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1. Linda's ethical violations

a. Financial arrangement with Chiro

Solicitation

Under the ABA and CA rules, a lawyer may not contact a potential client in person, over the telephone, or by real time electronic communication.

Here, L is not communicating directly with clients in order to solicit their business. However, C is communicating with potential clients on L's behalf in order to refer them to L. An argument could be made that C is acting as an agent of L's by contacting potential clients for her. While this could go either way, it is more likely that L has violated an ethical rule by having C communicate with potential clients on her behalf.

Gifts in return for referrals

Under the ABA and CA rules, a lawyer may not give gifts with the expectation of receiving referrals in return. Under ABA rules, a lawyer may not give gifts or compensation for referrals at all. Under the CA rules, a lawyer may give a gift as long as it is reasonable and is not given with the expectation of a referral in return.

Here, L created a system with C in which C gave L's name to his patients who have been in car accidents or falls, and L gives C a gift of 5% of her fee in return. Under the ABA rules, this is absolutely unethical as gifts are wholly barred. Under the CA rules, a gift may be given if it is reasonable and in appreciation or thanks, but not as compensation for a referral or with an expectation of a referral of return. The value of the gift must be reasonable and relative to the amount of work done. 5% of L's fees is likely not a reasonable gift, and will be found unethical under both ABA and CA rules.

Furthermore, L does not give C a gift when she does not receive a fee from one of the cases that C refers to her. This seems to create the implication that C is only getting "paid" for the cases that are successful. The gift is not out of goodwill or appreciation, but rather a referral fee that C is receiving in exchange for referring L.

Fee Splitting with a non-attorney

Under the ABA and CA rules, a lawyer may not split fees with a non-attorney. Furthermore, a fee splitting agreement must be in writing and with the informed consent of the client.

Here, L gives C a gift of 5% of her fees every time that she recovers money in contingent-fee lawsuits. She has created a fee-splitting agreement with C, a non-lawyer, and there is no indication that clients are consenting to this agreement. L has behaved unethically.

b. Partnership with Chiro

Partnership with a non-attorney

Under the ABA and CA rules, a lawyer may not form a partnership with a non-attorney.

Here, L has formed a partnership with C, who is a chiropractor. C's services are described as "marketing" for L's practice. However, under the rules, L may not form a partnership with a non-attorney. L has violated the ethical rules.

Exclusive Fee referral agreement

Under the rules, an attorney may not create an exclusive fee referral agreement.

Here, the facts are silent as to whether L and C's fee referral agreement is exclusive. If it is, L will have violated her ethical duty.

Marketing

Under the rules, attorney marketing must be clearly labeled as such. It must include the attorney's name and address.

There is no indication in the facts as to whether C gave any disclosures or information required. L will argue that C is doing word of mouth marketing for her, but a court is unlikely to find this persuasive. L will likely have violated her ethical duty.

c. Relationship with Pete

Sexual Relationship with Client

Under both ABA and CA rules, attorneys are prohibited from having a sexual relationship with a

client unless the relationship was started prior to the attorney taking on the case. In CA, this rule does not apply if the attorney is representing their spouse or domestic partner.

L initiated a sexual relationship with P. The facts do not indicate that P and L later married or became domestic partners, or that they had a sexual relationship prior to meeting to discuss P's case. L initiated the sexual relationship with P while she was representing him in his divorce case. L has violated the ethical rules.

Duty of Loyalty

A lawyer owes a duty of loyalty to her client to place the client's best interests above all else, including her own, and to not exert undue influence on the client.

L breached her duty of loyalty to P by hinging her representation of him on a date, pressuring him to go out with her, and initiating a sexual relationship with him.

Best Interests

Please see above for rule. A client should be able to freely choose the counsel that is best suited to their case, without undue influence or other factors involved. L did not act in P's best interests because she made going on a date a condition of her representation. L placed P in the difficult situation of accepting her advances and having representation in his divorce, or turning down L's advances but losing representation. Having to make a decision on that basis is not in P's best interests, and L caused him to be in that difficult position.

Furthermore, L did not act in P's best interests when she pressured him to go out with her.

