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A. Season Tickets

Allison committed an ethical violation under both California and ABA rules of professional conduct when she requested that Davos gift her season tickets if she prevailed on his criminal case. Under both rules of conduct, it is an ethical violation for an attorney to offer their legal services on a criminal case based on a contingency fee. Importantly, neither the ABA nor California renders the contracting of a contingency fee as patently unethical or illegal--but that is most relevant to civil court. A lawyer can never be paid based on a contingency for services that are rendered in criminal cases. The relevant question here is whether the "gift" of season tickets are properly considered to be a contingency fee. The facts do indicate that Allison and Davos signed a valid written retainer agreement. This means that it is possible the parties have an understanding for the payment of services rendered that are not based on a contingency, though we do not have any information about Allison's hourly rate or the amount of retainer she may have required Davos to pay. Even if the season tickets are not considered to be a contingency for purposes of payment, the fact that Allison requested a gift, and quite a large one at that, is also an alternative ethical violation. Under both California and the ABA Rules, lawyers are not allowed to accept large gifts in connection with their services, although small gifts as a token of appreciation for either representation or referrals tend to be acceptable. Whether or not the season tickets are considered a contingency fee, Allison's request for the season tickets is clearly unethical.

B. Payment to Wilfred

If Allison's decision to pay Wilfred an hourly fee that is consistent with his hourly wage + tips, which are surely quite variable depending on the day, is found to be anything other than reasonable compensation/reimbursement for costs associated with travel and lodging, a court would most likely find that Allison has committed yet another ethical violation.

Under California and ABA Rules, it is permissible for witnesses to be reasonably compensated for the time they spent testifying in court. That form of "compensation" is usually provided by way of reimbursement for travel and/or lodging accommodations, and most probably not as if the attorney is cutting the witness a check. If Wilfred was compensated for his testimony, it would be hard for the court to determine whether Wilfred's testimony is in earnest, or whether he is essentially being paid to support a version of the story that vindicates Davos's interests. This poses a huge risk to the integrity of the legal system, because one of the trial court's primary jobs is to determine witness credibility so that civil or criminal liability can be fairly assessed. Furthermore, the facts state that Allison's offer to pay Wilfred for his time is conditioned upon him not meeting with the prosecution before trial. This seems like pretty clear evidence that

Allison's conduct is not only unethical, but it is also a threat to the legal system that could surely be viewed as an offense that is worthy of being disbarred.

C. Payment to Eileen

Unlike lay witnesses like Wilfred, California and ABA Rules both allow expert witnesses to be reasonably compensated for their time and appearance as a testifying expert at trial. There are no bright line rules about how much an expert ought to be compensated, and it certainly varies by field and by expert/level of expertise. The fact that Allison is going to pay Eileen \$500/hour for her testimony as an expert is not an issue.

D. Presentation of Eileen's Expert Opinion

However, the fact that Allison is yet again attempting to condition Eileen's compensation on Eileen changing her expert opinion about Davos is a clear ethical violation. Especially because the facts tell us that Eileen initially determined that the video showed strong evidence of Davos's assault, the fact that Allison is knowingly directing Eileen to change her opinion is a huge problem. Allison is not only breaching her duty of candor to the court, but she is also directing Eileen to commit perjury. This creates additional liability for all parties involved. Eileen faces punishment of up to 5 years for perjuring herself, and Allison risks not only her reputation but she also is interfering with judicial resources and frankly state funding because her actions could easily result in a mistrial. Allison's presentation of Eileen's expert opinion is a clear ethical violation.

E. Allison's Closing Statement

Finally, as referenced above, Allison's decision to double down and insist that there was no assault based on the video footage is clearly disingenuous. She is the one who directed Eileen to change her opinion, and the fact that she has already breached her duty of candor to the court shows that she does not treat her position as an officer of the court with the moral deference that it deserves. Although Allison is allowed to ask that the court find Davos not guilty of the offense charged, a lawyer is not allowed to express a personal opinion about the case as Allison did. As soon as Allison said that, "in her opinion and based on the evidence" Davos was not guilty, she committed an ethical violation under both California and ABA rules.

Question #3 Final Word Count = 885

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