

QUESTION 6

Len, an attorney, is a member of Equal Ownership Inc. (Equal), a nonprofit organization that seeks to help low-income families purchase homes throughout the state. Len does not represent Equal as an attorney. Equal helped to get a statute enacted that requires that all new residential developments contain a certain percentage of low-income housing.

ABC Development Corp. (ABC) is a corporation that wants to challenge the statute. Pat, the President of ABC, asked Len to represent ABC and Len agreed. Len does not personally agree with ABC's objective, but moves forward with the representation nonetheless by filing a complaint challenging the statute. Len personally thinks the statute is a good law and secretly hopes that ABC is not successful in its lawsuit.

During the course of Len's representation of ABC, Pat informs Len that he (Pat) has filed false reports with the State Environmental Protection Agency regarding the disposal of non-hazardous waste, and is planning to file another false report next month. Filing a false report makes a person and his or her employer liable for a substantial civil fine. Len does not take any action with respect to the impending filing of the false report.

What ethical violations, if any, has Len committed? Discuss.

Answer according to ABA and California authorities.

QUESTION 6: SELECTED ANSWER A

Attorney-Client Relationship

An attorney-client relationship is formed when the client reasonably believes it has been formed. The existence of an attorney-client relationship triggers numerous duties, including the duties of competence, confidentiality, loyalty, and fiduciary duties. Breaching one of these duties is a violation of the Model Rules and California Rules.

Here, ABC has hired Len (L) to represent them in an effort to challenge the residential housing statute. Thus, it is likely that they reasonably believe an attorney-client relationship exists. One has therefore been formed. The duties mentioned above now apply to this relationship, and any breach will be considered an ethical violation.

For similar reasons, L does **not** have an attorney-client relationship with Equal. Although he has helped them get the housing statute enacted, he does not represent them as an attorney. Thus, we may assume that Equal would not reasonably believe such a relationship existed. Even in the absence of a formal relationship, however, his association with Equal may raise other problems, as discussed below.

Corporation as a Client

An attorney may represent a corporation as a client. The corporation acts through its duly-appointed representatives, usually officers. However, the corporation, not the officers, is the actual client and the attorney must be careful not to provide legal information to the officers in a personal capacity or to mislead them into believing that the attorney represents them personally.

Here, ABC, a corporation, has retained L to handle the representation. This is permissible under both sets of rules. ABC, acting through Pat (P), will likely give L

instructions on how to proceed and define what the goals of the representation are. However, L must remember that he represents ABC and not P.

Duty of Loyalty

An attorney owes his clients a duty of loyalty. The duty of loyalty includes the duty to refrain from conflicts of interest. Conflicts of interest take several forms: conflicts personal to the lawyer, conflicts between current clients, and conflicts between current and past clients.

Lawyer-Client Conflict

A lawyer may breach his duty of loyalty by representing a client with interests adverse to his own. This often arises when litigation the attorney is handling is adverse to one of his personal interests. When an attorney has a conflict between his or her personal interests and the interests of the client, under the California Rules he or she must provide the attorney with written disclosure of the interest. The model rules, by contrast, require that the attorney get informed consent from the affected client before continuing with a representation that raises a personal conflict. Further, under the Model Rules, the lawyer must reasonably believe that he will be able to provide competent and diligent representation in the face of the conflict.

Here, under either rule, L has breached his duty of loyalty. L is a member of Equal, an organization that helped to pass the statute his new client, ABC, is now challenging. L has admitted that he thinks the law is valid and that he hopes ABC is not successful in its suit. Under the Model rules, this would be a violation because he cannot reasonably believe he will be able to provide diligent and competent representation in the face of this admission. Further, under the California rules, there is no indication that he has provided written disclosure to ABC of his personal interest. He may argue that ABC only knew about him because of his work with Equal, and thus ABC was necessarily informed of his interest. However, California requires written disclosure, which was not

provided. L has breached his duty of loyalty by representing a client in the face of a personal conflict without disclosure and without a reasonable basis for believing he can continue to provide competent and diligent representation.

Client Conflicts

A lawyer may breach his duty of loyalty by representing current clients with interests adverse to one another or by representing a current client whose interests are adverse to a former client.

