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1. What ethical violations did August commit?

Confidentiality

A lawyer owes a duty not to reveal client confidences. This is information obtained during the course of the attorney-client relationship. The duty remains even after the relationship ends, and after the death of the client. The attorney *may* reveal client confidences only with permission from the client. The rules are similar in **CA**.

Here, A was hired by P in a lawsuit against P's former real estate broker, Dani. A's communication with P, has consisted of a written settlement demand, relating to the lost opportunity to buy land which A claims D was negligent, resulting in \$1,000,000 loss. When A told Rita, another attorney in another law firm, about the lawsuit, A did this with P's permission. It is not clear whether A disclosed the purpose of communicating with R, whether she was a skilled negotiator and because of this, it is possible, this disclosure was improper.

It appears that A did not breach the duty of confidentiality.

Competence

A lawyer owes a duty to represent their clients interest with *degree of care, skill, and legal knowledge*, with *thoroughness and promptness*. Perfect competence is not necessary. Under **CA** the attorney must not *repeatedly act with gross negligence*.

Here, A is handling a real estate dispute, between P and A. When A got permission to send a settlement demand for \$500,000 in dispute of a real estate transaction, A was acting with degree of care, skill, and legal knowledge, to settle the matter that was worth \$1,000,000 lost profit to A's client. Though A did not follow up with Len, the opposing counsel after realizing Dani was unaware of the settlement offer, this was not a violation of competence because A had already communicated the offer to L.

When A entered into a contingency fee agreement with Rita, another attorney, to split the contingency 50%, this was a violation, because A was required to disclose the new fee agreement, and under **CA** receive a written waiver. Since, A and R agreed to this arrangement, and settled the matter based on the arrangement, without P's consent, they were not acting with degree of care, skill, and legal knowledge required for representation.

Therefore, A breached duty of competence.

Communication

A lawyer owes a duty to communicate with their client *reasonably necessary* to allow them to make informed decisions regarding the objectives of the case.

When A asked Rita to assume joint responsibility in the lawsuit in return for 50% of A's contingency fee agreement, A owed a duty to communicate that information in writing, to P as this would allow P to make informed decision on whether to agree to hiring Rita. Though A will argue that P gave A permission to speak with R, A did not give permission for A to enter into an agreement without P's consent, because P was in a real estate dispute.

P will argue that by sending the letter to A, P communicate the new arrangement, however, A should have called and explained the matter to P, because P was unaware that the terms of the original contingency fee agreement had changed. In part, that A and R would assume joint responsibility, and also, that R would now receive have of the contingency agreement proceeds.

Therefore, A breached duty to communicate.

Transactions with Third Party

The attorney is not able to communicate with opposing party unless under limited circumstances, such as with prior consent of the opposing counsel, where they are present. However, parties may communicate amongst each other to settle disputes, so long as it is done voluntarily.

When A requested that P contact D, to communicate the settlement demand, this was questionable. However, when P and D spoke about the settlement demand, and P had no knowledge of the settlement demand, P and D were communicating voluntarily. Since A did not personally communicate with D, nor attempt to blindsides or falsify information behind L's back, it appears there was no ethical violation.

However, when R was brought on as an associating attorney for the purpose of dealing with D, the opposing party, this would be considered an unethical violation. R was now an attorney representing P, and so because A was aware of R's personal relationship, and R communicated with A, P was in violation of his duty by approving of communication between R and D.

Therefore, though questionable, the third party communication was not in violation under the circumstances.

Fairness to Opposing Counsel

An attorney owes a duty of fairness to opposing counsel, not to falsify information.

Here, when A told P to communicate with D, regarding the settlement demand, this was not improper, as the settlement demand for \$500,000 was communicated which was proper, and true. However, when A brought on R for the purpose of having R settle with D behind closed doors, A was not acting fairly.

Therefore, A was in violation.

Duty to Report

An attorney has a duty to report misconduct as to another attorney when as it relates to their fitness as a lawyer.

L should have communicated the settlement letter to D.

2. What ethical violations exist in August and Rita's arrangement?

Contingency Agreement

Fee agreements under the ABA must be *reasonable*. Fee agreements under CA must not be unconscionable. A contingency fee agreement must be in *writing* and *communicated* to the client. In addition the agreement must explain the *method* of payment upon settlement. Furthermore, in CA the attorney must communicate that contingency fee agreements are *negotiable*.

A and P entered into a contingency fee agreement. The agreement must have been reasonable, typically, no more than 1/3 is reasonable measure. Furthermore, the agreement must have been in writing and communicated A, so A could understand the method of payment. All other addressed exceptions must be considered above.

Fee Splitting - Lawyers Not in Same Firm

Fee splitting among lawyers not in the same firm is prohibited, unless the client is *consents in writing* of the fee splitting arrangement, and the arrangement does not *increase the overall costs* of attorney's fees. In CA the attorney may either be paid proportionate of their share and time into the case, or other reasonable mode, where the attorneys share liability.

Here, the attorneys split the contingency agreement 50%, and did so without P's consent in writing. A should have communicated to P of the fee splitting arrangement, which P did not do.

Therefore, this was an ethical violation.

3. What ethical violations did Len commit?

Settlement Offer - Communication

An attorney must communicate *settlement offers* to their clients. When L did not communicate the settlement offer to D, this was an ethical violation, as settlement offers involve the objectives of representation. Even though L did not believe it was a good offer, L still had an ethical obligation to disclose it.

Competence

L did not communicate the settlement demand to D. The matter was ultimately settled for \$500,000, which was the settlement offer.

It does not appear L breached duty of competence

Therefore, this was an ethical violation.

Diligence

The lawyer must exercise reasonable diligence under the ABA. Under **CA** an attorney must not repeatedly with fail to exercise reasonable diligence.

Here, L did not communicate the settlement offer to A.

Therefore, this was an ethical violation.

Duty to Report

L had a duty to report, if aware of R and D's relationship. As to A and R, as attorneys.

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