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1. August's (A) Ethical Violations

**Duty of Care and to Communicate**

An attorney owes a duty of care in all their work regarding the communications of their client regarding the attorney-client relationship. An attorney has a duty to communicate any conflicts of interest.

**Contingency fee**

Under the ABA contingency fees must be in writing, signed by the client and describe the method of how fees will be calculated

In CA, a contingency fee must be in writing, signed by both the client and the attorney, and describe how any additional expenses incurred will be calculated and dispersed.

Here, A and P have a valid written contingency fee agreement, so we can assume that it follows both the ABA and CA rules.

**Settlement Offers**

Clients have the prerogative in setting the substance of the attorney client relationship. This includes whether to settle, in a criminal trial to take the stand or to plead guilty, as well as how the money and fees of the representation will be spent.

Here, August sent the settlement offer to Len (L) with P's permission.

Therefore, August did not breach any ethical duties here regarding the settlement offer.

**Client Communications with Opposing Party**

Clients generally must not communicate with any opposing counsel without their lawyer being present or with the opposing party as well without their lawyer being present. However, upon the clients request a client may reach out to the opposing party without lawyers present to discuss a method to settle or negotiate their differences.

Here, P on A's request communicated the settlement offer to D. This is permitted as long as P is permitted to inform D that this is the best way to move forward with the suit.

Therefore, A did not breach any ethical violations here by asking P to communicate

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with D directly without L.

### **Duty to report violations**

Under both the ABA and CA rules, an attorney has an ethical duty to report any other attorneys who they believe have violated an ethical code of conduct.

Here, A knew that L violated her duty to communicate the settlement offer to D, and should have reported L to the ethics board.

Therefore, A breached his duty under both the ABA and CA rules.

## 2. August and Rita (R) Arrangement

### **Duty of confidentiality**

Under the ABA, A lawyer has a duty of confidentiality in all communications pertaining to the client's representation. A lawyer may communicate a client's confidential information with the client's consent if it helps the representation.

Under the CA rules any confidential information given to outside counsel must have the informed consent of the client in writing.

Here, A told Rita (R) of the suit with P's permission.

Therefore, A has not violated any ethical duties of confidentiality with P, though he has violated his duty of confidentiality under the CA rules since he did not receive P's informed consent in writing.

### **Fee Splitting with other Lawyers**

Under both the rules, Any fee splitting with other counsel must be done with the informed written consent of the client. The fee must also be proportionate to the amount of work performed by both lawyers.

Here, A asked R to assume joint responsibility of the lawsuit in return for a 50% of the contingency fee. A did not get any written informed consent from P to carry on with this fee splitting. Further, a 50% contingency fee is likely very high for R given that she barely spent any time on the case and settled (in the matter of days) the case for \$500k which was the worked. Even if R can argue that she deserves the 50% due to her skills and A was the one to offer the fee splitting this argument will likely fail.

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Therefore, both A and R violated the ethical duties under fee sharing between lawyers.

**Duty to Communicate Conflict of Interest:**

An attorney has a duty to communicate any conflicts of interest. This may be waived by Client upon informed written consent.

Further there may be a violation here too since A and R failed to communicate to P that R knew L the opposing party lawyer.

3. Len's ethical violation

**Duty of Care**

See rule above.

Here, L violated her ethical duty of care towards D but not communicating the offer of settlement to D when she received it.

**Duty to Communicate Settlement offer**

See rule above

Here, L breached her duty to communicate the settlement offer to D, even if she believed the offer was too low.

Therefore, L will be held to have ethically violated her duty to D.

**Duty to Communicate Relationship w/ R - Conflict of interest**

See Rule above.

Here, L had a duty to communicate to D that she knew R.

Therefore, she violated her duty here.

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**END OF EXAM**