

3)

1.

Duty of Competence

A lawyer must possess knowledge, skill, thoroughness to carry out the representation. Under CEC a lawyer shall not knowingly, recklessly and repeatedly fall below the reasonable objective standard.

Here, Rex is a real estate lawyer who was sued for legal malpractice for 4 times. He likely has the knowledge of the area of practice since he has been practicing over a year. However, he likely does not have the skill and thoroughness since he has been sued 4 times in 1.5 year. The facts suggest that even though there are no judgement against him yet, he might repeatedly fall below objective standard of care.

Thus, Rex is likely not competent.

Duty to Self Report

Under the ABA a lawyer who was sued for malpractice more than three times must report himself to authorities. In California Ethic Code (CEC) a lawyer must also be convicted.

Here, Rex (R) is a California licensed lawyer and was sued for legal malpractice for four times. Since he thought that the suits are to be frivolous and there has been no judgement against him he is not obligated to tell anyone. However, since he did not self report himself to authorities when the was sued more than three times he breached his duty of self report. However, since there is no judgement against him he has not breached his duty under CEC.

Thus, R violated his duty under ABA.

Duty to Not Partnership With Nonlawyers

Also an attorney may not form a partnership with nonlawyers or create a thoughts that the nonlawyer and the lawyer doing business together related to law practice.

Here, R's former partner at his former company allowed him to place sign in the lobby that practices real estate brokerage. Here, R must make sure that the partner or the clients of the company that they are not practicing together in regards to legal matters. The facts does not show any fee sharing with the company in exchange for referrals.

Thus, R did not violate his duty.

Referrals

Under ABA A lawyer may not give anything in value to get referrals however a lawyer may enter into to give and take referrals with third party unless the agreement is not exclusive. In CEC a lawyer may give gratuity in exchange.

Here, R did not enter into agreement or give anything in exchange of placing the sign.

Thus R, did not violate his ethical duties.

Advertisement

Under ABA A lawyer may make advertisements as long as the information in the ad is true and not misleading. Under CEC The ads must also contain address or phone number and the name of at least one lawyer. A lawyer may state that he is certified in a certain area as long as he shows that certifying authority and he is actually certified.

Here, R is a solo is a California licensed attorney who practices solo. However, in the ad he placed it says 'STATE BAR CERTIFIED REAL ESTATE ATTORNEY' , " REX JONES and ASSOCIATES" , "1-800-BIG-FIRM". The issue here is the ads are misleading and not true because since he is a solo practitioner and certainly a not a big firm, he may not state that there are associates in the firm or the firm is a big law firm.

Moreover, although R is licensed attorney in California and he is practicing in real estate area , the ad is not true because there are no facts showing that the state bar of California actually certified him as a real estate attorney.

Under CEC he complied with requirements because he put his name and phone number.

Thus, R violated his duty to not false and misleading advertisement.

Duty of Loyalty- Conflict of Interest

A lawyer shall not present a client that a lawyer reasonable believes the representation will adversely affect the interest of client. However the conflict might be cured if the lawyer reasonably believes that they can represent without prejudice and the client gives informed consent confirmed in writing (ABA) and informed written consent (CEC).

Here, while attending law school R worked as real estate broker and was co-owner or the company. The facts suggest that he likely received a lot of confidential information regarding their clients finances. If a client decide hires R, he must disclose the prospective clients that his relationship to company and must get consent from affected clients.

Thus, he likely did not breached his duty of loyalty.

Duty to Report

A lawyer shall report that he reasonably believes that another lawyer is misconducting. In CEC, a lawyer must have actual knowledge.

Here, R may reasonably believe that Nancy (N) is practicing unauthorized law in state of she is licensed in Arizona since he knows her. However, because N explained her that she was temporarily practicing in transaction and he did his individual research and found out he is in good standing he cannot reasonably believe or know that there is a actual

misconduct.

Thus, R did not violate his duty.

2.

Practicing Law Unauthorized

A lawyer shall not practice law while disbarred or the state she has not permit to exercise. However, a lawyer may represent clients temporarily with a state bar's permit or in transactional purposes only.

Here, N is not practicing law unauthorized in California because although she is an previously disbarred attorney, she is now in good standing. She might be practicing law unauthorized in California if she does not have permit from her state bar. However, since she is only representing client in real estate transaction she is not practicing law against ethic rules.

Thus she did not violate ethic rules.

Question #3 Final Word Count = 942

END OF EXAM