Current Clients

A lawyer may breach his duty of loyalty by representing current clients whose interests are adverse to other current clients. Under the Model Rules, a lawyer must get informed consent from the adversely affected client and reasonably believe that they can undertake the representation in spite of the conflict. The Model Rules require this consent only for **actual** conflicts of interest. By contrast, California requires informed consent for either **actual** or **potential** conflicts of interest. However, California does not require that the attorney reasonably believe he can provide competent representation in the face of the conflict.

Here, although Equal might argue that there is a client conflict, it is unlikely that L has breached either the model or California rules by agreeing to represent ABC. L was a member of Equal, but there was never an attorney-client relationship between L and Equal. There would therefore be no need to get informed consent from ABC or Equal before pursuing the representation of ABC.

Former Clients

Like a conflict of interest arising from the representation of current conflicting clients, an attorney may likewise breach their duty of loyalty by representing a client with an

interest adverse to a former client. In this case, the test under the California rules is generally whether the attorney learned any confidential information in the previous representation which could harm the client.

Here, like above, there is likely no former client conflict because there was no attorney-client relationship with Equal. However, Equal's argument on this front would be stronger--there is a strong possibility that as a lawyer-member of Equal, he learned information about Equal's litigation and lobbying strategies that could be used by ABC to defeat the statute. If he obtained confidential information from Equal, some courts might treat it as an ethical violation to use this information in subsequent litigation against that organization without getting informed consent. However, because there was no actual attorney-client relationship between Equal and L, it's unlikely that he breached his duty of loyalty by not getting Equal's informed consent.

Duty of Competence

An attorney owes a duty of competence to his client. Under both the Model rules and the California rules, this requires that he or she have the requisite knowledge, skill, thoroughness, and preparation necessary to handle the case. If a lawyer is not competent to handle the representation, he must become competent before proceeding, associate with a competent lawyer, or withdraw.

Here, although there is nothing to suggest that L is technically incompetent to represent ABC (he likely has experience in this area of law through his membership in Equal), it is possible that his affiliations and loyalties make it such that he cannot provide competent representation. He has admitted that he secretly hopes ABC is not successful in its lawsuit. This signals that he is biased against his client and therefore might be tempted not to use the requisite knowledge, skill, thoroughness, and preparation the representation deserves. If this is the case, then L will have breached his duty of competence to ABC.

Duty of Confidentiality/Disclosure

An attorney owes a duty of confidentiality to his clients. This requires, under both sets of rules, that they keep any information related to the representation confidential and inviolate. The duty of confidentiality is not absolute, and the Model rules and California rules both have exceptions for disclosure in case of fraud or financial harm (Model rules) or the threat of serious bodily harm or death (both sets of rules).

Here there are two potential issues related to confidentiality: (i) the possibility that L will breach his duty of confidentiality and provide information related to the representation of ABC to Equal, and (ii) whether L has a duty (or permission) to disclose information related to ABC's filing of false reports.

(i) Threat of Disclosure to Equal

As mentioned above, a lawyer must not disclose any information related to the representation to an outside source.

Here, his close association with Equal, a company whose law he is now attempting to strike down on behalf of ABC, presents a serious risk that he will violate the duty of confidentiality by disclosing information related to ABC's challenge of the law. Although there is no indication that he has yet made such a disclosure, if he does, he will have violated the duty of confidentiality and thus have committed an ethical violation.

(ii) Reporting ABC's False Reports

The Model rules and California rules treat the disclosure of confidential corporate information differently. When an attorney discovers that a corporation has undertaken an unlawful act, such as filing fraudulent documents or committing a criminal act, under both sets of rules an attorney must first **report up**. Reporting up requires that the attorney take the matter to the most senior member of the corporation. Under the

Model Rules, if the executives of the corporation refuse to take action, the lawyer may **report out** if he believes it is in the best interest of the corporation. This is an exception to the duty of confidentiality and allows the lawyer to report misconduct to an outside agency. California does not permit reporting out for financial crimes. California permits reporting out only when he or she has reason to believe that (i) the client or a third party will commit an act that creates a **risk of death or substantial bodily harm**, (ii) he or she has **remonstrated** the client to not take this action, and (iii) the disclosure is **reasonably necessary** to prevent the harm. Under the California rules, a lawyer may not disclose financial harms, although he may choose to withdraw from the representation.

