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### **1) August's Ethical Violations**

#### **Contingency Fee Agreement**

Under the ABA, all fee arrangements must be in writing with the clients written informed consent. In California, fee arrangements must be in writing unless the cost of the work is less than \$1,000, the lawyer is performing routine work for the client, or it is not feasible for a writing to take place. However, under both the ABA and California codes, a contingency must be in writing and the client must give their written and informed consent. Contingency fee agreements are not permissible in divorce matters nor criminal cases.

Here, Paul and August entered into a valid contingency fee agreement for Paul's suit against Dani regarding a negligent real estate transaction. This fee agreement and contingency clause do not violate either the ABA nor the California rules because Paul is suing Dani in a civil action pertaining to a breach of contract and possible tort violation.

Therefore, this fee arrangement and contingency fee are valid under both authorities.

#### **Communication with Opposing Party Without Counsel Present**

A lawyer shall not communicate with the client of opposing counsel without the other client's attorney present. Any communication with an unrepresented opposing party is a violation of both the California and ABA standards because of the potential of undue influence and unfairness the communication may have. This communication is a violation and a lawyer must refrain from speaking upon understanding the other client does not have adequate representation.

Here, Paul spoke to Dani first. Paul should not be speaking to Dani after the lawsuit has begun, however, because of the nature of their professional relationship this may be foreseeable. However, August may not communicate with Dani under any circumstance in situation where her attorney Len is not present. Additionally, August may not direct his client to speak to Dani because this is still communication with opposing counsel under this ethical code. Here, August knowingly requested Paul to contact Dani and communicate about the settlement offer which is a crucial part of this litigation. August instructed Paul to tell Dani why the \$500,000 settlement offer would be a good deal. Thus, this communication must be done in the presence of an attorney and not alone.

Therefore, this is a violation of both the ABA and California standards.

### **2) Ethical Violations in August and Rita's Agreement**

#### **Duty of Confidentiality**

A lawyer and client's communication must remain confidential. Under both the ABA, a lawyer may not disclose confidential communication between a client to any third party unless there is a threat of great bodily injury or death, in a defense of a malpractice suit, or when a tribunal orders so. The California authorities, do not permit disclosure of confidential information in any circumstance absent a high likelihood of death or injury.

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Here, August and Rita created an agreement where Rita would communicate with Dani regarding the aforementioned settlement offer. This communication and creation of this agreement violated the duty of confidentiality because in order to have Rita talk to Dani, August would have to reveal confidential information pertaining to the litigation. This communication is a direct violation of the duty of confidentiality because August would have to disclose relevant and confidential parts of this representation with Paul.

Therefore, August violated the duty of confidentiality in forming this relationship with Rita.

### **Solicitation**

A lawyer shall not solicit services through the use of a third party nor other attorney. Although, referrals are permissible in California, the presence of an agreement with a lawyer or non lawyer would constitute solicitation and be a violation of the ethical code under both the national and state standards.

Here, August approached Rita with the intent to have Dani agree to the settlement offer.

Therefore, this is a violation of the ethical conduct.

### **Sharing Legal Fees**

A lawyer may not share legal fees with a lawyer unless the client gives express written consent, is aware of the fee agreement, and there is no increase to the legal fee as a result of the share of the legal fees.

Here, Rita and August would be sharing Paul's legal fees. Paul's written consent would be necessary to do this. Here, there is no evidence of Paul knowing about this nor providing written express consent to this agreement. The agreement is fraudulent as is, however, the lack of Paul's consent would increase the violation.

Therefore, this would be a violation of sharing legal fees.

## **3) Len's Ethical Violations**

### **Scope of Legal Representation**

Under the ABA and California ethical standards, the client controls the objectives of litigation and the attorney controls the means.

Here, Len failed to provide the adequate representation needed because he did not provide legal presentation.

### **Duty to Communicate**

Under the ABA and California ethical standards, a lawyer must communicate with his client.

### **Diligence**

A lawyer must represent a client with the appropriate skills, legal preparation, thoroughness, and diligence necessary to adequately represent the client.

Overall,

Question #3 Final Word Count = 821

**END OF EXAM**