

Exam:

Exam Form:

C2502

Response**Formation of Attorney-Client Relationship**

An attorney-client relationship is formed when a potential client seeks the lawyer's representation and the lawyer manifests assent to accept the representation or fails to manifest a lack of consent and the client reasonably believes a relationship has formed.

Here, Larry is a divorce lawyer who is representing Carla in her divorce from husband. Under these facts, an attorney-client relationship has formed.

Therefore, there is an attorney-client relationship between Larry and Carla.

General Fee Agreements

Under the ABA, general fee agreements do not have to be in writing. Under the CA rules, fee agreements must be in writing unless; 1) the fee is for \$1,000 or less, the client is a corporation, the representation is for routine work for a regular client, or 4) an emergency makes it impractical to obtain a written agreement.

Here, Larry has a valid written retainer agreement to represent Carla in her divorce from Harry. Under both the ABA and CA rules, Larry obtained a valid fee agreement that is in writing.

Therefore, Larry did not commit an ethical violation under either the ABA or CA authorities when he had a valid written retainer agreement with Carla,

Third Party Pays Fees

Under both the ABA and CA rules, a third party may pay for another individual's legal fees, however the lawyer must be careful to ensure his fiduciary duties remain only to the represented client. A lawyer is prohibited under both authorities from disclosing confidential information and communicating about the scope of representation unless he seeks signed written consent from the client regarding any disclosure.

Here, Larry's services were paid for by Carla's mother. However, under a condition of payment, Carla's mother demanded information regarding the scope of Carla's representation. This conditional agreement is a violation of both the ABA and CA authorities because it promotes the disclosure of confidential information absent a waiver by the client. Here, there are no facts indicating that Carla consented to this, nor are there any facts indicating Larry's refusal to obtain services on this contingency. Larry's failure to deny this agreement will likely subject him to ethical violations under both authorities.

Therefore, even though Carla neither consented nor denied disclosure of information, Larry's failure to deny a third party from any information about this scope of representation will expose him to ethical violations under both the ABA and CA authorities.

Duty of Confidentiality

Under the duty of confidentiality, a lawyer may not disclose communication between an attorney and a client within the scope of representation unless a valid exception applies.

Here, absent to Carla's consent signed and confirmed in writing any disclosure of the representation to her mother is a possible violation of the duty of confidentiality.

Therefore, Larry may be subject to liability under both the ABA and CA authorities for the ethical violation of failing to provide confidential representation.

Duty of Loyalty

A lawyer owes his client a duty of loyalty that requires him to place the client's interest above his own. Under the ABA, a lawyer must make reasonable efforts to avoid potential conflicts of interest.

Potential Conflict

Here, Larry's duty is owed to Carla not her mother. Larry's fee agreement with Carla's mother exposes him to a potential conflict. Under the CA rules, Larry must obtain Carla's written and informed consent, confirmed in writing prior to proceeding with representation.

Therefore, Larry's agreement with Carla's mother is a potential conflict but may become an actual conflict if information is demanded.

Conflicts of Interest

In CA, an attorney is required to disclose and waive potential conflicts of interests by obtaining a client's written informed consent confirmed in writing, while the ABA requires a lawyer to disclose of potential conflicts when they pose a material risk through informed written consent.

Personal Conflicts between Attorney and ClientConsensual Sexual Relationship

Under both the ABA and CA rules, a lawyer may not engage in a consensual sexual relationship with his current client unless the sexual relationship existed prior to legal representation.

Here, Carla's divorce became final, however Larry and Carla entered into a consensual sexual relationship, in direct violation with both the ABA and CA rules. Because Larry kept Carla's file open because he assumed an issue may arise and further told her he would be happy to represent her if an issue in the future arises, Carla may be deemed to be Larry's current client. Although Larry sent a disengagement letter to Carla, his passive conduct indicates that a current client relationship exists. Therefore, their sexual relationship is a violation because Larry and Carla are engaging in a sexual relationship while legal representation is taking place.

Therefore, Larry will likely be in violation of both the ABA and CA authorities.

Mandatory v. Permissive Withdrawal

Mandatory Withdrawal

Under the ABA, an attorney is required to cease representation when there is an actual conflict of interest that cannot be waived, the attorney cannot provide competent representation, and representation is likely to result in substantial bodily injury or death, or fraud. In CA, a lawyer is only required to withdraw if withdrawal is likely to result in SBI or death or there is a conflict of interest that is not waivable.