Here, L has discovered that P has filed false reports with the State EPA regarding the disposal of non-hazardous waste and is planning to file another false report soon. Filing this false report opens the corporation up to a substantial civil fine. As a threshold matter, L should report this matter up the chain of command of the company. However, as it appears that P is the president, it is not apparent who else this could be reported to. Under the Model Rules, since L has exhausted his "reporting up" options, L is permitted to disclose the false report to an outside agency, since this involves a threat of substantial financial harm to the corporation. He may also withdraw from representation. He does not violate the Model Rules by not filing the report, although he may not counsel them on committing this type of fraud.

By contrast, L has no ability to report the fraud under the California rules. California permits reporting outside the corporation only where there is a risk of death or substantial bodily harm. The facts indicate that the waste is non-toxic, and thus it is unlikely that there is any risk of bodily harm. Although L may choose to withdraw from the representation and may not counsel the corporation on filing such documents, he is not required (or allowed) to disclose--to do so would be a breach of the duty of confidentiality.

In short, L's responsibilities in the situation depend on the rules applied. Under either

circumstance, he can likely withdraw from the representation since the client is committing fraud. Under the Model Rules, he may, but is not required to disclose the fraud to an outside agency. Under the California rules, he may not disclose the fraud and would be liable for a breach of confidentiality for doing so.

Duty of Candor to the Court

In addition to duties owed to the client, an attorney also owes a duty of candor to the court. As part of an attorney's duty of candor to the court, the lawyer owes a duty not to advance or file frivolous claims under both the California and Model Rules. This requires that they not knowingly put forward a claim that is unsupported by the law, although a good faith argument for modification or reversal is not considered frivolous.

Here, L has filed a claim seeking to invalidate the residential housing statute, a law that he helped pass. He has admitted that he secretly hopes that ABC is not successful in its lawsuit and that the statute is good law. Thus, there is a substantial likelihood that he will violate the duty of candor by filing a suit seeking to invalidate the law. This is because, if the law is valid, then claiming it is not valid without a reasonable basis is considered a frivolous claim. L will argue that he does not know that the law is good law, he just believes it is. Therefore, because he does not know whether the law is good or not, he is not prohibited from putting forth a good faith argument that it should be modified or overturned. Whether this argument succeeds depends on whether or not he believes there is a good faith basis for challenging the law. If he does not, and he proceeds to litigate the claim anyway, he will have violated his duty of candor to the court.

QUESTION 6: SELECTED ANSWER B

DID LEN COMMIT ANY ETHICAL VIOLATIONS IN CHOOSING TO REPRESENT ABC?

Duty of loyalty

A lawyer owes to their client the duty of loyalty. Under the ABA rules, the duty of loyalty requires that a lawyer not take a representation when there is a conflict of interest, unless the lawyer: (1) reasonably believes that his ability to represent the client will not be materially limited by the conflict of interest; and (2) the lawyer discloses the conflict to the client and receives their informed consent to continue with the representation. The California rules are quite similar, except the lawyer only needs to have a good faith subjective belief that his ability to represent the client will not be materially limited by the conflict of interest, and if the conflict is a personal conflict, the lawyer only needs to provide a written disclosure of the conflict in writing to the client. However, if the conflict is not a personal conflict, the client's consent itself, and not just a confirmation of consent, must be in writing.

Conflict of interest #1: Len's membership of Equal Ownership Inc. (Equal)

Did a conflict of interest exist?

Although Len did not represent Equal, a conflict of interest still likely existed because Len was a member of Equal, yet he agreed to represent ABC in its suit to challenge the statute. Equal was the nonprofit organization that helped to get the statute in question enacted. As a member of Equal, Len likely assisted or at the very least approved of and supported Equal in its mission to help get the statute enacted. Now, Len is on the opposite side of the same conflict, seeking to get this same statute struck down.

Accordingly, Len had a conflict of interest due to his membership of Equal and his representation of ABC, as Len was required to essentially fight a statute that was supported by the nonprofit which he was a part of.

Did Len take appropriate steps to represent ABC notwithstanding this conflict?

ABA MODEL RULES

Under the ABA model rules, Len could still represent ABC notwithstanding this conflict if: (1) he reasonably believed his ability to represent ABC would not be materially limited by this conflict; and (2) Len obtained ABC's informed consent in writing. Note that Len was not required to obtain Equal's informed consent, because Len does not represent Equal as an attorney.

