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Competency

A lawyer owes a duty to competently represent a client and not to take a case for which they are not competent unless they can gain competency

Lou regularly practiced in estate planning and had never represented defendants in a criminal case before, thus not likely to be competent to handle a criminal case. Further, due to Lou being grossly unfamiliar with criminal procedure the court relieved Lou and appointed new counsel for Betty and Sheila, thus Lou was not competent.

Therefore, Lou breached his duty of competency.

Gain Competency - Education

A lawyer who is not competent may take a case if he reasonably believes he may gain the required competency without undue delay or cost to the client.

Here Lou was not competent to take Betty and Sheila's criminal case, thus was not competent.

Further, nothing in the facts indicate the Lou believed nor attempted to gain competency to handle the criminal case as shown by Lou being so unfamiliar with procedure he angered the court.

Therefore, Lou did not gain competency through education

Gain Competency - Association

An attorney otherwise incompetent may gain competency by associating with an attorney that is competent with the consent of the client.

Lou did not make any mention or attempt to get permission to associate with a competent attorney in criminal law, thus Lou did not attempt to gain competency by association.

Therefore, Lou did not gain competency by association.

Potential Conflict of Interest

Where a mere potential for a conflict of interest is present an attorney may take the case after consulting with the client to disclose the potential conflict. California requires agreement to be in writing.

Here Lou is Betty's uncle and is jointly representing Betty and Sheila in a criminal case, thus there is a potential conflict of interest.

Further, there was no stated consultation about this potential conflict. However, as Betty and Sheila have been long time friends it is likely Sheila is aware of Lou being Betty's uncle.

Moreover, the written retainer agreement states there is no conflicts of interest and Lou will make every effort to inform of any potential conflicting representation. This is not sufficient of a waiver of the present potential conflict Lou may have in obtaining a deal favorable to Betty at the expense of Sheila.

Therefore, there is a potential conflict of interest which Lou did not properly address in a written waiver of the potential conflict.

Conflict of Interest Provision

If there is an actual conflict of interest an attorney cannot accept representation. If there is a possibility of a conflict of interest an attorney cannot represent unless he has a good faith believe it will not impair representation and disclosure is made to all parties. Written waiver required in California.

Lou's retainer agreement states if there a a potential conflict of representation he will "make every effort to inform" clients of the conflict. This falls short of disclosure of the conflict and does not provide for waiver of conflict as required.

Therefore, Lou's retainer agreement does not adequately address conflicts arising from representation of other clients.

Reasonable Fees - Agreed Fee

Attorney fees must be reasonable considering the work involved, experience and skill of the attorney, and complexity or novelty of the case.

Lou is charging a contingency fee of \$10,000 plus actual costs for joint representation of two clients. This is a complex case however Lou has no knowledge or experience in handling such a case to the point of being incompetent to handle the case.

Therefore, Lou may have breached his duty of reasonableness.

Written Agreement

Contingency agreements and agreements for fees over \$1,000 must be in writing

Here Lou had the retainer agreement in writing, signed by both Betty and Sheila, stating his fee being contingent on a verdict or deal in their favor of \$10,000 plus costs and costs only if there was no deal or verdict was not in their favor.

Therefore the agreement was properly in writing.

Loaning Money to Client

An attorney may not loan a client money other than for the cost of litigation. Client must remain liable for all fronted costs.

Here the agreement stated Lou would advance the costs of defending and Betty and Sheila would be liable for these costs no matter what the ultimate outcome of the case.

Therefore Lou did not improperly loan money to clients.

Reasonable Fee - Charge Prior to Removal

defined above

After Lou was removed by the court due to incompetence Lou requested payment from Betty and Sheila of \$2,000 for the time he spent on their case.

Lou had not incurred any expenses prior to removal, thus non of the request was for proper reimbursement under the agreement.

Moreover, Lou was so unfamiliar with criminal procedure he angered the court, was removed, and new council appointed, thus no time Lou spend appears to

reasonably warrant compensation.

Therefore, Lou's request for \$2,000 for the time he claims to have spend it not a reasonable fee.

Fee Sharing

Fee for referral or for shared work is allowed if fee split is proportioned with the amount of work performed by each attorney and with the consent of the client.

California allows referral fee, ABA does not allow referral fee.

Here Lou did not share work with another attorney but was instead removed from the case by the court and new council was appointed to replace him.

Further, there was no agreement for Lou to share fees with anyone.

Moreover, as stated supra Lou's work on the case did not warrant compensation especially in the amount of 1/5 the full fee after being removed by the court for incompetency at arraignment.

Finally, new council was appointed by the court not referred by Lou, thus the fee cannot be for a referral even where allowed.

Therefore, the claim for \$2,000 could be an impermissible attempt as fee sharing.

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END OF EXAM