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## **1. TOM'S ETHICAL VIOLATIONS**

A lawyer owes several duties to his client, including the duty of loyalty, competence, confidentiality, and she also owes duty to the decorum to the court. Both Tom and Alan have implicated several duties owed to Patty and to the court. The ethical duties of each lawyer will be discussed separately below.

### **A. Duty of Competency**

#### Duty of Competency

A lawyer owes his client a duty of competence. This means that during representation, the lawyer must possess the knowledge and skill reasonably comparable to a lawyer in that particular field. If a lawyer is not competent, he may become competent by associating with a lawyer who has the skill necessary to represent the client, or he can learn the skills necessary without incurring unreasonable, additional fees to his client. If these options are not available. A lawyer must reject representation of the prospective client (discussed further below).

Here, Patty contacted Tom, but it does not seem she knew that he specialized in real estate. Nonetheless, Tom accepted representation of her by entering into a valid and proper contingency fee agreement (discussed further below).

Under the facts it appears that Tom knew he did not possess the requisite knowledge and skill of a personal injury lawyer, so he referred Patty to Alan, who was an experienced personal injury attorney. Tom properly referred Patty to a qualified lawyer, but he has still implicated ethical duties by entering and remaining in a fee agreement with Patty and by also receiving a one-third contingency fee from Alan. Tom has not violated his duty of competency in

referring Patty, but he may have conflicts of interests associated with the fees.

### Duty to Reject

If a lawyer does not possess the requisite knowledge and skill to represent his client, then he has a mandatory duty to reject the case.

Tom properly referred Patty to Alan for personal injury representation. However, Tom's continuing representation of Patty is still unclear. Tom will still be receiving one-third of the contingency fees, so perhaps he is assisting Alan in his representation of her. If so, he has not rejected his client, but has associated with competent counsel. Either way, his fee agreement with Patty should indicate who is actually representing Patty's interests. Tom did not violate his duty to reject Patty as a client by referring her to Alan.

### Fee Agreement (Contingency)

Under the ABA Model Rules, a contingency fee agreement must be communicated to the client in writing, signed by the client, and must also state in detail how the contingency fee will be calculated (whether it is before or after expenses are deducted). California is more strict it has the same requirements as the ABA, but also requires that contingency fees also indicate that the contingency fee percentage is negotiable, and that charging liens may be placed on the client. Here, it is stipulated that there is a valid and proper contingency fee agreement between Tom and Patty.

What is unclear, however, is whether Alan has adopted this valid contingency fee agreement. Patty did not object to Alan representing her, but there may be a conflict as to who is actually representing her. This contingency fee agreement should state whether it is Alan or Tom. If Alan executed a new, valid and proper contingency fee agreement, and substituted Alan's name for Tom's name, then the contingency fee agreement is valid (as stipulated in the facts). Tom has not

violated his ethical duties to communicate his contingency fee to Patty.

### Referral Fees / Fee Sharing

Referral fees are not allowed under the ABA Model Rules and in California. Attorneys are, however, allowed to share their fees if they if they are in the same firm or if the attorney receiving the fee has actually earned those fees through substantial legal work. Any fees that are shared must be disclosed to the client.

In this case, Tom will be receiving one-third of Alan's contingency fee. A straight one-third of the contingency is arguably valid if Tom will be assisting Alan in this case. As a real estate lawyer, he may only be able to assist in the administrative details, but not some much in the legal theories of Patty's case. Tom will have the burden of showing that he will actually be performing substantive work on Patty's case. Even if such a referral is valid, this should have been communicated to Patty. The facts state that the referral was unknown to Patty, therefore, Tom as violated his ethical duties to Patty.

On the other hand, fee sharing is allowed between lawyers who work for the same firm. Lawyers may also share fees with their assistants, such as paralegals and law clerks. Alan and Tom are both lawyers, however, it is unknown whether Tom and Alan work in the same firm. If they are both partners and it was usually for Tom as a partner to receive one-third, then no ethical duties are violated.

It seems more likely that Tom and Alan do not work for the same firm and that Tom will not be assisting Alan in his representation. It seems that Tom merely handed off Patty to Alan because he knew he was not competent to represent her. Therefore, under the ABA and California rules, Tom has violated his ethical duties to Patty.

## **2. ALAN'S ETHICAL VIOLATIONS**

### Referral Fees

As discussed above, it was improper for Alan to agree with Tom to give him one-third of his contingency fee because it was unknown to Patty, and because Tom will probably not perform any substantive work in Patty's case.

### \$200 Gift to Joe

Gifts made to non-lawyers are permissible so long as these gifts are not substantial. The purpose of gifts are usually for gratuity and they must not be for payment or for an incentive to do something.

Here, the \$200 gift to Joe can be seen either as a payment for working or an incentive to place his name in the newspaper. There is no indication that Joe and Alan had any previous relation. Joe was merely writing a story about the "texting" aspect of Patty's case, not about who is representing her or about the progress of the litigation. There does not seem to be any newsworthy information related to Alan's name being referred to in the paper. A court will probably infer that Alan wanted his name in his paper for attention, which is akin to advertisements for more clients.

### Advertisements

Advertisements are permitted under First Amendment, but the Supreme Court has ruled that attorney advertisements may be regulated. Any advertisements made by attorneys must indicate that it is an "advertisement." In this case, a court will probably infer that Alan wanted obtain more business by getting his name in the paper. Joe would probably have not included Alan's name, and the \$200 was an incentive. This "work around" the advertisement rule is improper. Therefore, Alan has violated his ethical obligations to the court in perserving the duty to the decorum.

### \$200 Gift to Joe - Payment - Duty of Communication

Any expenses related to a case must be reasonably communitied to a client. A client can reasonably be expected to pay for usual litigation expenses, but gifts will not qualify.

It is unclear who will be paying for this \$200 gift certificate. If Alan intends to pay for the \$200 by billing Patty, then he has violated his ethical duty to communicate his fees, amongst other duties related to this gift. Even if the \$200 gift were proper, Alan should have to pay for this out of his own personal expenses or have the firm front the cost of the gift certificate. Patty should not be responsible for this gift.

### Witness Payments

An attorney may advance reasonably related fees in procuring a witness. These cost will be limited to what is reasonable in ensuring the appearance of that witness.

In this case, Alan promise Walter, who was a homeless man to put him in a hotel for and undisclosed amount of time. By saying to Walter, "until you get back on your feet," will be heavily weighted by court, especially since Walter is homeless. Patty will probably be expected to pay for the hotel, but her expenses should be limited to the costs only in ensuring his appearance, but not to the extent of helping Walter "get back on [his] feet." During a trial, the defense will probably use this information to impeach Walter, thus diminishing the credibility of Patty's case.

Alan has gone beyond his obligation in procuring Walter as a witness. He has not only breached his duty of competency to Patty by adversely affecting her case, he has also breached his ethical duty to preserve the dignity and integrity to the decorum.

Duty of Competence

discussed above

Duty to Preserve the Dignity of the Decorum

A lawyer has a duty to preserve the dignity and integrity of the decorum. This includes actions in and out of court. As discussed, Alan has breached several ethical duties, thereby in total, breaching his duty to preserve the dignity of the decorum.