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1. August's Ethical Violations

Duty of Fairness: Opposing Counsel and Lawyer Speaking with Represented Parties

Under ABA and CA rules, an attorney cannot speak to a represented party of opposing counsel without opposing counsel being present or with the knowledge and consent of opposing counsel.

Here, it appears that Paul initially spoke with Dani about the settlement demand unbeknownst to August because he later told August about the conversation. If Paul spoke with Dani without August's knowledge or direction, then this first conversation is not an ethical violation. However, after Paul told August about the conversation and *at August's request*, Paul again spoke with Dani about the communicated settlement demand and tried to convince her this was a good offer. Even though August did not directly speak with a party represented by opposing counsel, this does not absolve her of this violation. She may not use others like her client Paul as a proxy committing ethical violations.

Thus, August likely did not commit an ethical violation as to the first interaction but did commit a violation as to the second interaction.

Duty To Report Misconduct

Under the ABA and CA rules, a lawyer must report another lawyer to an authority if they know there is an issue of honesty, trustworthiness and fitness of that lawyer. The CA rules go further to include knowing of a lawyer's intentional, reckless or conduct of misrepresentation/fraud and must report to California State Bar, not another authority.

Here, August did not do anything when she was told by Paul that Len did not initially communicate the settlement offer. August should have been concerned about Len's fitness as a lawyer and his reluctance to communicate important case information to his client. This concern should have led her to consider reporting Len to the applicable authorities or California State Bar.

Thus, August may have committed an ethical violation.

Duty to Communicate

Under the ABA and CA rules, an attorney has a duty to communicate regular case status updates to their client and communicate any relevant information from the client to the relevant parties, with the client's permission.

Here, August duly followed her duty to communicate when she had Paul's permission to send a written settlement demand for \$500,000 to resolve all issues to Dani's lawyer, Len.

Thus, August did not commit an ethical violation.

Duty of Confidentiality

Under the ABA and CA rules, a lawyer must keep any information regarding their legal representation of a client confidential. Under the ABA rules, a lawyer may break confidentiality when: (1) client gives consent; (2) lawyer is impliedly authorized; (3) a lawyer reasonably believes that death or substantial bodily harm will occur; (4) compelled by law; (5) in a dispute between a lawyer and a client; (6) if lawyer's services will further a crime (including financial) or fraud; or (7) to receive ethics advice.

The CA rule for breaking confidentiality is notably stricter than the ABA's with only the following exceptions: being (1) consent of a client; (2) a lawyer reasonably believes that death or substantial bodily harm will occur; (3) compelled by law; or (4) in a dispute between a lawyer and a client.

Here, because Paul gave his permission to August to speak with Rita about the lawsuit, August had her client's consent to disclose confidential client information. But we need more facts to understand the scope of Paul's consent. It is unclear if Paul only consented to August informing Rita about the existence of the lawsuit. However, he may not have consented to August inquiring about Rita's participation. The fact that August wrote a letter to Paul describing the new arrangement with representation of two lawyers and the updated 50% contingency fee that Rita would collect makes it seem that Paul was neither aware of or nor consented to this arrangement. If that is the case, then August may have broken confidentiality beyond the scope of Paul's consent.

Thus, it is possible that August committed an ethical violation.

Duty to Avoid Fee Misunderstandings: First Contingency Agreement

A contingency fee agreement is one where the fee is based on the outcome garnered by the lawyer. Under the ABA and CA rules, a contingency agreement must be in writing, signed by the client, outline the scope of performance, outline the method of the fee including information on how expenses will be deducted and how the lawyer's recovery is calculated/when it will deducted, and the subject matter of the representation is not related to domestic violence or criminal issues. Regarding the signature component, the CA rules additionally require that a lawyer also signs the contingency agreement and provides the client a copy.

Here, August and Paul's first agreement would have to meet all of the requirements and the facts indicate that it in fact does because it is "valid, written contingency agreement" for a case involving a real estate transaction.

Thus, August did not commit an ethical violation regarding this first agreement.

2. August-Rita Arrangement Ethical Violations

Duty to Avoid Fee Misunderstandings: Reasonable/Unconscionable Fees, Fee Splitting between Lawyers, and Second/Updated Contingency Agreement:

A lawyer has a duty to avoid fee misunderstandings. First, under the ABA rules, all fee agreements must be reasonable. Under the CA rules, all fee agreements can't be unconscionable . Factors that are usually looked are what fee is customarily charged for

that service in that locality, the education and experience of the lawyer, and time and effort expended by the lawyer on the case.

Second, under the ABA and CA rules, two lawyers can fee split as long as the division of work is proportional to the work, they receive informed written consent from the client, and the client's fee is not raised because of the extra lawyer.

Third and finally, see rule above regarding valid contingency agreements.

Here, there are many issues with the second/updated contingency agreement. First, Rita's 50% of contingency fee does not appear to be reasonable and not unconscionable. Rita did at most a few days work to receive the settlement from Dani. This fee is not reflective of the time and effort expended by Rita. Second, Rita and August never received informed written consent from Paul. They may argue that August drafted a letter and Paul just didn't receive in time before the settlement came through but this does not absolve them of this ethical violation. They must have both received Paul's written consent before moving forward with any actions of the joint representation. Third and finally, any contingency agreement, even updated ones, must be writing and signed by the client (and lawyers in CA and give a copy to the client). Rita and August came up with the new agreement unbeknownst to Paul and informed him after the fact. This second agreement was not validly executed. Rita and August may argue that they ultimately settled Paul's lawsuit against Dani for the \$500,000 they initially wanted but that doesn't absolve Rita and August of the multiple ethical violations committed by Rita and August regarding their fee agreement with Paul. Paul must have had knowledge and consented to this updated agreement.

Thus, both Rita and August committed ethical violations with their fee arrangement.

3. Len's Ethical Violations

Duty to Communicate and Scope of Representation

Under the ABA and CA rules, an attorney has a duty to communicate regular case status updates to their client. Under the ABA and CA rules, the scope of representation is that a lawyer advises their client and makes the legal strategic decisions, while the client decides anything substantive about the case (e.g., settlement offer, guilty plea agreements, jury trial issues). The lawyer must defer to the client regarding substantive decisions.

Here, Len did not respond to the demand letter from August, Paul's attorney. Neither did he communicate the demand to Dani. Dani only found about the letter because Paul told her later on. Len may argue that he did not respond to the demand because it was too high for the value but this isn't a defense to the duty to communicate and responsibilities he has as part of representing Dani. Even if Len didn't want to take the offer, he still had to communicate this offer to Dani and let her decide how to proceed.

Thus, Len committed an ethical violation.

Duty of Competence and Diligence

Under the ABA rules, a lawyer must act with the requisite competent legal skill, knowledge, preparation, and thoroughness. Under the ABA rules, a lawyer must act with reasonable

diligence and promptness. Under the CA rules, a lawyer must not intentionally, recklessly, repeatedly, or with gross negligence fail to act with competence and diligence.

Here, Len did not respond to the demand letter from August, Paul's attorney. Neither did he communicate the demand to Dani. He did not act with reasonable diligence, promptness, and competence in his representation of Dani. Len may argue that he did not respond to the demand because it was too high for the value but this isn't a defense. Even if he didn't want to take it, he still had to communicate this offer to Dani and let her decide.

Thus, Len committed an ethical violation.

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