

Exam:

Exam Form:

C2502

Response

Payment of Fee by third party for Client allowed under certain circumstances

Generally in CA and under ABA rules, a third party is allowed pay the legal fees of a client if they have a relationship with them. Normally the third party paying is a parent paying the legal fees for their child, or a spouse paying for their spouse. However the payor cannot dictate what happens in the case, only the attorney and the attorney has loyalty to the client not the payor.

Here, Larry represents Carla in a divorce proceeding against Henry. This is being paid for by Carla's mother. Since Carla's mother is a third party paying for the fees of the client this is generally allowed. It should be noted this is allowed until Carla's mother puts her condition (discussed below).

Thus, the original payment is allowed without the condition Carla's mother later placed.

Duty to inform Third Party that the attorney has a duty of loyalty to client and not the third party payor.

Under ABA and CA rules, an attorney needs to inform the client and the third party payor that they owe a duty of loyalty to the client not the payor. Meaning the third party can't make any decisions on behalf of the client or have any say in the case unless the client allows them to.

Here, When Carla's mother conditioned payment for Larry's services upon her being informed of all aspects of the divorce matter including carla's statements to him, Larry should have informed Carla's mother that his duty was to Carla and not to her. Larry knows and should have told her that he cannot give her any information regarding the case unless Carla consents.

Thus, by not doing so, Larry breached his duty by failing to inform Carla's mother he has a duty of loyalty to Carla and he cannot give her information without her consent.

Duty of diligence with disengagement letters

In CA and under ABA rules, when an attorney is sending a disengagement letter they have to let the client know their case is closed with the office, they have to provide the client with a copy of their file.

Here, Larry sent Carla a letter that stated 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." However this is a violation of the ethical rules under both

ABA and CA because, Larry did not let Carla know the case was closed with his office, and he also did not return her legal documents. An attorney normally has to provide the file or at least ask the client if they would like a copy of their documents and provide a copy if it is requested. By not doing so Larry did not do an adequate disengagement letter.

Thus, Larry's disengagement letter violates the ethical rules, by failing to provide the option for Carla to obtain her file and legal documents.

Duty to close case with office when representation has terminated

Under ABA and CA rules, an attorney has to actually close a case with their office once representation has terminated. Normally this is when the court closes the case. In CA lawyers have a legal duty to keep the file for 5 years.

Here, Larry decided to keep Carla's file open because he made the assumption Carla would run into legal issues again with her husband. Larry regardless of his own personal opinion had a duty to close the case within his office now that representation had terminated. By not doing so, he violated his ethical duty to actually close the case of Carla.

Thus, Larry breached his duty by keeping Carla's file open after he had already sent a disengagement letter to her and the case had terminated in court.

Duty to not have sexual relations with clients

Under CA and ABA rules, an attorney has a duty to not have sexual relations with a client unless they had a prior consensual sexual relationship prior to representation.

Here, Larry would not have the ability to represent Carla if he didn't have a prior sexual relationship with her. Since Larry and Carla started a consensual sexual relationship after her divorce became final, and it is consensual he does not violate the rules.

Thus, although it is frowned upon for attorneys to have sexual relations with their clients, Larry is allowed to represent Carla and give her legal advice since he had a prior consensual relationship with her.

Duty to not go into business with nonlawyers and share money with nonlawyers

Under ABA rules, attorneys cannot go into business with nonlawyers and they cannot share and funds from their legal profession with someone who is not in the legal field, unless they are participating under a referral program. In CA the rule is the same, but gifts are allowed.

Here, there is no referral fee, or referral program. Larry is proposing to Carla that they become partners and that he will upfront the capital and Carla will run the business and they can split profits. Larry cannot go into a partnership as an attorney

he would have to be a partner, and would not have to intermingle his funds from his clients to fund a business. LARRY would have to use his own funds in order for this to be allowed.

Larry might be able to argue that this is a gift to Carla for their love, and it might be allowed.

Thus, if Larry proves that he is going into this business as a partner and not as a lawyer, and he funds it with his own money without intermingling it with his clients, he does not breach this duty and this is allowed.

Conflict of interest with Lawyers going into business with clients

Under ABA and CA rules it is a conflict of interest for a lawyer to go into business with a client. If he does decide to go into business with them, he has to 1. inform them in writing of the conflict (normally in the agreement) 2. The lawyer has to inform the client that they should consult with another attorney regarding the conflict. 3. they have to waive the conflict.

Here, Larry only tells Carla that she could consult with her mother, who has no legal experience regarding the conflict and the agreement. Larry should have written in the partnership agreement of the conflict, he should have informed Carla she should consult with another attorney regarding the agreement and he should have had her waive the conflict in writing. By not doing this he breaches his duty as an attorney and there is no adequate waiver of the conflict of interest and no valid agreement.

Thus, since there is no adequate waiver of conflict between Larry and Carla since Larry violated his duty as an attorney to inform Carla of the conflict in writing, by not providing time for her to review with another attorney and by having her not sign in writing she waived the conflict.

Duty of competence in regards to conflict waiver

Under ABA and CA rules, an attorney has a duty of competence in providing adequate representation.

Here, Larry violated his duty of competence by providing Carla with no adequate conflict waiver. There was nothing in writing for her to waive the conflict and he did not tell her to consult an attorney like he should have.

Thus, Larry breached his duty of competence to Carla in his inadequate representation with regards to the conflict waiver with Carla.