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A willful violation of PR rules is the basis for discipline, doesn't require that there be intent.

Fees

The amount of fees cannot be unreasonable or unconscionable, so large as to shock the consciences in CA. The sophistication of lawyer and client, time and experience are some factors that must be looked into. Here, Linda, the Lawyer (L) is asking for 50% of recovery which is an exorbitant amount of fees, further the agreement was orally agreed which is a breach as such agreements must be in writing.

Contingency Fees

Under both ABA and CA, a lawyer can enter into a contingency agreement but it must be in writing and signed by the client and describe the percentage of fees the L will deduct before or after the expenses and in CA must state how that fees not covered by agreement will be charged and that the fees are not set by law and are negotiable.

Here, L violated this rule and entered into an oral agreement, and didn't inform about the conditions of deductions of expenses and their apportionment.

Duty to Communicate and Scope of Representation

A L must communicate with her client regarding all substantial information relating to the representation. L must keep abreast of all relevant information regarding the progress of the case and related matters. Must promptly inform about any settlement offers and abide by the client's decision in that regard. Client is the master of the case, and client controls the objectives of the case, where L suggests the legal means of achieving those objectives. L must zealously represent the interest of clients however must do within the scope of her representation and without violating any laws

Here Dan's insurance company directly communicated with the L, however instead of taking the offer to Clint, and seeking her approval, she directly informed the insurance company that she accepts the offers which is beyond the scope of her duties and amounts to a violation and creates a substantial doubt on her fitness and competence as a L. Clint was relieved and approved her judgment, however later approval does not ratify the earlier unethical behavior of L.

Duty to safekeep funds and not to commingle

L has duty to safekeep client funds in a client trust account and not the operating account. Further L must not commingle client funds with their own funds, except for payment of bank charges on the trust account. In CA advance flat fees can be kept in operating account after notice and informing client of their rights of refund and amount more than 1000 must seek written consent.

Here, no such exception applies, and L breached her duties by commingling funds with clients funds. Further L, deducted her fees which are a disputed amount, such amount until there is a satisfactory resolution of the dispute are unearned and must be kept in the trust funds account.

Malpractice Liability

In CA, a L lawyer cannot prospectively limit liability. In ABA, a lawyer can if the client is independently represented and is informed in writing to seek representation and given reasonable time to do so and they that they are represented at the time of settling.

Here, L was in complete violation of both CA and ABA rules, she did not inform the Clint in writing and did not advice to seek representation before settling. Further in CA, dispute regarding fees can also be settled in arbitration, had Clint being represented she would have know about her rights. Such prospective limitation of liability is unfair and one sided as Client is generally lay and lacks the resources and know how of the L and terms of any settlement are grossly unfair and therefore such settlement ought to be set aside.

Duty of Loyalty

A L must act in best interests of the client and avoid conflict of interests (COI). A L representation cannot be adverse to existing client or materially limited due to L personals interest, or that interest of former client or other parties. In ABA if L reasonably believe they can competently and diligently represent the client and get informed written consent they can represent. In CA needs disclosure and informed written consent for both actual and potential conflicts. Moreover In CA L professional, legal, financial relationship can also lead to violation of duty.

Here, L is not acting in the best interest of Clint and self dealing. L interests are adverse to that Clint as she is trying to avoid malpractice liability, thus creating a COI and must address such conflicts by withdrawing.

Business Transaction

A L cannot enter into an business transaction with a client unless they are fully informed of the terms and disclosed in writing, they are fair and reasonable, they are informed in writing writing

to seek counsel and there is informed written consent and signature.

Here, L entered into a business transaction to offer 10,000 in exchange of releasing L from liability is a business transaction with the Clint. However, none of the formalities of the business transaction and complied by the L, thus L breached his duty of loyalty towards Client.

Mandatory Termination

In CA L must withdraw if her representation leads to violation of the ethics rules or other laws, if representation is materially limited in ABA or is unreasonable difficult in CA due to mental or physical condition or is discharged by client.

Here, the continued representation of the L, due to her own violations must terminate the Attorney-Client relationship, as continued representation will lead to further violation of the ethics rules.

Duty of Competence

In CA L must not intentionally, recklessly, with gross negligent or repeatedly fail to perform legal services with competence. Here L has repeatedly over the course of the representation has failed to perform her duties with competence. In ABA L breaches this duty if she lacks skills, thoroughness or legal skills.

Duty of Diligence

In CA L must not intentionally, repeatedly, negligently or with gross negligence with commitment and dedication to clients interest perform her duties. In ABA must promptly and diligently perform duties relating to representation

Here, L since the beginning of the representation to the time of settlement has not acted with any competence or diligence in representing Clint's interest and further her callous and hazardous approach is dealing with every issue of the dispute has lead to financial harm to her client and she has further financially benefitted from transacting with client, in ways that are impermissible under rules leading to an wholesale breach of ethic rules.

Therefore, L committed the aforesaid ethical violations relating to the representation.

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END OF EXAM