

**5) Please type the answer to Question 5 below.**

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**When finished with this question, click to advance to the next question.**  
(Essay)

### **1. SCOPE OF RELATIONSHIP**

Under both ABA and CA Rules, the attorney-client relationship begins when the client reasonably believes so. Here, the facts state that Claire (C) and Len (L) properly executed a retainer agreement. Therefore, the scope of the relationship is properly defined and there should not have any issues there.

### **2. VALID RETAINER AGREEMENT**

Under ABA rules, a fee agreement does not have to be in writing (but it is preferred). In California, such an agreement has to be in writing, signed by both parties, and must outline the scope of representation and duties that the attorney will undertake. In addition, if the agreement is based on the attorney receiving a percentage of the damages, then there are additional requirements - such as the attorney must detail how the fee will be apportioned, whether or not the client is responsible for normal litigation expenses.

However, the facts state that the agreement is valid, so this does not apply here.

### **3. DUTY OF ATTORNEY TO SAFEKEEP CLIENT PROPERTY**

Under both ABA and CA Rules, the attorney is under a duty and obligation to safeguard and segregate client property - whether it be funds or personal property that the client gives the attorney for safekeeping. That means that there cannot be an intermingling of funds in the Client's trust account, nor can documents or personal property be mixed up with the attorney's own.

Here, C gave L the clothes that she said were stained by the cleaning solution for safekeeping. The facts state that L put them in his office closet, however,

later on it shows that he had sent all the clothes she gave him along with his clothes to the dry-cleaners by mistake. As this is a breach of the attorney's duty to safekeep client property, L violated both the ABA and CA rules.

#### **4. CONFLICT OF INTEREST BETWEEN LAWYER AND CLIENT**

Under both ABA and CA rules, there is a conflict of interest between the lawyer and his client if opposing counsel turns out to be someone that they have a close relationship with (spouse, domestic partner, parent, child, sibling, etc.). If such a situation happens in the course of representation, the attorney can continue representation if they feel that they can reasonably do so. Additionally, under ABA rules, the lawyer must get informed written consent from the client; and under CA rules, the lawyer must given the client a written disclosure.

Here, L was previously engaged to Hannah (H), the attorney for the hotel that C is suing. While the ABA and CA rules are unclear as to whether or not an ex-fiancee counts as someone they have a close relationship with, it could still conceivably be an issue if, for example, H has a child with L that they co-parent together. However, it is probably still better to err on the side of caution when it comes to such conflicts of interest. The facts do not indicate that L notified C of such a conflict, nor did he try to seek her consent.

Therefore, if an ex-fiancee is considered someone that an attorney has a close relationship with, L both the ABA and CA rules.

#### **5. DUTY OF DILIGENCE**

Under both ABA and CA rules, an attorney must pursue each potential case with the highest level of zeal and diligence.

Here, the facts show that L was told by H that this was the fourteenth lawsuit that C filed against the Hotel. However, it is not proper for L to just take H's word for it. As an advocate, L must go out and read the facts himself and perform the

providing effective assistance to the client. Additionally, under CA rules, the attorney must withdraw if the lawsuit does not have probable cause.

At first glance, the situation here does meet any of the above outlined situations. L might argue that C does not have probable cause in her case since she filed thirteen prior lawsuits, however, this is unlikely to bear any weight since L agreed to the initial representation when he first met with C and saw the extent of her injuries.

### **8. PERMISSIVE WITHDRAWAL**

Under the ABA, the attorney can withdraw at any time; and in CA, the attorney can do so if it is not during pending litigation.

Here, while L filed a lawsuit in state court against Hotel; H, Hotel's lawyer had not filed any sort of response yet - therefore, L can still withdraw since the case is still likely to be dismissed and it is not currently pending before the court.

There are other situations where an attorney may withdraw. Under California and ABA Rules, an attorney may withdraw when the client is behaving in such a manner as to where effective representation is not possible.

L will argue that this is the case here, since first L called C and left her a message asking her to call him. He also sent him an email with a 'read receipt' tag. The facts indicate that he sent her an email every day in a week, with him resorting to sending her a registered letter. In total, L called her once, sent her probably six emails in total, and sent her a letter by mail when all that failed to go through. He waited a week before sending her a letter saying he no longer represented her.

While C may argue that it was not reasonable for L to just call her once, L will point out that she did receive all his emails (as shown by the 'read receipt') and it

is simply unreasonable for her to let all of them go unanswered. C's retort of thinking that the emails were not a big deal is also not something a reasonable person would do. L waited a total of 2 weeks for a response from C, while trying to contact her all along the way.

Therefore, L was permitted to withdraw under both California and ABA rules since C's conduct prevented L from providing effective representation.

### **9. RESPONSIBILITIES AFTER WITHDRAWAL**

Under the ABA and CA rules, an attorney has several responsibilities to fulfill after withdrawing from representation. First, they have to provide reasonable notice to the client; Second, they have to mitigate any potential consequences, including returning client documents and property; and third, they have to return any unused funds or request any attorney fees for the work that he already did.

First, L gave C notice that he was not representing her in a letter after trying to contact her eight times. While it was permitted for L to withdraw, the way he phrased the withdrawal termination letter is potentially problematic since it was not in the form of a notice, but it was definite without any final chance for C to resume representation. Second, as mentioned above, L failed to safeguard the personal property of C's clothing (and all the stains are now gone) - and therefore failed to mitigate any consequences of his failure to preserve evidence. Lastly, the facts do not indicate that C paid L any sort of retainer fee; but if L performed any legal work for C, he could bill her for that amount.

Therefore, L potentially violated his duty to withdraw responsibly by failing to give C reasonable notice and by failing to mitigate any consequences through his failure to safeguard C's clothing.

### **10. DUTY TO UPHOLD THE INTEGRITY OF THE PROFESSION**

Under both the ABA and CA rules, an attorney has a duty to uphold the integrity

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of the profession by not violating any ethical violations.

Here, as mentioned above, L violated the duty to safekeep client property, to notify C of his potential conflict of interest, and he also failed to withdraw from representation properly. Therefore, he failed to uphold the integrity of the profession as well.

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