Here, Len would argue that Len could reasonably believe he could represent ABC notwithstanding this conflict because even though he was a member of Equal, Len did not necessarily participate in the specific lobbying strategies or otherwise directly work on/contribute to Equal's efforts to enact the statute. Len could argue that though he supported Equal's mission at the time, this past support would not undermine his ability to represent ABC, despite the fact that ABC's objectives sought to tear down this specific statute.

On the other hand, it could be argued that Len's belief was not reasonable. Len was a member of the organization that supported and helped to enact the low-income housing statute. It could be argued that it would not be reasonable for Len to believe he could represent ABC and somehow place his membership of Equal and his support of Equal in an "isolated mental box" in his mind, which would not affect his ability to represent ABC, because the interests directly and squarely conflict with one another.

Overall, Len may very well succeed on his argument that he reasonably believed that this conflict of interest would not have materially limited his ability to represent ABC. Len was only a member of Equal, and the facts do not suggest that Len spearheaded or otherwise was deeply involved with the Equal's work in helping the statute get enacted.

However, despite this fact, Len did not disclose the conflict to ABC at the time he chose

to take on the representation. The facts do not suggest that Len told Pat he was a member of Equal, and that Pat consented to the representation notwithstanding this consent. Moreover, even if Len may have told Patrick about it and Patrick consented, such consent was not obtained or otherwise evinced by a writing.

Therefore, Len breached his duty of loyalty under the ABA model rules by improperly accepting a conflicted representation.

CA RULES

Here, Len would argue that he at the very least had a subjective good-faith belief that he could represent ABC notwithstanding his membership of Equal. A court would likely agree with Len, on grounds that as discussed above, while Len was a member of Equal, Len did not represent Equal, nor do the facts indicate that Len was directly or deeply involved with Equal's efforts to enact the statute. Accordingly, regardless of whether this belief was reasonable or not, Len may have had a good faith belief that he could have represented ABC notwithstanding this conflict.

However, Len did not provide a written disclosure of this conflict to ABC in writing. Indeed, this was a personal conflict, as it related to Len's membership with Equal and not some other conflict due to representation of other past or present client. However, under the ABA rules, Len was required to give ABC notice of this conflict and obtain its informed consent in writing. Len did not provide such a disclosure or obtain informed consent.

Therefore, Len breached his duty of loyalty under the ABA model rules by improperly accepting a conflicted representation.

Conflict of interest #2: Len's personal disagreement with ABC's objective

Did a conflict of interest exist?

In addition to being conflicted due to his being a member of Equal, another potential conflict of interest existed because Len did not personally agree with ABC's objective. Len personally thought that the statute was a good law, and secretly hoped that ABC was not successful in its lawsuit. Len's interests therefore directly diverged and conflicted with those of the objectives of his client. Accordingly, a conflict of interest also existed as regards Len's personal sentiments as to the merits of ABC's lawsuit, which Len was working on.

Did Len take the appropriate steps to accept the representation notwithstanding the conflict of interest?

ABA MODEL RULES

Len would argue that he reasonably believed that he could still represent ABC despite the fact that he did not personally agree with ABC's objectives, and believed that the statute was good law. He would argue that it is common for lawyers to personally disagree with their client's positions, but for them to nonetheless do the work as required and necessary to further their interests in the current matter.

However, it could be argued that Len's belief was not reasonable. Len's beliefs **directly and completely** diverged from that of his client's objectives. Such a strong, powerful belief, which even led Len to secretly hope that ABC was not successful in its lawsuit, would have inevitably affected Len's ability to represent ABC fully and to his utmost ability. Accordingly, it could be argued that due to the divergent disparity between his beliefs, and the objectives of his client, which even led him to essentially root for his client's failure, Len could not have reasonably believed he could represent ABC despite his personal beliefs.

A court would likely find that Len's belief that he could represent ABC effectively notwithstanding his personal beliefs was likely to be unreasonable. While it is common for a lawyer to disagree to an extent with the client's objectives, here Len was completely against them. The severity of his belief, and the likelihood of his personal sentiments materially impairing his ability to represent ABC is strongly evinced by the fact that he was rooting against his own client's victory.

Moreover, as discussed above, Len did not disclose such a conflict in writing to ABC, nor did Len obtain their informed consent.

Therefore, Len breached his duty of loyalty in accepting this representation with a conflict of interest.

