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1. What ethical violations did August commit?

A lawyer has ethical duties to the client such as duty to loyalty, duty of competence, duty to communicate etc. A lawyer has also duty of fairness and candor to opposing counsel, third party and tribunal.

August committed several ethical violations under ABA authorities and California authorities.

Retainer agreement:

Under the ABA and California authorities, a lawyer has to have a retainer agreement with the client for a representation, unless the client is a corporation, fee is less than \$1000 or it is a routine work for the known client.

The facts suggests that August agreed to represent Paul in a lawsuit against his former real estate broker Dani and they have a valid written retainer agreement and therefore there is no ethical violation.

Contingency fees:

Under ABA and California authorities Lawyer can agree into contingency agreement except in criminal or matrimonial matters. The contingency agreement must explain fees and disbursements. The facts suggests they have a valid contingency agreement and therefore there is no ethical violation because it is a civil claim and not criminal and matrimonail claim.

Duty to report:

Under ABA authorities, lawyer has an obligation to report the ethical violation of other lawyer.

Under California authorities., there is no such duty to report.

Here, August with Paul's permission, sent a written settlement demand for \$500,000 to resolve the case to Dani's lawyer Len. Len did not respond to the settlement offer although he has a duty to respond to the other lawyer promptly. Len even did not communicate with his client with respect to the offer. When Paul came to know about this from Dani, Paul advised August about it and still August did not do any thing or report the conduct of Len to

state Bar.

August committed ethical violation of duty to report under ABA, however he did not commit any violation under California rules.

Duty of competency:

Under the ABA, a lawyer has to be competent enough for the representation. He has to have knowledge, preparation and organization.

Under California rules, a lawyer must not repeatedly, negligently, recklessly and intentionally failed to represent the client competently.

Here, August just sent an offer to settle and did not do any research to see if the offer is viable. Also he did not do any other preparation for the case in the event the offer is not accepted.

He did not take any steps in the case, instead he asked Rita to solicit the opposing party.

It seems he does not have enough knowledge or skill to represent the client and he attempted to settle the matter anyhow. He breached the duty of competency under the ABA. If this is his first time, he might have not breached any duty under California because the facts did not say he repeatedly did this. However, as per California rules he should have solicited with more experience lawyer and learned the skill as long as it is not prejudicial to Paul.

Duty of fairness and candor to opposing counsel:

Under ABA and California, A lawyer has a duty of candor to opposing counsel and directly or indirectly should not communicate with the opposing party without his or her counsel.

Here, August requested Paul to communicate with Dani and advised him to explain why the offer of \$500,000 was a good offer without consent of his counsel Len.

By doing this , August has committed violation of duty of candor to the opposing counsel.

2. Ethical violations in the arrangements of August and Rita?

Duty to inform the client and duty to confidentiality:

Under ABA and California rules, a lawyer has to preserve all the confidential information and communication with the client obtained in the course of legal representation.

Here, August took Paul's permission to have Rita, another attorney for the purpose of settlement of the case. However, as per ABA, the client's consent must be written and informed consent. In California, such consent must be in writing and signed by the client in advance. Written confirmation after discussion is not enough.

Here, August wrote to Paul about his new arrangement with Rita and he might not breach any duty under ABA, however he breached duty of California rules by not obtaining written consent from Paul for his arrangement with Rita.

Also when August agreed with Rita to assume the responsibility, the arrangement must be in writing. Also August did not disclose to Paul that Rita knows Dani. August should have disclosed this to Paul under California rules and must have obtained Paul's consent in writing.

Duty to candor to opposing counsel:

Rule as above.

Here, August encourage Rita to solicit with the opposing party without the consent of the opposing counsel and breached duty under ABA and California rules using her acquaintances with Dani. By doing this he breached duty under ABA and California for not to contact, communicate and solicit other party without his counsel.

3. What ethical violations did Len commit?

Duty to communicate :

Under ABA and California rules, a lawyer must communicate with the client and opposing counsel promptly and diligently.

Lawyer can use the strategies to represent the clients however client has right whether to settle the matter, take a plea etc.

Here, August sent offer to settle to Len. Len did not advise Dani about the offer and therefore committed ethical violation under ABA and California Rules.

Duty of competence:

Rule above.

Len did not do anything in the case. First he did not communicate the offer to Dani. It seems he has no knowledge that he has to communicate the offer to settle to his client.

Also he did not take any steps in the case. He did not advise Dani whether to take the offer or reject it.

Under ABA< he breached duty of competency.

Under California if he has been doing it repeatedly then he might breach the duty.

Duty to candor to opposing counsel:

As discussed above, a lawyer has a duty of fairness and candor to opposing counsel and should promptly and diligently respond to the other counsel.

Here, August sent Len an offer to settle the case, however he did not respond to demand. By not responding opposing counsel, Len breached the duty of fairness and candor to August.

Question #3 Final Word Count = 1050

END OF EXAM