

5) Please type the answer to Question 5 below.**Â**

When finished with this question, click to advance to the next question.
(Essay)

Ethical violations of L

Lawyers have many ethical duties under the ABA and CA authorities. Len (L) has breached many ethical duties.

Duty of Competence

L owes a duty of competence to C. Competence is using the skill, knowledge, thoroughness, and preparation reasonably necessary to represent a client. Even if initially incompetent, a lawyer could gain competency by associating with a lawyer that practices in this area or learning the law. If neither of those options work for the lawyer, they must refer the client to someone else and permissively withdraw from representation. Here, C met with L concerning a slip and fall and potential chemical burn when she slipped on caustic cleaning solution spilled on a sidewalk outside Hotel (H). L is a personal injury lawyer.

Under CA, L must not act repeatedly or recklessly act with incompetence. Here, L has not acted incompetent in any way.

Thus, L is competent to represent C under CA and ABA authorities.

Client Attorney Relationship

A client attorney relationship is formed at the initial meeting between the two. The L has a duty to not disclose any confidential information about the C and must zealously advocate for the C. Here, C met with L and signed a retainer agreement. Thus, there is a client attorney relationship between the two.

Fiduciary Duty

Under the ABA, L must not charge an unreasonable amount for their services. Under CA authority, the amount charged must not be "unconscionable." Here, L had C sign a retainer agreement. The retainer is valid under both the ABA and CA because it is in writing. The facts do not indicate how much the retainer agreement is for. Regardless, that price must not be unreasonable or unconscionable. A retainer fee in general is fine in this instance; however, if representation ends, then L must give C back any unused portion of the retainer. Thus, L did not violate a fiduciary duty.

Trust Accounts

Under the ABA and CA rules, a lawyer must not commingle the clients and their own personal money. Money received from the client must be placed in a separate trust account. Here, the facts do not indicate whether L placed the funds in a separate account. If L did not place the money in a separate account, the court will find that he violated the ABA and CA authorities.

Duty to safekeep clients property

Under the ABA and CA rules L has a duty to safekeep clients property. Here, C gave L her clothing that was stained by the cleaning solution. L placed the clothing in his office closet for safekeeping. Depending on how L placed the clothing in the closet, it might not have been the most efficient way to safekeep the property. Since it was stained, L should have covered the clothing or protected it somehow. There is a possibility that the stain would fade. If that happens, then his failure to keep the clothing in its current condition could amount to a violation of this duty. Thus, it is possible that the relaxed handling of this important piece of evidence by L breached his duty to C.

Duty of Confidentiality

L owes a duty of confidentiality to C. L must not disclose any confidential information about C without C's express or implied consent or a court order. For example, if the lawyer was defending himself in a malpractice suit, he would be

able to disclose confidential information. Under the ABA, L must disclose confidential information if it will prevent death, bodily injury, or financial injury. CA does not require disclosure in these instances. A clients name and the amount charged by L are generally not confidential.

Here, L filed a suit against H. H is represented by Hannah. Upon receiving the complaint, Hannah called L and told him that this lawsuit was the 14th lawsuit that C had filed against H. Hannah also told L that she intended to move the court to declare C a vexatious litigant. It is unclear whether L disclosed any information about the case to Hannah. If he did, then there would be a breach of confidentiality. Absent facts to the contrary, it is unlikely that L breached this duty to C under the ABA and CA rules.

Duty of Candor

Duty to uphold the dignity/decorum of court

L has a duty to protect the dignity and decorum of the court system and legal profession. Here, L has notice that C has filed numerous meritless cases against H. When L eventually asked C "about the thirteen prior lawsuits against Hotel." She replied, "What 'thirteen prior lawsuits'? Besides, Hotel's got more money than I do." H should have checked to see if C filed these other lawsuits prior to filing the suit. If he filed that suit and it lacks any sort of legal basis, he should dismiss the case before the court imposes sanctions on him for filing without researching his clients past. Further, this conversation with C indicates that she is not being truthful with C and is only going after the deep pockets of H. L should not waste the courts time with this type of lawsuit if he has any indication that the suit is meritless. Thus, L has breached his duty to uphold the dignity of the court.

Conflict of Interest - L and Hannah's relationship

L owes C a duty of loyalty free of conflicts. Conflicts exist when the personal,

business, or professional interests of an attorney prohibit him from adequately representing a client. L must disclose these conflicts to C. Under the ABA, in order to continue representation, L must reasonably believe they can continue representation free of conflicts, disclose the conflict to C, and obtain written consent to continue representation from C. Under, the CA authorities, L must also obtain the informed written consent and disclose potential conflicts.

Prior relationship with Hannah

L and Hannah must disclose their close personal relationship to both of their clients. Their close personal relationship creates a potential conflict of interest. Under the CA authorities, potential conflicts of interest must be disclosed to the client and the client must give their informed written consent. Here, L and Hannah were engaged two years ago before they amicably decided to go their own separate ways. Even if the two do not talk anymore, they should still disclose this close relationship as a potential conflict. Rather, the two seem to be friends, at least enough so that Hannah called L to warn him of his clients' past lawsuits and her planned course of action. Therefore, this is likely an actual conflict of interest. Thus, L (and Hannah) breached their duty of loyalty to C and H.

Duty to communicate

L owes C a duty to communicate. This means that L must stay in contact and discuss every critical aspect of the case with C. C may also not make any commitments without the knowledge of C.

Here, L attempted to contact C numerous times through telephone, mail, and email. He noticed that C would read his emails but never responded. C did not breach his duty to communicate because he attempted to talk with C many times. Thus, there is no breach under ABA or CA authorities here.

Permissive Withdrawal

A L may permissively withdraw from a case if they do not feel they can represent the client due to conflicts. L may also permissively withdraw if they are unsure of their clients ability to pay them. L must inform the court of this decision. Here, L felt he could no longer represnet C because of the lack of comminucation and possible meritless suit. Under both of the authorities this permissive withdraw is acceptable. L must return all items to C and return the portion of the unused retainer fee. The fee's should be accounted for so that C is fully informed of where her money went.

Mandatory withdrawl

L must withdraw from representation if they are no longer physically or mentally able to adequately represent client. It does not seem like L has an arguement for mandatory withdrawl in this instance. Thus, he may only permissively withdraw.

Damaging Evidence

A L must not intentionally or recklessly damage evidence. Here, L accidentally sent the clothing C had him store along with his clothing to be dry cleaned. L should have kept the clothing seperate from his and properly safeguarded so that an accident like this would not happen. This was reckless on his part. The dry cleaner removed all of the stains before he was able to rush and retrieve the mistaken items. The clothing was likely the only piece of evidence C had to prove her case. Thus, the court will likely fidn that L recklessly tampered with evidence.

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