

Exam:

Exam Form:

C2502

Response

The issue is what ethical violation Larry committed.

All lawyers in California must follow California Ethical Rules (CA rule). Where CA rule is silent, the courts refers to ABA Ethical Rules (ABA rule) which all lawyers are required to follow.

Attorney - Client Relationship

Attorney - Client relationship begins when his client retains the attorney.

Here, Carla and Larry had a valid written retainer agreement to represent her for divorce from her husband Harry.

Thus, Larry and Carla have attorney - client relationship.

Duty of Loyalty

Lawyers owe a duty of loyalty to his clients. Lawyers must put his client first. The interest of client is must be best interest of the lawyers.

Here, Larry may put her mother's interest first in order to correct the service fees because she demanded the confidential information, but he did not refuse it.

Therefore Larry violated a duty of loyalty and he might face discipline, suspension, or losing a bar license.

Fees Paid by the third party

Lawyers may charge fees to their clients if it is reasonable (ABA rule) or it is not unconscionable (CA rule). It is allowed for the third party to pay the fees for his clients; however, lawyers must not let the payer to take advantage of their clients and representing lawyers. When lawyers accept the fees from the third party, they must explain fully to their clients and if their clients agree, they must obtain a consent informed in writing (ABA rule) or informed written consent (CA rule). Lawyers are responsible for the tactics to reach clients' goals and clients have rights to make decision as to reject or accept settlement offers.

Here, Larry's services were paid for by Carl's mother. This may not be an issue yet. However, it would be problematic because mother demanded that she be informed of all aspects of the divorce matter, including Carla's statements to Larry. This is a condition of payment for Larry's service. Larry violated a duty of loyalty to Carla because he does not put his client, Carla, first. Larry is not allowed to have such condition on the fee agreement. Larry must explain to her mother, that is against his professional ethical rule.

Moreover, Larry did not fully explain about the fees arrangement and the condition. He did not obtain consent informed in writing (ABA rule) or informed written consent (CA rule).

Therefore, Larry violated a duty of loyalty and might face discipline, suspension, or losing a bar license.

Duty of Confidence

Lawyers owe a duty of confidentiality to their clients. All confidential communications regarding the representation must be confidential. Lawyers are allowed to reveal such information only when defending himself from malpractice, court orders or to prevent death or substantial bodily harm to his clients or others (ABA rule) or under CA rule, lawyers must inform his clients to not harm anyone and warn he may reveal if the client does not comply.

Here, Carla's mother demand for Larry to let he know Carla's statement to Larry, which is confidential to Carla. Carla is not suing Larry for malpractice, there is no court order to disclose her confidential information, or Carla is not harming herself not

other people.

Therefore, Larry violated a duty of confidentiality.

Duty to Communicate

Lawyers owe a duty of efficient communication to their clients.

Here, Larry did not communicate with Carla for the condition of fee arrangement. Although Larry might argue that Carla most likely agrees with the arrangement; thus, he did not violate a duty to communicate to his client, this argument is not persuasive because it is Larry's obligation to explain everything about the fee arrangements. Carla may or may not agree with the arrangement or condition is irrelevant.

Therefore, Larry violated a duty to communicate his clients.

Invitation for continue relationship

Solicitation

A direct solicitation is not allowed at hospital or accident site. An advertising mail that shows "ADVERTISEMENT" to selected members of the community is allowed. Also, lawyers are allowed to mail to his family members or former clients to particularly describe what services lawyers are offering.

Here, Larry sent Carla a disengagement letter, which is not invalid. First part "I was glad to have represented her," is not particularly offensive or against the ethical rule. The second part "I would be happy to help her if issues arose in connection with the custody and support order" seems like advertising his services; however, because the disengagement letter is valid, but he pointed out what services he is offering in the future and the letter does not sound professional. Larry must be more careful and show his high professionalism all the time.

Therefore, he did not actually violate, but he could hold himself with higher professionalism to promote fair and dependable legal system to his client.

Sexual Relationship

Sexual relationship between lawyer and his / her client is allowed during the representation. However, after the representation is over, and both of them are adult, they may start the sexual relationship as long as the lawyer did not plan for the sexual relationship during the representation.

Here, Carla must be an adult because she has children and married at least once. It is not clear how they started the relationship. If the previous letter was an implied invitation of the sexual relationship, Larry violated the ethical rule.

Business with his clients

Lawyers are allowed to be business partner with their clients, but they must explain fully benefits and liabilities of the business partnership. The business partnership must be fair. It is an ideal to offer other party to have an independent lawyer to review the business agreement. Also, Lawyers must obtain consent informed in writing (ABA rule) or informed written consent (CA rule).

Here, Carla asked Larry to go into business with her and Larry proposed a partnership, which he would contribute the start-up capital. This is not illegal; however, he did not explain fully what partnership is. Larry is a lawyer, so he has more knowledge. Also, Carla did not have an independent lawyer to review the agreement.

Although Larry may argue that he offered to have her mother to review the paper, which may satisfy the offering independent third party to review, this is not enough. Mother is not a lawyer and he did not ask Carla to have attorney.

Therefore, Larry violated in this conduct with business agreement.

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Sexual Relationship Sexual relationship between lawyer and his / her client is allowed during the representation. However, after the representation is over, and both of them are adult, they may start the sexual relationship as long as the lawyer did not plan for the sexual relationship during the representation. Here, Carla must be an adult because she has children and married at least once. It is not clear how they started the relationship. If the previous letter was an implied invitation of the sexual relationship, Larry violated the ethical rule. Business with his clients Lawyers are allowed to be business partner with their clients, but they must explain fully benefits and liabilities of the business partnership. The business partnership must be fair. It is an ideal to offer other party to have an independent lawyer to review the business agreement. Also, Lawyers must obtain consent informed in writing (ABA rule) or informed written consent (CA rule). Here, Carla asked Larry to go into business with her and Larry proposed a partnership, which he would contribute the start-up capital. This is not illegal; however, he did not explain fully what partnership is. Larry is a lawyer, so he has more knowledge. Also, Carla did not have an independent lawyer to review the agreement. Although Larry may argue that he offered to have her mother to review the paper, which may satisfy the offering independent third party to review, this is not enough. Mother is not a lawyer and he did not ask Carla to have attorney.