

5)

ETHICAL VIOLATIONS OF ANNE

DUTY TO PREVENT THE UNAUTHORIZED PRACTICE OF LAW

A lawyer has a duty to prevent the unauthorized practice of law. Under the ABA, a lawyer cannot assist an individual who is not a licensed attorney engage in the practice of law. Under California authorities, a disbarred lawyer cannot be hired as a subordinate in a law firm because that can lead to the unauthorized practice of law.

Here, there are multiple instances in which Anne may have assisted or encouraged Kelly in the unauthorized practice of law.

The first incident is when Kelly was disbarred and hired as a litigation support clerk. Her prior client Player emailed her asking for legal advice. This shows that although Anne represents Player because she is the licensed attorney in the firm, there is still a relationship in which Player may believe Kelly is still his attorney. However, there was no legal advise given here because Kelly directed Player to Anne. Therefore, there is no violation.

The second incident is when Anne filed a counterclaim drafted primarily by Kelly. Under the ABA authorities this is not considered the unauthorized practice of law as long as Anne checks Kelly's work for errors. Under the California authorities this is likely a violation because it is closely akin Kelly practicing law under Anne's license. However, the facts are silent as to whether Anne reviewed Kelly's work. Therefore, at this point there is no violation.

The third incident occurred when Kelly drafted questions for Anne to ask during the owners deposition. However, Anne was performing the deposition and it was ultimately up to Anne to decide which questions to ask Owner based on her independent legal judgment. Therefore, at this point there is no violation.

The final incident occurred when Kelly sat next to Anne and passed notes suggesting further questions for Anne. As long as Kelly's participation was known as a litigation support clerk and Anne used independent legal judgment when deciding whether to ask Owner Kelly's suggested questions there is no violation. However, because Kelly was Player's prior lawyer she likely known by the team as a lawyer which may lead the Owner to believe that she still is a lawyer which would be a violation under the California authorities.

Therefore, Under the ABA there is not unauthorized practice of law. However, under the California authorities Anne may have engaged in assisting the unauthorized practice of law.

DUTY TO SUPERVISE SUBORDINATES

A lawyer has a duty to supervise the work of subordinates to ensure it comports to the same standards as the lawyer is held to.

Here, Anne filed a counterclaim drafted primarily by Kelly there are no indications that Anne reviewed and approved of the work. Further, Kelly also drafted the questions used in Owner's deposition. Therefore, it can be inferred that she did not review the work drafted by Kelly which is a violation of Anne's duty to supervise subordinates. However, as far as the questions that Kelly drafted for use in the deposition, Anne would be reading the questions as she asked them and could skip questions that are not proper. This is likely a weak attempt to comply with the rule of supervision, but the questions are not presented until Anne speaks them. Therefore, the depositions questions may not be a violation of the duty to supervise.

Therefore, Anne violated the duty to supervise subordinates when she filed the counterclaim.

DUTY OF COMPETENCY

Under both the ABA and California authorities a lawyer owes her client a duty of competency. A lawyer is competent to handle a matter if they have prior experience, educated themselves on a legal matter, or associated with another attorney who is competent.

Here, Anne told Player to ignore the court order to play under the terms of his current contract. A competent lawyer would not encourage her client to ignore the advice of the court because it would cause harm for her client such as being found in contempt of court. Anne could have taken further legal actions rather than encouraging her client to disobey a court order.

Therefore, Anne violated the duty of competency.

DUTY TO REPRESENTED PARTIES

A lawyer shall not communicate directly with parties they know are represented by counsel.

Here, Anne called the team owner. Because of the nature of the dispute with Player and team it is more likely than not that the team has lawyers representing them (such as when they obtained the injunction forcing Player to play). Rather than calling the team owner, Anne should have gotten the message to the team owner through the teams attorney.

DUTY AGAINST THREATS AND FALSE CLAIMS

A lawyer shall not knowingly use threats and false claims to force an opponent to act.

Here, Anne falsely threatened to file a discrimination complaint against the team if they did not re-negotiate Player's contract. Anne knew that she had no basis to file the complaint and only made the threat to try and force the team into acting.

Therefore, Anne violated the duty against threats and false claims.

DUTY AGAINST FORMING A LAW PRACTICE WITH NON-LAWYERS

A lawyer cannot engage in the practice of law with non-lawyers. The lawyer can hire support staff and pay them on an hourly basis, but the support staff cannot share in profits with the lawyer.

Here, Anne and Kelly shared a law practice while Kelly was a practicing attorney. It is indicated that she resigned and was re-hired after she was disbarred. However, there is no indication as to how she is paid and whether she shares profits.

Therefore, Anne did not violate the duty against forming a law practice with non-lawyers.

DUTY AGAINST CONFLICTS OF INTEREST

An attorney has a duty to protect their client against conflicts of interest. Conflicts can extend through current or former clients and through the staff of the law firm.

Here, Kelly was Player's attorney before she was disbarred. There is no information about the circumstances of Kelly's disbarment. However, if the disbarment was related (even tangentially) to her representation of Player Anne would have a conflict of interest in representing Player.

Therefore, there is not enough information to determine whether Anne has a conflict of interest.

Question #5 Final Word Count = 1036

END OF EXAM