Here, Larry has an active conflict of interest with Carla because they have an on-going dating relationship where she has now begun to depend on Larry for legal and non-legal advice without pay.

Therefore, Larry must withdraw from representation because the conflict may not be waived since the relationship started during representation.

Permissive Withdrawal

An attorney may permissively withdraw from representation if he reasonably believes he is unable to provide competent representation, or he is recklessly, repeatedly, and intentionally fails to provide competent representation.

Here, Larry may seek permissive withdrawal because of the conflict that exists due to his relationship with Carla. Larry may be able to argue that their relationship began after representation ceased. If he is successful in this claim, Larry may be able to claim that further representation poses a conflict and he needs to withdraw.

Therefore, Larry must withdraw from this representation to abide by both the ABA and CA authorities.

Duty to Return Material After Representation

Under both the ABA and CA authorities, a lawyer has a duty to return client documentation and property at the conclusion of representation.

Here, Larry kept Carla's file open despite the divorce finalizing and representation concluding. Larry's failure to return Carla's property would likely be a violation under both the ABA and CA authorities because he kept her file open despite sending a disengagement letter. However, Larry may have intended to keep representation open because he reasonably believed pending issues regarding child support and custody. Despite this, Larry had a duty to return the property.

Therefore, Larry will likely be in violation of both the ABA and CA authorities for failing to return the client's property.

Agreement With a Client

Generally, an attorney may not enter into a separate agreement with a client such as a contractual agreement or an agreement to enter into a business. Under the ABA and CA rules, an attorney forms a valid agreement with a client if: 1) the

lawyer encourages the client seek outside counsel prior to entering into the agreement, 2) the potential conflict of interest is disclosed, 3) the client is given reasonable time to seek outside representation, and 4) the client signs the agreement. Under the CA standard, the client's consent must be obtained through written informed consent confirmed in writing to be valid.

Here, Carla is a florist who wants to start her own business. During this time, Larry and Carla are still engaging in their sexual relationship, and Larry proposes a business partnership where he raises capital and Carla manages the business, however they both split the profits. Larry suggests this agreement and further drafts up the papers regarding the proposed business. However, Larry failed to encourage Carla to seek outside representation because encouraging Carla's mother's advice is insufficient as there is not evidence to indicate that Carla's mother is a lawyer. Further, Carla signed the papers immediately because she trusted him. This agreement is likely a violation of both the ABA and CA authorities because there was no time for Carla to obtain outside advice, their sexual relationship posed a material conflict, and there was no reasonable time to sign.

Therefore, this agreement is likely a violation under both the ABA and CA authorities.

Owning a Business Separate to the Practice of Law

A lawyer may own and operate a business outside the practice of law if: 1) there are no potential conflicts of interest that arise as a result of the business and 2) the business is not related to the practice of law.

Larry may own and operate a business outside the practice of law such as a flower shop, however his business is likely a violation of the ABA and CA authorities because he failed to prevent potential conflicts of interests as Carla is currently seeking legal and non-legal advice from him at this time. This business is a potential conflict of interest because it is with his client and would be burdensome for Carla.

Therefore, the business ownership is a violation of both the ABA and CA authorities.

Overall, Larry will be in violation under both the ABA and CA authorities because he failed to provide the requisite representation and did not successfully waive any conflicts.

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Response

Larry is a divorce lawyer. With a valid written retainer agreement, Larry represented Carla in her divorce from her husband Harry. Larry's services were paid for by Carla's mother. As a condition of payment for Larry's services, Carla's mother demanded that she be informed of all aspects of the divorce matter, including Carla's statements to Larry. Carla was awarded custody of her children and support payments.

Once Carla's divorce became final, Larry sent Carla a disengagement letter that said he "was glad to have represented her," but also said he "would be happy to help her if issues arose in connection with the custody and support order." Larry kept Carla's file open because he assumed such issues might arise.

After Carla's divorce became final, she and Larry entered into a consensual sexual relationship. Larry and Carla have an on-going dating relationship and Carla has come to depend on Larry for legal and non-legal advice (without pay) on tax, child support and visitation matters.

Carla is a florist and wants to start her own business. She asked Larry if he would like to go into business with her. Larry proposed a partnership in which he would contribute the start-up capital, Carla would run the business, and they would split the profits. Larry said he would draw up the papers and suggested that "you can have your mother take a look at the agreement if you want." Carla said, "I don't see any reason for that; I trust you." Larry drew up a simple partnership agreement; he and Carla signed, and they celebrated with a dinner date.