

4)

The ABA and the California Bar Association have rules regarding the professional responsibilities of attorneys. In this case, the professional responsibilities are the following:

A. FINANCIAL ARRANGEMENT WITH CHIRO

1. An attorney cannot share fees with a non-attorney. However, an attorney is allowed a reciprocal referral arrangement as long as it is not limited to just each other's businesses; it has a durational limitation; and the client referred is informed and consents to this reciprocal referral.

Here, Linda gives Chino 5% of Linda's fee disguised as a gift each time Linda recovers money from the cases referred to her by Chino. Chino is not an attorney but a chiropractor therefore this fee sharing is not allowed.

2. Reciprocal attorney arrangement. An attorney is allowed to have a reciprocal referral arrangement with a non-attorney as long as the agreement is not exclusively between them; there is a durational limitation; and the client referred is informed and consents to the reciprocal referral arrangement.

Here, the facts do not indicate that Pete was informed of this arrangement, therefore, this arrangement is unethical.

3. An attorney is not allowed to have a business partnership or involvement with a non-attorney when the business concerns the law or the legal profession.

Here, Linda is engaging in a business relationship with Chino whereby Chino provides clients for her in exchange for 5% of her fee. This is prohibited conduct.

4. An attorney cannot directly solicit clients. Any person acting on behalf of the attorney and who directly solicits clients is also prohibited. Here, Linda instructed Chiro to give her name to his patients who have been in a car accident or fall. This is prohibited as a direct contact with the prospective clients and therefore Linda is in violation of this professional rule and by extension, if Chiro directly solicits clients for Linda, his conduct is imputed to Linda and Linda will be in violation of the rule.

B. PARTNERSHIP WITH CHIRO

1. An attorney is not allowed to form a business partnership with an attorney that involves the legal practice. Here, Linda has a business arrangement with Chiro whereby Chiro gives Linda's name to his clients in exchange for a 15% fee. This is a prohibited partnership. However, this arrangement would be permissible if it does not involve any payment but a strict reciprocal referral agreement. This is not the case here as money is being exchanged for the service. Therefore, Linda is in violation of the rule.
2. An attorney can engage in a reciprocal referral arrangement with a non-attorney if it is for a limited time, is not exclusive, and the clients are informed and consent. Here, the agreement is not for a reciprocal referral but only for a referral of clients to Linda. Therefore, this arrangement/partnership is prohibited.
3. An attorney can form a business partnership with a non-attorney without any involvement of the practice of law. Here, the partnership described as "marketing" involves the practice of law which is the referral of clients to Linda for a 5% fee from the cases. This is a pure legal partnership and therefore, this partnership is prohibited by the rules.

#### C. RELATIONSHIP WITH PETE

1. In California and the ABA, an attorney is prohibited from having any sexual relations with a client unless the sexual relationship commenced before the attorney-client relationship. In California, if the client and attorney later marry, there is no violation of the rule. Here, it is clear from the facts that the sexual relationship commenced at the beginning of the attorney-client relationship and Linda is in violation of this rule.
2. An attorney cannot take a contingency payment for cases involving divorce proceedings. Here, Linda did not agree to Pete's offer to pay on a contingency basis, but she also did not refuse the offer. Instead, Linda used her bargaining power and position as an attorney and made Pete believe that she will agree to the contingency payment if he has drinks with her. Linda later on has sex with Pete and violates the rule.
3. Duty of competency. A attorney has the duty to represent a client with the legal knowledge, diligence, skill and preparedness necessary for a successful representation. Here, Linda's obsession with Pete and her desire to spend more time with him caused him to file papers hurriedly and narrowly avoids deadlines. If Linda's representation is affected, she will be in violation of the duty of competency. If Linda repeatedly is incompetent, under the California Bar, Linda will be in violation of the duty of competency.

D. Threatening an attorney for legal gain. An attorney cannot threaten another attorney for a legal advantage if he represents an adverse party and is using the threat for his advantage. If an attorney is aware of another attorney's misconduct, the attorney should report it to the ABA or CBA directly. Here, Tom knew of Linda's violation for having sex with her client and should have reported her directly to the bar association instead of using Linda's misconduct to his advantage in the legal proceedings. Tom is in violation himself of the duty to report an known attorney misconduct as well as his conduct of bad faith.

**E. LINDA REPORTS THE THREAT**

An attorney who threatens to use the knowledge of another attorney's misconduct and uses this knowledge to his advantage is in violation of the rules of professional responsibility and should be reported to the bar association. Here, Tom threatened Linda that he would report her sexual misconduct to the bar unless she settles the case with him. Tom is in violation of the rules and Linda is correct in reporting him.

Question #4 Final Word Count = 942

**END OF EXAM**

