

ETHICS QUESTION OF THE MONTH

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Question

Lawyer A represents Client X in a family law case. Client X has told Lawyer A he has struggled with substance abuse and continues to use cocaine occasionally.

Client X's wife had similar substance abuse issues, but she appears to be in sustained recovery. Client X wants primary custody and appears reconciled to admitting his occasional cocaine use and seeking treatment.

The wife's lawyer takes Client X's deposition and asks him if he still uses cocaine. Client X denies any cocaine use since the couple separated. Lawyer A asks no questions at the deposition, but later confronts his client about his denial of current drug use. Client X promises not to lie about his cocaine use again. Lawyer A does nothing further, and Client X does not correct his deposition testimony.

At trial, Lawyer A doesn't raise cocaine use, but does ask Client X to generally tell the jury why he believes that he is a fit parent. Lawyer A assumes that Client X will avoid talking about drug use, but Client X again says he has not used anything since the couple's breakup. Hoping that his client won't continue to perjure himself, Lawyer A drops the subject and quickly wraps up his direct examination.

On cross-examination, opposing counsel is ready to pounce but doesn't have any impeachment evidence that Client X is lying. He can't shake Client X's repeated denials of drug use since the couple's separation.

The jury awards primary custody to Client X at the end of the first week of trial. The trial will continue the following week with the property division tried to the court without a jury. Over the weekend, Lawyer A confronts his client and insists that he not further perjure himself during the second week.

Which is Lawyer A's best course of action?

- A. Lawyer A has acted appropriately in preserving what he learned from privileged conversations with Client X and should do nothing to undermine the attorney-client relationship.
- B. Lawyer A should withdraw before the second week of trial so that he can avoid disclosing his client's perjury when court resumes.
- C. Lawyer A cannot withdraw, but does not need to take further action as long as he doesn't affirmatively encourage Client X to lie.
- D. Lawyer A cannot withdraw and must take steps to address his client's lies, including disclosure to the court of the true facts.



ABOUT THE CENTER

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Answer

The answer is D. For the reasoning behind the answer, go to legalethictexas.com.