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What ethical violations has Linda committed?

Representing Indigent clients

Fees

Under the ABA, a lawyer's fees must not be unreasonable. In California (CA), an attorney's fees must not be unconscionable. The fees are based on the difficulty of the case, labor and skill required, experience and reputation of the attorney and customary charge for the same work.

Here, Linda (L) told Clint (C) that she would take 50% as attorney fee, and C will get the other half, less any costs L incurred.

Fifty percent would be an unreasonable amount of fee for a personal injury lawsuit since there does not seem to be any extreme circumstances that would complicate the suit. L knew C could not pay and that he had suffered serious bodily injury. L could be taking advantage of C's condition by exacting an unreasonable amount as attorney's fees because she knew she could be desperate.

In CA, 50% would be considered unconscionable if the customary fee for a personal injury suit is 30% plus other expenses L incurs, especially in light of her client, being unable to pay for his serious injuries.

Therefore, L might be in violation of both ABA and CA rules for making her attorney fees unreasonable and unconscionable.

Retainer Fees

Under the ABA, the fee agreement must state the basis or rate of the fees as well as the expenses the client will be responsible for, communicated to the client by explaining it and placing it in writing.

In CA, any agreement >\$1000 must be in writing.

Here, L and C's agreement was in writing- the facts state C "orally agreed" to the fee arrangement. Under ABA, L would be in violation for not having the agreement in writing, and with explanations for the fees, signed by C.

Ur. n, L could also be in violation because many personal injury cases, settle for more than \$1000. If L knew there's a possibility that the settlement would be \$1000, she should have

put the agreement in writing. As it was, the settlement turned out to be for \$100,000 which is more than \$1000.

Therefore, L would be in violation of ABA and CA laws for not having the fee agreement in writing.

Contingency Fees

Contingency fees must explain how the fees will be calculated and when and what expenses the client will be responsible.

Here, L told C not to worry about paying anything until there is a recovery in the case. L did not explain to C how the fees were calculated- she merely said she was taking 50% and C gets the rest minus L's cost if a recovery was obtained. L should have explained that she might be deducting certain expenses costs even if a recovery was obtained. L also told C later that she is entitled to \$50000 even before completing any substantive work on the case.

Therefore L is in violation of not explaining to C appropriately about contingency fees and expenses.

Duty of Communication

A lawyer has a duty to communicate to the client status of the case to allow the client to make appropriate decisions concerning the outcome of the case. The lawyer must also communicate any settlement offers to the client before accepting it.

Here, Dan's insurance company, Acme emailed L and offered a settlement for \$100,000. L replied to the email and accepted the settlement offer without informing C. L did not consult with C before accepting the settlement offer. She did not allow C to make the decision

Therefore, L violated her duty to communicate by not consulting with C about the settlement offer Acme offered before accepting it

Scope of Representation

The client decides certain things in a suit, such as when to settle, if he wants to plea bargain or a jury trial. A lawyer is responsible for deciding legal strategies or trial techniques

Here, L has a duty to allow C to decide when to settle and if C wants to accept the offer of \$100,000 from Acme

Therefore, L went outside of her scope of duty by not allowing C to make the decision to settle

and accepting the settlement herself which might not be what C would have wanted.

Commingling/ Trust Account

A lawyer has a duty to create a trust account for the client and not commingle client and attorney funds.

Here, L deposited Acme's check and deposited it into her law firm's business account, thus commingling the settlement offer with her law firm's funds.

L should have created a trust account for C and deposited Acme's check there.

L can deduct fees earned from the trust account or keep the funds there temporarily as C is disputing it and threatening to sue L for malpractice.

Therefore, L is in violation of commingling funds and not creating a trust account for C.

Limiting Liability

A lawyer may not limit liability unless the C is represented by independent counsel and the client gives written informed consent.

Here, L offered to return \$10,000 for the fee in exchange for an agreement releasing L from all liability associated with the case.

C accepted even though he did not receive independent counsel from another lawyer if he should release L from liability. The facts state that C executed the release- it is not clear whether this constitute an informed written consent, otherwise if it is merely an oral acceptance, then the release is invalid.

Therefore, L is in violation of limiting her liability but not allowing C to consult with independent counsel and obtaining C's written informed consent.

Duty of Diligence/ Duty of Honesty and Integrity

A lawyer has a duty to act with diligence, and not intentionally, repeated, recklessly with gross negligence, fail to act with diligence and with the commitment and diligence to protect the client's interest. A lawyer has a duty to act honesty and in keeping with integrity in the legal profession.

Here, L intentionally had her own best interest in mind by asking to be released from liability.

She did not have her client's interest in mind. She failed her duty to act diligently and not recklessly accept the settlement offer from Acme and not deposit in the law firm's account thus commingling it with other funds.

Therefore, L is in violation of her duty of diligence by putting her interests first rather than her client, C.

Duty of Competence

A lawyer has a duty to use legal knowledge, skill and thoroughness and preparation to represent a client. If she does not have the competence she should do research, study or consult a more experienced lawyer.

Here, L failed to represent C competently by accepting the settlement offer before consulting C, and not knowing putting fee agreement into writing and commingling the offer with the firm's account. Therefore, L is in violation of her duty of competency.

Malpractice

Duty

L has a duty to act as a lawyer with specialized knowledge of the profession and in good standing. L failed to use her specialized knowledge to represent C.

Breach

Mere errors of judgment will not make an L in violation, but if a reasonable research would not have come up with the answer. L breached her duty to C for not doing research as to commingling and accepting settlement offers

Causation

L's breach was the actual cause and proximate cause of C's injury which is commingling of funds, accepting to release L from liability and accepting a settlement offer.

Damages

L is in violation of ABA and CA rules of professional conduct, and may be liable for disbarment and/ disgorging the retainer fees and costs incurred

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END OF EXAM