CA RULES

Indeed, it is still possible that Len had a good faith subjective belief that he could represent ABC notwithstanding his strong feelings against their objective. However, as discussed above, Len did not disclose the nature of the conflict in writing.

Therefore, Len breached his duty of loyalty under the CA rules in accepting the representation with a conflict of interest.

Duty of competence

The duty of competence requires that a lawyer pursue a representation with the knowledge, skill, prudence, and effort that is reasonably required for the representation. Under the California rules, the lawyer only violates his duty of competence if he intentionally, recklessly, or repeatedly commits ethical violations.

ABA MODEL RULES

Under the ABA Model Rules, it could be argued that Len violated his duty of

competence in choosing to represent ABC notwithstanding such a conflict. A lawyer acting with appropriate knowledge and skill would have been aware that Len faced multiple conflicts of interest, and should not have taken on the representation. A lawyer acting with sufficient prudence would have been aware of the risks that his ability to represent the client would have been limited, and that he would be subject to discipline for taking on such representation. On the other hand, it may be argued that even a lawyer with appropriate knowledge, skill, and effort would have taken on this representation, as they would have had sufficient knowledge and skill to further ABC's interests notwithstanding the conflict of interest.

Under the ABA Rules, it is likely that Len breached his duty of competence. He did not act with the proper prudence in representing ABC, given the conflicts of interests that had existed.

CA RULES

Under the CA Rules, it is possible that Len did not violate his duty of competence. Len may have failed to act without prudence in accepting such a conflicted representation, but the facts do not suggest that Len had intentionally acted or even recklessly acted incompetently. Rather, he may have merely been negligent in taking on this representation, and this would not have been sufficient to support a finding of a breach of the duty of competence in California.

Conclusion

Len may have violated his duty of competence under the ABA model rules, but likely did not violate the CA rules.

DID LEN COMMIT ANY ETHICAL VIOLATIONS IN FILING THE COMPLAINT ON BEHALF OF ABC?

Duty to avoid filing frivolous lawsuits with the court

A lawyer has a duty to the courts and the judicial system to refrain from filing frivolous lawsuits with the court. A lawsuit is frivolous if the suit as filed was not warranted by the current law, or by a good-faith argument for a change in the law.

Here, Len personally thought that the statute is a good law. Yet, he still filed the lawsuit challenging the suit. Thus, it could be argued that Len breached his duty to the courts to avoid frivolous lawsuits, as he filed the suit without a good-faith belief that the suit was warranted by existing law or by a good-faith argument for a change in the law. However, it could also be argued that Len did not breach this duty because while Len may have personally believed the statute is good law, there is a possibility that other precedent and jurisprudence would have provided a good argument to strike it down.

It is likely that a court will find that Len did not breach this duty to the court. The facts indicate that Len **personally** thought that the statute was **a good law**. The statute was not necessarily founded on solid principles and immune from attack on other legal grounds. Thus, though Len personally disagreed with the filing of the complaint, there are insufficient facts to establish that it was frivolous to do so.

DID LEN COMMIT ANY ETHICAL VIOLATIONS FOR HIS FAILURE TO TAKE ACTION WITH RESPECT TO THE IMPENDING FILING OF THE FALSE REPORT?

Duty to protect the interests of the corporate client

When the lawyer represents a corporate client, the lawyer owes a duty to act in the corporate client's best interests. The duty to corporate clients provides that if the lawyer learns that the corporation, or one of its agents or employees, were to commit an act of wrongdoing or other act that would be harmful to the corporation's interests, or be imputed to the corporation to expose it to liability, the lawyer has a duty to report such

information to the highest authority in the corporation, such as the corporation's CEO or Head of Counsel. If such reporting is not possible, or would not be effective at preventing the harm, under the ABA model rules, the lawyer **may** report the information to an outside authority to avoid **harm** to the corporation. In California, however, although internal reporting is still required, reporting to an outside organization is **not permitted** except when necessary to comply with the requirements of the Sarbanes-Oxley Act.

Len **may** have breached his duty to the corporation under the ABA and California model rules. Here, Len found out that Pat had filed false reports with the State Environmental Protection Agency (EPA), and that Pat is planning to file another false report next month. Len was also aware that filing a false report makes a person **or his or her employer** liable for a **substantial civil fine**. Accordingly, Len was aware that one of the employees of his client (ABC), had taken actions, and was going to take actions, that could both be **imputed** to the corporation, AND would expose the corporation to liability. Therefore, Len was required to "run the information up the corporate flagpole."

