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Linda's ethical Violation

Competence

A lawyer should show competence by necessary preparation to represent client with thorough knowledge and skills of a reasonable lawyer under ABA, CA.

Here, Linda, L entered a personal injury case attorney-client relationship with Clint, C against Dan, D. Based on L's errors in her formalities of fees agreement and communication with D's insurance company, it is evident that L did not perform competently as a reasonable lawyer in a personal injury case would. L should have prepared to handle the case properly by doing research or associating with a lawyer who is competent.

L violated the ethical obligations of ABA and CA competence.

Loyalty -Conflict of Interest, COI

Potential COI

A potential conflict of interest is one where the lawyer may be materially altered in representing the client. However, the client may give the lawyer written consent despite the conflict after the lawyer has disclosed the conflict.

When C could not afford to pay L, there was COI between L and C because L would not be able to fully represent C without financial support for administrative jobs such as filing papers. Instead of disclosing this to C and getting a written consent from C to proceed despite the matter, L told C not to worry about paying anything until there was a recovery in the case.

Because L was dependent on a contingent agreement, L may not have a potential conflict of interest and C would only have to give written disclosure for the contingent agreement.

L violated a COI duty ABA and CA.

Fees

Contingent Fee

Where a fee will be dependent on the outcome of a case, the client has to be presented on the amount to be charged by the lawyer, how fees are to be calculated and if any other fees will be calculated. CA requires that any fee above \$1000 be in writing and be signed by the client plus the client has to seek independent counsel. ABA does not require that the contingent agreement be in writing.

Here, when L told C that he need not worry about the fees until there was a recovery in the case, she told C that if a recovery is obtained, L would take 50% as her attorney fees and C would get the other half less any costs L incurred. Client orally agreed. To comply with CA, L should give C a written agreement that stated the fees that she would take including the other deductions and suggest that he see an independent counsel regarding the calculations of the fees.

Because L only allowed C to orally agree to the terms and not tell him to seek independent counsel, she has violated the CA ethical rules.

Unconscionable/Reasonable Fee

In CA a unconscionable fee will be determined by the fee that is customarily charged by other attorneys in the location, the amount of work to be done, the novelty of the case etc. ABA requires that the fees be reasonable in accordance by the same terms as CA.

Here, L was representing C in a personal injury lawsuit, which is usually of about 30% of the client's award, L's fee of 50% plus the other half to be decreased by L's other costs would be unconscionable by CA standards. By ABA standards the fee also seems unreasonable since the case was not novel, was an ordinary every day personal injury case that would take much time and effort by L because D's insurance company emailed L. As a result, L did not have to do much due diligence investigation and L would not have

to charge for private investigation etc for her fees to be that of 50% of C's award.

L's fee is likely unconscionable by CA and unreasonable by ABA standards.

Written fee agreement

ABA does not require written agreement for contingent case, but CA requires a written agreement signed by client that has exceeded \$1000.

As stated above, L did not require a written contingent agreement from C although D's insurance company offered her \$1,000,000 settlement for C's case.

hence she has violated the CA ethical standard.

Communication

A lawyer has to timely communicate any new information learned to the client during the representation.

Here, Acme, D's insurance company emailed L before she completed any substantial work in the case, and offered to settle the matter for \$100,000. L was thrilled and replied to the email that she accepted the settlement offer instead of communicating this new knowledge to C. It was after L accepted the offer that she told C about the settlement. L has violated the communication to her client, C.

Furthermore on receiving the offer from Acme, L should have allowed C to make the decision whether the offer was reasonable and if he would accept, since such decision is from the client and not the lawyer.

L violated her duty of communication to C under ABA and CA.

Trust account- Client Property

Client's account should be separate from the lawyer's account and monies should not be commingled. The lawyer should deposit the client's award into the client's trust account and not commingle the client's funds in the lawyer's account.

Here, Acme delivered a check payable to L who deposited it into her law firm's business account. L should have not deposited the entire amount into her account but should have deposited the check in C's client account. L's attempt to write a check to C's account for \$50,000 less her costs and mailed it to him was further breach of her duty of keeping client's funds until final settlement.

Dispute of payment

Because C upon receipt of the check complained about L's fees and threatened to sue L for malpractice, L should not have taken any of the \$100,000 as yet and the amount should have been remaining in C's account.

L violated her duty to not commingle C's settlement award with her account.

Malpractice Settlement

A lawyer shall not settle a malpractice suit with a client without the lawyer disclosing to the client to seek independent counsel.

Here, when C threatened to sue L for malpractice because he complained about the fee and to report her to the State Bar, L offered to return the \$10,000 of the fee she held as costs from the \$50,000 to C. L offered to return the \$10,000 in exchange for an agreement from all liability associated with her representation.

This violated L's duty to inform C to seek independent counsel on his threat of a malpractice lawsuit instead of attempting to settle the matter between herself and the client.

L violated this ethical duty by ABA and CA ethical standards.

Reporting to State Bar

A lawyer must self report to CA if she knows that she has been sued by a client. ABA requires a lawyer to report another lawyer for any known violations.

Here, L does not need to report herself to CA State Bar because she was not sued. She does not need to report herself to ABA.

L did not violate any reporting to the State Bar.

Diligence

A lawyer must represent the client with zealous representation. The lawyer must investigate claims to get the full reasonable amount for the client in a personal injury case.

Here, when Acme emailed L before she completed any substantive work on the case and offered to settle the matter for \$100,000, she was thrilled. She should have done substantive work to know if the amount was the full amount that she should have received since Acme is representing D it is likely that A underrepresented the full amount to which C was entitled.

L violated her ethical duty under CA and ABA in completing substantive work to get C the best settlement.

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