

Exam:

Exam Form:

C2502 - Static Form

## Response

## Ethical Violations by Larry ABA/CA

## Duties

Alawyer has a duty to the court, to their client and to the public at large. To the court, a lawyer must produce evidence, uphold the law, present facts and evidence truthfully, and state the law truthfully.

To the client, a lawyer has a duty of competence, confidentiality and communication. A lawyer must maintain financial integrity, act towards their client with loyalty and be diligent in their representative role.

Finally, a lawyer has a duty to deal with the public fairly, to expedite their case and preserve impartiality and dignity of the profession.

## Duty of Loyalty

Under the ABA and in CA, a lawyer's loyalty belongs with their client.

Here, Larry's duty of loyalty is with Carla, not Mother (more discussion supra).

Thus, Larry violated his duty of loyalty.

Duty of Confidentiality (see discussion re 3rd party payor supra)

Duty of Communication (see discussion re 3rd party payor supra)

## Duty of Competence

An atty has a duty to act competently in their representative role. If there is an area of law for which they are not familiar, the atty must educate themselves or seek assistance from co-counsel.

Here, Larry drew a simple partnership agreement between he and Carla. Larry is a divorce atty and may not possess the requisite skill or knowledge to prepare such an agreement competently. Or perhaps the appropriate action was to form a corporation or other entity or it may be that the type of partnership between Larry and Carla required a complex partnership agreement rather than a "simple" one.

Thus, if Larry did not have the requisite experience, skill or knowledge to prepare the partnership agreement, he is in violation of his ethical duty.

## Potential Conflict of Interest

A potential conflict of interest is one that may arise but hasn't yet. This may arise between a former client and present client or between the atty and client. Under the ABA, there is no duty to disclose potential conflicts of interest if the atty believes in good faith that representation can proceed and as long as the atty monitors the potential COI for any developments. In CA, an atty has a duty to advise their client of any potential COI and must substitute out if it is material.

Here, Carla's mother is paying her legal bills directly to Larry (see 3rd Party Payor infra). This is a potential conflict of interest because Mother has demanded that Larry apprise her of the details of the case, including disclosure of confidential information. If Larry were to rebuff Mother's "conditions" and inform her that he could not agree to them, they would remain merely potential COI but in fact, Larry appears to comply with her requests.

Thus, these potential COI have ripened to actual COI.

#### Actual Conflict of Interest

An actual conflict of interest is one where the interests of a 3rd party of the attorney himself are adverse to that of the clients. Under the ABA, an attorney may continue representation if they have informed written consent by the client and if they believe the conflict is not material such that it would preclude the attorney from representing the client's interests. In CA, the attorney must adhere to the above, and give the client the opportunity to seek advice from separate counsel before proceeding with the representation.

Here, there is an actual COI because Larry appears to have agreed to Mother's "conditions" of payment of Carla's legal fee by disclosing confidential information and reporting the case progress to Mother, apparently without Carla's consent or knowledge. This is further evidenced when Larry says, "you can have your mother take a look at the agreement" which Carla saw no reason to do that.

Thus, there is an actual COI between Larry and Carla.

#### 3rd Party Payor

Under the ABA and in CA, a lawyer may accept their fee payment from a 3rd party so long as their loyalty remains with the client. Under both authorities, the lawyer may not breach their duty of confidentiality and the client must be made aware of the payment agreement. Further, the 3rd party payor may not make demands on the attorney such as keeping them abreast on case matters or disclosing confidential information.

Here, Larry is reporting to Mother about case matters and appears to be disclosing confidential information. Carla doesn't appear to be aware of this arrangement (violation of duty to communicate). This relationship also implicates his duty of loyalty.

Thus, Larry's handling of the 3rd party payor is a breach of his duty of loyalty, confidentiality, communications.

#### Advertisements and Solicitation

Under the ABA and in CA, attorneys are restricted in how they may advertise their services. This goes to their duty to the public to preserve the dignity of the profession.

Advertisements are a general broadcast while solicitations are targeted, usually to named individuals. An attorney may not advertise in a way that is false or misleading, must identify themselves or their firm, must contain labeling on materials that indicate that it is an advertisement. An attorney cannot guarantee results, may not promise a certain outcome and if using materials with a fictitious client/attorney, must disclose that such individuals are fictitious.