The facts do not indicate whether Pat was the highest authority in ABC or not. Indeed, Pat was ABC's president. However, it is possible that there were other corporate officers (i.e., a CEO or something) or directors that were higher up on the "corporate flagpole" than Pat. If there were such individuals available, Len was required to inform them of Pat's actions to avoid having civil liability imputed to his client, ABC, and his client being subject to potential civil liability by having to pay a fine. Assuming that there were other individuals who were higher up than Pat on the corporate flagpole, Len may have violated his duty to protect the corporation's interests in failing to take any action with respect to the impending filing of the false report.

Note that under the ABA Model rules that if, however, Pat was the highest authority at ABC, Len was **permitted, but not required** to disclose the information regarding the false report to the State Environmental Agency. Len was not mandated to disclose, but only was permitted to do so. Accordingly, under these circumstances, because Len did

not have an affirmative duty to disclose, but only had the right and the privilege to disclose to an outside authority, Len did **not** breach his duty to protect the corporation's interests by failing to report the false reports to the State EPA.

Conclusion

Therefore, Len **may** have breached his duty to protect the interests of his corporate client under the ABA and California rules, depending on whether there were other individuals on the "corporate flagpole" that Len could have reported this information to in order to protect the corporation from having liability imputed onto it by an action of one of its employees.

Duty of confidentiality - was disclosure required or permitted in these circumstances?

Because Len was not required to disclose the information to the State EPA due to his duties to protect the interests of his corporate client, the only other means by which Len may be disciplined is if he was **required** to make such a disclosure and breach his duty of confidentiality.

A lawyer owes to his clients a duty of confidentiality. The duty of confidentiality requires that a lawyer may not disclose or reveal any information that the lawyer receives as part of the representation. The duty of confidentiality continues even after the representation has ended, and even after the death of the client.

Under the ABA model rules, the lawyer is **permitted** to reveal confidential information from the client in the following circumstances: (1) Where necessary to avoid serious bodily injury or death to others; (2) Where necessary to avoid or ameliorate financial injury to others that was a result of crime or fraud that was accomplished with the lawyer's services; (3) Where reasonably necessary to further the representation; and (4) Where reasonably necessary to comply with other ethics obligations, such as the disclosure of limited client information for conflicts checks. In California, however, the lawyer is only permitted to disclose confidential information to avoid physical injury or

death to others, **and** if reasonable, before disclosure, the lawyer must first: (1) reason with the client and attempt to persuade him not to follow through with his acts AND (2) tell the client of his intent to disclose.

Avoid serious bodily injury or death

Here, Pat had filed false reports with the State EPA regarding the disposal of **non-hazardous waste**. While ABC may have been improperly disposing waste, such waste was non-hazardous. Therefore, it is likely that the disclosure of this confidential information was not reasonably necessary to avoid serious bodily injury or harm, as the waste was not hazardous waste.

Moreover, even if the waste was hazardous, the lawyer's duty to disclose was **permissive, and not mandatory**. Accordingly, Len did not breach his duty of confidentiality under either the ABA or CA rules, as this exception was not applicable, and Len was **permitted, but not required** to provide such disclosure.

Avoid financial injury to others due to crime/fraud procured through use of lawyer's services

Here, Len's representation concerned challenging the low-income housing statute. However, Pat's statements to Len were completely unrelated to the scope of his representation and provision of legal services, as Pat's false reports were related to the disposal of non-hazardous waste, and false reports in connection with such disposal to the EPA.

Though the disposal of non-hazardous waste may have harmed other individuals' financial interests, as the non-hazardous waste may have caused damage to others' property, such harm was not procured using Pat's legal services. Moreover, as with the duty to disclose information to prevent physical injury or death, the duty to disclose to avoid financial injury is also **permissive**, rather than mandatory.

Therefore, even if this rule was applicable, Pat did not violate any duty in failing to report

or disclose this information, as his duty to disclose was **permissive**, not mandatory. Note, moreover, that California does not have this exception.

Conclusion

Len was not required to disclose the information regarding the filing of the false report in the present case. Although he may have been permitted to do so under two exceptions to the duty of confidentiality under the ABA Model Rules, Len was not required to do so.