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**DUTY OF LOYALTY:**

A lawyer owes his clients a duty of loyalty to act place the client's interests above all and to not act against the client's interests.

Conflict of Interest:

Under the ABA and CA authorities, the duty of loyalty owed to a client is breached when a lawyer has a conflict that is adverse to the client's interests. This may arise in a variety of ways, such as concurrent representation, representation of a client that is adverse to the client's interests and/or claims, representation of a client with personal interests, pecuniary interests. A lawyer is required under both ABA and CA authorities to inform the client of such conflicts and obtain informed written consent from the client. In CA informed consent is required for both actual and potential conflicts, while ABA requires only actual conflicts to be disclosed.

Here, Lou's meeting and subsequent decision to represent Shiela and Betty likely violated the duty of loyalty owed to both Shiela and Betty. While Shiela and Betty initially sought Lou's help together, since they were both friends and co-defendants and were being charged for the same crime that arose out of the same incident, Shiela and Betty's interests could very likely be adverse to one another in the near future. Furthermore, because defendants in a criminal case generally are offered different sentencing and plea bargains if the party testifies against the other, Lou should have taken reasonable measures to ensure he could represent both parties before doing so. The potential for Shiela and Betty's positions to be adverse to one another is required in CA to be disclosed to the client. Lou not only failed to get written consent from both parties, but nevertheless failed to provide sufficient information to his clients regarding this fact.

Thus, Lou committed an ethical violation in CA by choosing to represent both Betty and Shiela with a potential conflict of interest without written informed consent. This duty will likely be breached under the ABA as well, though not at this time.

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**Personal Relationships:**

Under the ABA, a conflict of interest exists when representation is limited by a personal interest, such as with family. A lawyer is required to obtain written consent is required by the client after disclosing the relationship. Alternatively, in CA, the conflict is slight when there is a family relationship. The attorney is required to disclose this fact to the client, though informed written consent is not required.

Here, Lou neither disclosed this information to Betty nor obtained written consent. While Betty was likely aware of the relationship due to her close relationship with Shiela, Lou was still required to follow formalities to this regard.

Thus, ethical violation.

**DUTY OF COMPETENCE:**

A lawyer owes a duty of competence to the client to act with skill, diligence, and preparation. Furthermore, under the duty of competence, the attorney must not represent a client upon matters that he does not know of without reasonable efforts to learn about/acquire skills to successfully do so. Under ABA and CA, an attorney may represent a client in an unknown area of law if he is supervised by an attorney who does have substantial experience in the field, or, he may research and acquire the necessary skills required to do so.

Here, Lou is an estate planning attorney that has never represented criminal cases before. Estate planning and criminal trials are completely different areas of law, the latter of which requires a significant amount of judgment, skill and preparation. While Lou nevertheless could have independently studied the area of criminal law to acquire the necessary skill and experience required to represent his clients effectively, he failed to do so. Lou's lack of preparation to represent his clients and become familiar with criminal law subsequently detrimentally impacted his clients. Specifically, his unfamiliarity with criminal procedure during the joint arraignment forced the court to relieve Lou and appoint a new counsel.

Thus, Lou committed an ethical violation by agreeing to defend his client(s) in an

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area of law he had no experience in and representing them in a hearing without any preparation.

**DUTY OF DILIGENCE:**

In CA and ABA a duty of diligence is owed, such that the client must act reasonably, zealously, and advocate to the best of his skill, judgement and abilities. This is often called "zealous" representation.

Here, Lou breached the duty of diligence when he appeared before the court without any preparation, let alone familiarity with the criminal procedure, breached the duty of diligence he owed his clients. This forced him to be relieved of the case and consequently forced his clients to seek legal assistance from other sources.

**FEES:**

Under ABA, fees must be reasonable. Under CA authorities, they must not be unconscionable.

Here, Lou committed an ethical violation when he charged \$2,000 for his failed representation at the joint arraignment. Fees are generally a consideration of various factors, such as skill, circumstances, novelty, difficulty, and other such basis.

Here, there was an ethical violation since fees were unreasonable and unconscionable.

**CONTINGENCY:**

Contingency fees not allowed in criminal or divorce in ABA. CA disallows divorce.

Here, there was a criminal case. The fee arrangement specified that the lawyer would be advancing costs and then getting reimbursement, which is a contingency. Thus, there was an improper contingency fee arrangement.

**ADVANCING COSTS:**

ABA disallows advancing costs to clients unless contingency. CA allows, but after

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representation.

HERE, the contingency itself was not proper, since the case was civil, since the contingency fee arrangement was for a criminal case. Furthermore, the clients were current clients, not past clients. Accordingly, Lou could not advance costs to Shiela and Betty for his services. Furthermore, even if he was able, they would not be for "repaying lawyer for ALL costs and services." Rather, the payment would only suffice for court costs and litigation. Thus, the advancement of costs would also be improper under ABA and CA.

Ethical Violation.

DUTY TO TRIBUNAL and profession:

duty is owed to the tribunal of candor. act in a reasonable manner. Here, Lou disrespected the tribunal by failing to prepare before going in front of the court. The court subsequently was forced to relieve him. Generally, Lou's behavior was a sanctionable offense.

Thus, ethical violation.

Question #3 Final Word Count = 1040

**END OF EXAM**