Under the ABA and in CA, an attorney must not solicit potential clients via phone, electronic, direct mail or other means unless they comply with the applicable rules. An attorney may not engage with prospective clients in a way that amounts to coercion, harassment, or solicitation. If an attorney solicits a potential client at an accident scene or in the hospital, it is presumed to be false and misleading.

Here, upon the conclusion of the divorce matter, Larry included in his disengagement letter that he was happy to help her if issues arose in connection with her custody order. This is intended for Larry's pecuniary gain since he decided to leave her file open and as such is disallowed under the ABA and in CA.

Thus, Larry's solicitation of Carla for future legal assistance is an ethical violation.

#### Sex w/ Client

Under the ABA, an attorney may not have sexual relations with a client. In CA, a consensual sexual relationship is permitted if it proceeds the attorney-client relationship. In other words, an attorney may represent their spouse or intimate partner so long as the personal relationship occurred prior to the attorney-client relationship.

Here, Larry represented Carla and then initiated a personal sexual relationship with her.

Thus, Larry is in violation of his ethical duties under the ABA and in CA.

#### Biz w/ Client

An atty is discouraged from doing business with clients but it isn't expressly prohibited so long as the dealings are fair and do not unconscionably favor the atty. In addition, the atty must have informed written consent of the client that spells out the terms of the agreement. In CA, the atty must give the client the opportunity to seek independent counsel to review the terms.

Here, Larry offers to start a partnership with Carla where he will invest capital (presumably as a LP) and she will run the florist business (presumably as a GP). This could have legal implications for Carla that she is not aware of such as liability to 3rd parties, creditors, etc.

Thus, Larry is in ethical violation with his business dealings with Carla.

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**Ethical Violations by Larry ABA/CADuties** A lawyer has a duty to the court, to their client and to the public at large. To the court, a lawyer must produce evidence, uphold the law, present facts and evidence truthfully, and state the law truthfully. To the client, a lawyer has a duty of competence, confidentiality and communication. A lawyer must maintain financial integrity, act towards their client with loyalty and be diligent in their representative role. Finally, a lawyer has a duty to deal with the public fairly, to expedite their case and preserve impartiality and dignity of the profession. **Duty of Loyalty** Under the ABA and in CA, a lawyer's loyalty belongs with their client. Here, Larry owes their **Duty of Confidentiality** **Duty of Communication** **Duty of Competence** An attorney has a duty to act competently in their representative role. If there is an area of law for which they are not familiar, the attorney must educate themselves or seek assistance from co-counsel. Here, Larry drew a simple partnership agreement between he and Carla. Larry is a divorce attorney and may not possess the requisite skill or knowledge to prepare such an agreement competently. Or perhaps the appropriate action was to form a corporation or other entity or it may be that the type of partnership between Larry and Carla required a complex partnership agreement rather than a "simple" one. Thus, if Larry did not have the requisite experience, skill or knowledge to prepare the partnership agreement, he is in violation of his ethical duty. **Potential Conflict of Interest** A potential conflict of interest is one that may arise but hasn't yet. This may arise between a former client and present client or between the attorney and client. Under the ABA, there is no duty to disclose potential conflicts of interest if the attorney believes in good faith that representation can proceed and as long as the attorney monitors the potential COI for any developments. In CA, an attorney has a duty to advise their client of any potential COI and must substitute out if it is material. Here, Carla's mother is paying her legal bills directly to Larry (see 3rd Party Payor infra). This is a potential conflict of interest because Mother has demanded that Larry apprise her of the details of the case, including disclosure of confidential information. If Larry were to rebuff Mother's "conditions" and inform her that he could not agree to them, they would remain merely potential COI but in fact, Larry appears to comply with her requests. 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This is further evidenced when Larry says, "you can have your mother take a look at the agreement" which Carla saw no reason to do that. Thus, there is an actual COI between Larry and Carla. **3rd Party Payor** Under the ABA and in CA, a lawyer may accept their fee payment from a 3rd party so long as their loyalty remains with the client. Under both authorities, the lawyer may not breach their duty of confidentiality and the client must be made aware of the payment agreement. Further, the 3rd party payor may not make demands on the attorney such as keeping them abreast on case matters or disclosing confidential information. Here, Larry is reporting to Mother about case matters and appears to be disclosing confidential information. Thus, Larry's handling of the 3rd party payor is a breach of his duties. **Advertisements and Solicitation** Under the ABA and in CA, attorneys are restricted in how they may advertise their services. 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