3)

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

Duty of Competence

A lawyer must must represent a client with competence, with the necessary skills, knowledge and professionalism. In California a lawyer must not intentionally, recklessly, or with gross negligence fail to represent to client and he can self taught if not competent enough in the field or associate with a competent lawyer.

Here, Rex is an attorney who works in real estate after passing the California Bar Exam, with a solo law practice, which used to own a real estate brokerage firm. He was associated with his co-owner in that Realty-Co firm, which he owned for probably some years, since from the facts we are told that he was doing that during the law school. Rex is now representing clients who are buyers in real estate field and most likely he represent them competently with the skills necesary for this field of law, since he worked for some may year in real estate. There is no facts telling us that he was actining with any neglignce or reckless whily represeinting his clients.

Thus, Rex was acting with competence, according to both ABA and CA rules.

Duty to Report Ethical Violations/Self Report in CA

Under the ABA a lawyer must report another lawyer to the authorities (Bar) raise a substantial concern regarding his fitness and character of trustworthiness and profesionalism. Under CA an attorney has a duty to self report if he was: 1)m sanctioned $1000 or more, has been convicted of a felony, or other similar or if he was sued for malpractice 3 times in a year.

Here, Rex was sued for malpractice for times in the last year and a half. We are not told from the fact when the first three suits happend. Its a close call, as he could have been sued three times in a year and the forth time in the last half of the year. Either way, this does make it any better. We are told that he didn't told anyone about them because there were no judgement and he "believes the suits to be frivolous". It looks like he was not likely inclined to self report himself to the California Bar and was also terating this as an insignificant thing. this shall raise a big corncern as to his character of thrustwortiness and fitness, as not many lawyers in the field are sued 4 (four) times in a year and a half fro malpractice.

Thus, under CA rules Rex most likely violated the duty to self report.

Advertisement//Referrals/Partnership with Non-lawyers/ Specialization

Under ABA rules advertisements are allowed if *true and not misleading.* The advertisement must be labeled as "advertise" or in CA as "advertisement" and if on an anvelope must be

written the name of at least one attorney from the office and the address. Under CA rules you can *not advertise promising warranties or guaranties, making testimonials* that are exaggerated with personifications without disclosing the truth or saying that the client shall pay no fee (i.e.:contingency fees agreements), without mentioning that the client must pay the court costs and other expense related to the suit. A lawyer shall not advertise that he is *certified/specialized* in a field of law, unless the Bar or the authority actually issues a certificate.

Here, Rex advertise his services at his former partner Realty-Co, by placing a sign in the lobby of Realty-Co, free of charge. The sign was mentioning that Rex is a certified State Bar-Certified Real Estate Attorney. We were not told anywhere in the facts that Rex had a certification from the Bar regarding his real estate practice. He was indeed working as a real estate broker, which it means that he most likely had the broker licences by the state, but not by the California Bar. Also, in the advertisement is included his name and the phone number, but no office address. Also, his phone number 1-800-BIG-FIRM is a little misleading, as from the facts we are told that his is a "Solo law Practitioner", which it means that the advertise that he is posting in the phone number could mislead people thinking its a big firm. From the facts we are told that his sign was posted in the lobby of Realrty-Co free of charge, but since he was his former client and he was still in the real estate field it is kind of obvious that they were making themself a reciprocal favor, since his former partner was in real-estate and Rex a lawyer representing buyers.

Thus, Rex violated the ABA and CA rules regarding advertisement and specialization mandatory request.

Solicitation

A lawyer shall not solicit employment through direct live voice, telephone or other direct communications for his pecuniary gain only, unless a former client. In CA a lawyer shall not solicit employment from clients known to be in need (chasing ambulances, hospital, or similar)

Here, Rex was advertising by placing a sign a sign at his former partner, so he was not soliciting by direct means the services from clients.

Thus, he didn't violate this rule.