Finally, L did not act in P's best interests by initiating a sexual relationship with him. Other than the fact that it is expressly against the ABA and CA rules, L should have reasonably expected that starting a sexual relationship with a client would pose a serious conflict of interest. As was shown, L was distracted by P and therefore did not perform competently.

Undue Influence

Please see above for rule. While P was not coerced into accepting L as his lawyer, a court will likely find that she exerted undue influence upon him by pressuring him to go on a date with her in order for L to accept his case on a contingent fee. L used her position as an attorney who could represent P on a contingent basis in order to pressure him into a sexual relationship with

her. L violated her duty of loyalty to P.

Duty of Confidentiality

A lawyer owes her client a duty of confidentiality with regard to the client's matters and the case. A lawyer must not reveal any of the client's information without the informed consent of the client.

Even though L's relationship with P was unethical and goes against the ABA and CA rules, she may also still be held liable under the duty of confidentiality because T found out about their relationship somehow. P's sexual relationship with L is of a private nature and should be confidential information. The facts are silent as to how T found out about their relationship, but if L was responsible for T's knowledge then L may be held liable under the duty of confidentiality as well.

Duty of Competence and Care

A lawyer owes her client a duty of competence and care. This requires that a lawyer act with the legal knowledge, skill, thoroughness, and preparation required by the profession.

As a result of her sexual relationship with P, L did not act with competence and care. L was distracted from the case, which resulted in her filing papers hurriedly and narrowly avoiding deadlines. L did not act with the thoroughness and preparation because she almost missed deadlines. Furthermore, she was distracted from the case, and could have missed important facts in the case.

Duty of Fair Dealing

A lawyer owes a duty of fairness to the court and to third parties.

Here, L breached her duty of fair dealing by letting her sexual relationship affect her to the point of distraction. L was distracted from the case, which resulted in her filing papers hurriedly and narrowly avoiding deadlines. L likely was not giving her best efforts and thoroughness to her work, which is unfair to the court as well as to opposing counsel. Both the court and opposing counsel expect and deserve L's good faith best efforts, and because of her distraction she failed to deliver this. L has breached her duty of fair dealing.

d. Accepting Pete's case on a contingency basis

Contingent Fees

Under CA and ABA rules, an attorney may accept a case on a contingent fee basis if the attorney obtains full written consent from the client, the agreement is in writing, and the writing delineates the breakdown of the fee. The writing must include the expenses, the attorney's percentage, and other details. Fee splitting is not allowed in "domestic relations" such as marriage, divorce, and domestic violence.

Here, L agreed to take P's case on a contingent fee basis. Because P is seeking a divorce from his wife A, P's case would qualify as one of the cases in which fee splitting is not allowed. L has violated the ethical rules of both CA and ABA by agreeing to take P's case under a contingent fee agreement.

Duty of Loyalty

Please see rule above. Whenever a lawyer accepts a case on a contingent fee basis, there is always a possibility that the client will be more motivated to do something that goes against the client's best interests but that will benefit the lawyer. For instance, the lawyer may push the client to accept a settlement that is not in the client's best interest, in the hopes that the lawyer will get her fees.

L has breached her duty of loyalty here by agreeing to take on P's case on a contingency basis. Even if it were not expressly against the ABA and CA rules to take a divorce case on a contingency basis, L still owes a duty of loyalty to P as her client and should have acted in his best interest by turning down the contingency basis for the case. If L still wanted to take the case, she could practice pro bono or find another solution for P that would be in his best interest.

Duty of Fairness

2. Tom's ethical violations

Duty of Fair Dealing

Under both ABA and CA rules, a lawyer is required to act fairly towards the court and third-parties. Under the ABA, a lawyer has a duty to self-report ethical wrongdoing and to report wrongdoings of other attorneys that he is aware of. Under CA, there is not a requirement to report to the Bar.

Tom violated the duty of fair dealing by threatening to report L to the Bar for her relationship with P. He blackmailed P by threatening to report her if she did not settle the case cheaply. Firstly, T should have reported L's relationship with P to the Bar in any case. Secondly, it is unethical for T to use blackmail for gain in a case. T has violated his ethical duty.

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