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1. Competence

ABA model rules and CA requires that the lawyer be competent by applying the knowledge, skill, and thoroughness reasonably necessary in representing the client. CA requires that the lawyer will not recklessly and repeatedly fail to represent the interest of the client.

Here, when Mary did not disclose to Peg that she and Len were intimate in the 1990s while attending law school and remain good friends, she was not using the skill of disclosure of actual or potential conflict of interest to Peg.

Mary violated the competence requirement.

Conflict of interest- Failure to disclose

Actual- there is actual conflict of interest where the representation of a former client or personal interest of the lawyer will adversely affect the interest of the current client. When there is actual conflict that is materially adverse to the representation of a client, the lawyer shall disclose the conflict to the client and only proceed if she has received informed, written consent from the client.

Here, Mary and Len had a romantic intimacy in law school and remain good friends. Furthermore, Mary is especially uncomfortable using the tactic of Peg's fact of Doug's affairs against him to settle for a larger amount, in a case involving her good friend Len.

Mary has not told Peg anything about her relationship, past or present, with Len. and now is especially uncomfortable with Peg's tactics against her good friend Len.

Len has actual conflict of interest that is not disclosed to Peg.

Diligence

Diligence is required with competence and promptness.

Competence supra.

Here, Peg is especially uncomfortable with the tactics that Peg is offering of facts of Doug's extramarital affairs against Doug, Len's client. This is likely to affect the promptness with which Mary will represent Peg.

Mary will violate the rule on diligence.

Scope of Representation

Scope of Representation is used to abide by the clients instructions, but the independent professional strategies of the lawyer determines the mthead of the case.

Here, because Mary has not told Peg about the affair between Len and herself, she is unable to abide by the client's request and her independent professional judgment is affected because she is hiding the relationship from Peg.

Mary violated the duty of scope of representation.

Communication

The client should be told of any material change of the representation.

Here, Mary should have told Peg that she is unable to use the tactics against her good friend Len because they have a past intimate relationship and a presently good friend relationship.

Mary violated the communication duty.

2. Zealous Representation

Fairness to adverse party.

The lawyer should not use facts that will be unfair to opposing side.

Here, Mary agrees that if she uses the fact of the affair by Doug in her negotiations with Len, as leverage to get maximum damages, the case will be settled for a larger amount than if she does not mention the affair. Mary may offer that the facts are not unduly unfair to Doug because the trial is based on Doug's promissuity against Peg. Len however may show that the fact is unfair because it is akin to extortion. However, if the court finds that the facts are likely to be extortion, Mary will have violated the rule. If the court however finds that the facts are material to the case because of the nature of the facts to the issue of the case, then Mary would not have violated the duty of zealous representation.

Zealous Representation- Illegal Acts

The lawyer may not use illegal acts to further her representation.

Here Mary is not using crime or fraud to further representation because the facts are true.

Mary did not violate zealous representation

Zealous Representation-Undue Influence

Undue Influence may not be used against adverse party.

Since Doug knew what he was doing in terms of having his sexual affairs and continue to act in light of this behavior by sexual harassment against Peg, the court may find that it is not undue influence. However if the court finds undue influence, Mary will not have violated her duty.

Honesty and Integrity

Lawyer should act to maintain the integrity of the profession.

Here, Mary is likely to not breach the duty of the professional conduct if her agreement not of undue influence, and she acts fairly to adverse party.

Mary has violated the honesty and integrity duty by failing to disclose her past and present relationship with Len to Peg.

3. Withdrawal

Mandatory- Lawyer may withdraw from representation where the client insist of cause in the lawyer to violate the professional rules of conduct, or if the action is reprehensible to the lawyer.

Here, although Peg agrees that the fact of the affair in negotiating with Len will increase the settlement for Peg, she strongly dislikes the idea of using the information, and is especially using it against Len her good friend. Because this will materially affect her representation of Peg, she should be granted a mandatory withdrawal.

Permissive withdrawal- However, because Mary is at settlement the court may find that because she agreed and the result may be adversely affected if Mary is granted withdrawal, she should not withdraw from representation.

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END OF EXAM