Partnership with non-lawyers/Referrals

A lawyer shall not partner with an non-lawyer to gain services any service. Also, a lawyer shall not partner with a non-lawyer, unless a specialized service for referrals. A lawyer can partner with a lawyer and sign a reciprocal agreement, which shall not be exclusive.

Here, Rex had his former partner helping him to advertise free of charge at his former real estate firm. His former partner was not a lawyer, as we are told that he was a broker. We are not told that they partner specifically for this, but having in view that they were partners in the real estate firm and now Rex is working in the same field, it is more than obvios that they had a reciprocal agreement to share the clients and represent them both in the real estate transaction

and in the law services which were provided by Rex. Most likely Rex had as clients the buyers from his former firm, so it was a mutual agreement, so they would receive benefits from it.

Thus, most likely Rex violated the duty of partnership with non-lawyers and referrals.

Gifts

Under ABA a lawyer shall not receive any gift as a consideration for the provided services. Under CA, a lawyer can receive a gift if is for a past employment/consideration.

Here, Rex was not receiveing any gifts, but he was just adversting.

Thus, he didn't violate this rule.

Duty of Candor/ Court and Public

A lawyer owns a duty of candor towards the court and public and must refrain from acting recklessly or putting the profession of lawyer under a question mark.

Here, Rex was an attorney who was representing buyers in real estate, which was sued for malpractice for more than four times in one year and he never self-report. Moreover, he was advertising misleading the public and associating with a non-lawyer.

Thus, Rex violated the duty of condor to the public.

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

Duty of Competence

See rule supra.

A lawyer cannot represent a client in a jurisdiction in which he is not license, unless an emergency or a one time "transaction" exception might apply.

Here, Nancy was an attorney licensed in Arizona, who was representing a client for one time transaction of a real estate property in California. The client owned only that property and it looks that Nancy was represnting him only for that. We are not told from the facts that she was

not competent in the real estate filed, but only that she was licensed in Arizona. Thus, she was representing him in CA, without beeing license. We are not told that she knew the legislation of CA, though, but havibng in view it was a real estate transaction, the rules most have not n=been so different.

Nancy might say that that was just a one time representation, so thsi shall be considered an exception and not a violation of the rule.

Thus, Nancy might have violated this duty, but its a close call.

Duty of Diligence

A lawyer shall act with competence and care necessary to complete the representation. In California a lawyer must not intentionally, recklessly, or with gross negligence fail to represent to client and he can self taught if not competent enough in the field or associate with a competent lawyer.

Here, Nancy was representing temporarly her client, as she told to Rex. Most likely she was a real estate attorney in Arizona. We are not told that she was not competent or was doing something reckless, but again, its a close call, since she was not a CA attorney. Under CA rules she might have been considered in violation because this is a reckless action, to represent a client in a jurdisciction without knowing the law.

Thus, most likely Nancy violated the duty of competence.

Duty to Communicate

A lawyer shall communicate to her cleint aboiut all the important aspects of the case, promptly and without delay.

Here, we are not told if Nancy communicated with her client about the fact that she is not competent to parcice in CA.

Thus, she might violated this duty.

Duty to Report Ethical Violations/Self Report in CA

Under the ABA a lawyer must report another lawyer to the authorities (Bar) raise a substantial concern regarding his fitness and character of trustworthiness and profesionalism. Under CA an attorney has a duty to self report if he was: 1)m sanctioned $1000 or more, has been

convicted of a felony, or other similar or if he was sued for malpractice 3 times in a year.

Here, Rex heard that Nancy was previosuly dissbared, but she is now in good standing. Moreover, He knew that she was representing that client in CA for this trnsaction only. He might thought to report her to the Bar, since from the facts we are told that he "searched" and discovered that. But, having in view that he was also sued for malpractice, he probably thought would be better not to report her.

If under Florida law nancy should have self reported, she should have done that.

Thus, if Rex would consider the one time transaction a violation of the rules for Nancy, he can report her under ABA rules.

Question #3 Final Word Count = 1725

END OF EXAM