~~ Since June anonymously disclosed the memo to No Lead and to the media, she has breached her duty of confidentiality to Acme. *(Follow the IRAC framework)*

(To strengthen your analysis here, try to make use of all of the facts - memo from acme's president to the company's drivers - and then draw an inference from them as to why they are important.)

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