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Assisting in the Unlawful Practice of Law

Under both CA and ABA authority, an attorney must not assist in the unlawful practice of law. Where a member of the bar has been disbarred, that attorney may not perform legal services, however, she may perform work as a paralegal or legal assistant under the direct supervision of an Attorney. The Attorney, however, must ensure that the disbarred attorney's services as a legal assistant do not amount to legal services.

Here, Kelly was disbarred several month ago and Kelly immediately rehired by Anne as a litigation support clerk. Kelly engaged in two separate acts which amount to legal services: 1) Kelly primarily drafted a counterclaim filed in court and 2) Kelly drafted questions for Anne to Ask at deposition and at the deposition passed notes to Anne suggesting further question to the team owner. Here, Anne was required to be the supervising party, not vice versa. Where Anne filed a counterclaim primarily drafted by Kelly, Anne was required to direct and check all of Kelly's work before submitting the counterclaim. By allowing her to primarily draft the document, it does not seem like that was what Anne's role was. Further, by drafting questions before the deposition and giving Anne questions to ask during the deposition, Anne was simply acting as a puppet for Kelly. The fact that Anne was using Kelly's questions leads to an implication that Kelly was performing the work unsupervised and Anne was following her orders blindly. These actions circumvent the disbarment as Kelly is technically still practicing law and simply using Anne to create an illusion that Anne is providing h services. As a party to such actions, Anne has violated her duty to not assist in the unlawful practice of law as Kelly's actions were above the scope of a litigation assistant and more similar to those of an attorney.

Duty of Diligence

Under ABA and CA law, an attorney owes a client the duty of diligence. ABA authority recognizes that the attorney must not continuously, recklessly (and in CA with gross negligence) fail to perform their services with the diligence necessary to carry out the representation.

Here, Anne needed Kelly to to suggest questions to her at the deposition hearing after Kelly had already drafted the primary questions asked. By using Kelly to question the

owner at the deposition in such a manner, Anne shows that she was not prepared for the deposition hearing. This lack of preparation would amount to being continuous, because there are two instances of being ill prepared, when the questions were the drafted and at the hearing as she did not seem to have the background on pertinent case factors to ask further questions that she would need to build her case. This even amounts to recklessness as showing up unprepared to a hearing is not a reasonably prudent thing an attorney would do. Furthermore, a court is likely to also find that this unreasonable course of conduct may amount to gross negligence as the lawyer.

As such Kelly has violated her ethical duty of diligence under both CA and ABA authority.

Threats of Malicious Prosecution

Under both ABA and CA authority, an attorney must not make threats of bringing a non-meritorious lawsuits against third parties as a method of duress or retaliation.

Anne explicitly understands that there is no basis to files a discrimination complaint against the team, however, as a negotiation tactic for renegotiating Player's contract. Such threats are strictly forbidden. By doing so, A has violated CA and ABA law.

Fee Sharing with non-lawyer

Under ABA and CA authority, an attorney may not share fees with a non-lawyer or make a substantial gift to a non-lawyer for a referral. Under CA law, an attorney may share fees with another lawyer where the attorney provides written disclosure of the fee sharing to the client.

Here, Kelly is not an attorney but a legal assistant. A may pay her a salary for work performed but nothing more than that, this payment must be commensurate with that a litigation assistant and not an attorney. A probably has not violated this duty as the facts do not provide that she grossly overpaid K.

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