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1. What ethical violations, if any, has Rex committed?

Ads

Under the ABA and CA, a lawyer must not put out false or misleading ads pertaining to their practice of law. The ads must also indicate their name, address, and area of expertise if they have a specialization certificate in that area.

Here, Rex put out a false and misleading ad pertaining to his practice of law because he stated that "LOOKING FOR A STATE BAR-CERTIFIED REAL ESTATE ATTORNEY?" when in actuality he is not a certified real-estate attorney but a former real estate broker that was a co-owner of a real estate brokerage firm. Furthermore, Rex's ad is false and misleading because he proudly indicates to "CALL REX JONES AND ASSOCIATES 1-800-BIG-FIRM" when in reality he is a solo law practitioner that does not have a larger firm or associates. Finally, the ad is an ethical violation because it does contain his address but does have his full name.

Thus, Rex has committed an ethical violation under the ABA and CA pertaining to ads.

Solicitation

Under the ABA and CA, a lawyer must not solicit clients through in person contact, the phone, or real time online contact. However, a lawyer is permitted to solicit clients through a legal services plan, if they have a previous relationship with a client where this form of relationship is permitted, family members, other lawyers, and friends.

Here, Rex is soliciting clients in an ethical manner because he placed a sign in the lobby of his former partner at Realty-Co's lobby. Due to the fact that, Rex is not soliciting clients through in person contract, the phone, or via online in real time this form of solicitation is permitted under the ABA and CA. However, this does not dismiss the fact that Rex's ad is an ethical violation.

Thus, Rex has not committed an ethical violation under the ABA and CA by soliciting clients through a sign in a lobby.

Sharing Fees with Non-Lawyers

Under the ABA and CA, lawyers are permitted to share fees with other attorneys within the same firm or outside of the firm if it is communicate to the client, the fee is reasonable and unconscionable, and in proportion to the services provided. However, a lawyer must never share fees with a non-lawyer.

Here, Rex has not committed an ethical violation of sharing fees with non-lawyers by placing his sign in his former partner's window because he is placing it free of charge. Furthermore, because Rex and the former partner do not have a relationship where Rex is sending clients to him and he is sending clients to Rex in exchange for money he is not committing an ethical violation.

Thus, Rex has not committed an ethical violation under the ABA and CA pertaining to sharing fees with non-lawyers.

Forming a Partnership with Non-Lawyers

Under the ABA and CA, a lawyer is not permitted to form a partnership with a non-lawyer if they are holding themselves out as a law firm and they are predominately engaged in legal services.

Here, Rex formed a partnership with non-lawyers because he was a co-owner of a real estate brokerage firm with additional partners. However, because Rex was a co-owner at this brokerage firm before he passed the California Bar Exam and then upon passing he sold his interest he is no longer associated with Realty-Co and has not committed an ethical violation.

Thus, Rex has not committed an ethical violation under the ABA and CA pertaining to forming a partnership with non-lawyers.

Duty to Communicate

Under the ABA and CA, a lawyer must reasonably keep their clients informed, inform them of any plea bargains, and any settlement offers.

Here, because Rex has not informed his clients or anyone about being sued for malpractice he has possibly committed an ethical violation. However, under the ABA and CA, Rex does not have a duty to communicate this to his clients because while they must be reasonably informed regarding the status of their case anything pertaining to the lawyer's own mishaps and malpractice suits is not information a client is required to have access to.

Thus, under the ABA and CA Rex has not committed an ethical violation by not communicating with his clients that he has been sued for malpractice.

Duty to Report

Under the ABA and CA, a lawyer must report any malpractice, civil, or criminal suits against them. Additionally, under the ABA and now CA, if a lawyer knows that another attorney is engaging in the unauthorized practice of law or practicing in a jurisdiction they are not barred in then they must report them.

Here, Rex has four malpractice suits against him through the course of only a year and a half, because Rex did not report these matters to the State Bar of California under the belief that they're just frivolous suits are that there has been no judgments against him he has committed an ethical violation. Furthermore, after Rex spoke with Nancy who he knew was disbarred in Arizona he had a duty to report this matter. However, because Rex researched Nancy on the State Bar website after speaking with her and confirmed that she was now in good standing he did not need to report this particular matter. Rex did know that Nancy only lived in Arizona and practiced there as well but after speaking with her he learned that she was temporarily representing a client in California and he needed to report this matter to the State Bar of California and Arizona because Nancy is not licensed to practice in California unless she waived in through a pro hac vice motion.

Thus, under the ABA and CA Rex had a duty to report his four malpractice actions and Nancy's unauthorized practice of law in California.

Duty of Competence

Under the ABA, a lawyer must possess the legal knowledge, skill, and thoroughness when representing a client. Under CA, a lawyer must not repeatedly represent a client through negligence, recklessness, or wantonly.

Here, there are no facts that indicate that Rex committed a violation pertaining to his duty of competence. However, because Rex is advertising himself as a "STATE BAR-CERTIFIED REAL ESTATE ATTORNEY" he must possess the legal knowledge, skill, and thoroughness that a state-bar certified real estate attorney would have even without the previous knowledge he has working at Realty-Co.

Thus, under the ABA and CA Rex has not committed an ethical violation pertaining to his duty of competence.

Conflict of Interest

Under the ABA and CA, an attorney must not represent a client whose interests are adverse to theirs unless: 1) the attorney reasonably believes that they may competently and diligently represent the client, 2) it is not unauthorized by the law, and 3) they get informed consent confirmed in writing.

Here, because when Rex spoke with Nancy he came to know that she was representing a client in a real estate transaction in California against his client, a buyer at a real estate closing in California, he had a duty to inform his client that he knows Nancy. Rex might attempt to argue that Nancy is just colleague so he did not need to inform his client because they don't have a sexual relationship or a deeper friendship. This argument might suffice but err on the side of caution Rex should have informed his client.

Thus, Rex committed an ethical violation pertaining to conflicts of interest under the ABA and CA.

2. What ethical violations, if any, has Nancy committed?

Unauthorized Practice of Law

Under the ABA and CA, a lawyer must not practice in a jurisdiction they are not licensed in and must not assist others in the unauthorized practice of law.

Here, Nancy committed an ethical violation because while she is in good standing in Arizona now she is representing a client in California even though she does not have a California bar license unless she waived in pro hac vice.

Thus, under the ABA and CA Nancy has committed an ethical violation pertaining to the unauthorized practice of law.

Conflict of Interest

Under the ABA and CA, an attorney must not represent a client whose interests are adverse to theirs unless: 1) the attorney reasonably believes that they may competently and diligently represent the client, 2) it is not unauthorized by the law, and 3) they get informed consent confirmed in writing.

Here, because when Nancy spoke to Rex she came to know that he was representing a client in a real estate transaction in California against her client, she had a duty to inform she knows Rex. Nancy might attempt to argue that Rex is just colleague so she did not need to inform her client because they don't have a sexual relationship or a deeper friendship. This argument might suffice but err on the side of caution Nancy should have informed her client.

Thus, Nancy committed an ethical violation pertaining to conflicts of interest under the ABA and CA.

Duty of Confidentiality

Under the ABA and CA, a lawyer owes a duty of confidentiality to their client relating to legal representation unless they receive authorized consent or implied authorized consent to speak about the legal representation.

Here, Nancy possibly committed an ethical violation when she informed Rex about representing a client in California but this argument will likely not stand because he is opposing counsel and privy to this information.

Thus, Nancy did not commit an ethical violation under the ABA and CA pertaining to her duty of confidentiality.

Question #3 Final Word Count = 1589

END OF EXAM