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All rules refer to both CA and ABA rules unless otherwise specified.

### **1) August's Violations?**

#### Duty of Competence/Diligence

A lawyer has a duty to use the proper knowledge, skill, thoroughness, and preparation needed to competently represent a client. Also, a lawyer must act with diligence and promptness in representing clients.

Here, A might have violated her duty of competence in calculating the \$500,000 settlement offer. Since D thought the number was too high for the value of the case, that puts both of their duties of competence into question. If the \$500,000 was indeed too high for the case, A would be in violation. P is also seeking damages after losing out on a \$1 million profit. More facts are needed to determine this, but A likely violated her duty of competence.

#### Duty to Report

Under the ABA, a lawyer has a duty to report another lawyer's misconduct when it speaks to their honesty, truthfulness, or fitness as a lawyer. Under the CA rules, a lawyer does not require a lawyer to report another's misconduct, but a lawyer may do so if they want. However, CA does have a mandatory requirement for self-reporting if a lawyer has been sued for malpractice or has been committed of a felony.

Here, P randomly saw D and asked if she had received his settlement offer. When D said she had no knowledge of the settlement from her attorney, P told A. Subsequently A did nothing. L had a duty to communicate the settlement offer to his client D (See below) and he clearly violated this duty by not communicating it to her. A should have recognized this violation and acted accordingly. Thus, A has violated this ABA rule, but she is not in violation of the CA rule.

#### Duty of Fairness to Represented Parties

A lawyer cannot talk to or engage with parties they know are represented by other counsel without the consent of their counsel. However, a lawyer may encourage opposing parties to engage in conversation or otherwise with each other.

Here, A requested P contact D, who was represented by L. This was permitted under both the ABA and CA rules since A did not communicate with D herself, but encouraged P to do it.

#### Unauthorized Practice of Law

A lawyer may not assist or counsel a non-lawyer in carrying out duties or tasks that are only for lawyers to carry out, such as providing legal advice, or explaining legal reasoning.

Here, A requested P contact D. P did so and, per A's request, P communicated the settlement demand to D and explained why the \$500,000 was a good offer.

## **2) Violations in August and Rita's Arrangement?**

### Fees

Under the ABA, fees must be reasonable, and do not have to be in writing. Under CA rules, fees must not be illegal or unconscionable. Also in CA, fee agreement don't have to be in writing unless they are for over \$1,000.

Here, there is a fee agreement between R and A, two attorneys about jointly working on a client's case. It seems reasonable, and not unconscionable, that two lawyers would split a contingency fee award 50/50 for assuming joint responsibility on a case together. Thus, the agreement between R and A is not a violation under the ABA nor CA, in terms of the amount charged on P.

### Sharing Legal Fees

Generally, a lawyer may share legal fees with another lawyer in their same firm. However, a lawyer may not share legal fees with another lawyer in another firm, unless 1) both lawyers assume joint responsibility or only take only the fees that are proportionate to their share of the work done, 2) fees must not be increased due to the sharing, 3) the fee splitting agreement must be disclosed to the client, in writing, including the method for dividing the fees between the two lawyers, and 4) it must be in writing. A lawyer may never share legal fees with a non-lawyer.

Here, Rita (R) is an attorney in a different law firm than A. R knew D and offered to work with A to reach a settlement with D. A agreed to have R work on P's case. A asked R to assume joint responsibility for P's lawsuit and receive 50% of A's contingency fee. This was permitted, or else A and R could have divided the work and taken the money proportionate to their work done. The facts do not indicate that P's fees were increased at all since A was seeking \$500,000 before R joined, and R ended up settling the case for \$500,000. This shows that R didn't try to settle for a higher amount in order to get paid more, which is good for R. A did write to P explaining the new arrangement, however, the facts don't indicate that the entire agreement was in writing.

Thus, the agreement between R and A is an ethical violation.

### Conflict of Interest - between Rita and Dani

There is a potential conflict between R and D since the facts indicate they might be close friends, yet they are representing opposing parties (P vs. D). If there is a significant risk that R's representation of P would materially limit her ability to represent him due to her close personal friendship with L, then R should not take on P.

## **3) Len's Violations?**

### Duty to Communicate

A lawyer has a duty to communicate to clients any status updates about their case,

including settlement offers.

Here, L received a settlement offer from A and did not promptly communicate it to D. Even if L didn't think it was a good number, the \$500k being too high, L still should have told D about the offer and explained his thoughts about why it was too high. Thus, L is in violation of this rule.

### Scope of Representation

During representation, the client decides things such as whether to testify and whether to take settlement agreements, but the lawyer decides the legal strategies.

Here, it was not up to L whether D took the settlement agreement or not. L only had a duty to communicate the settlement offer to D, and to provide his insight as to whether he thought it was fair or not. But regardless of L's opinion, D had the ultimate and final choice whether to take the \$500,000 settlement or not. Thus, L committed an ethical violation by acting outside his scope of representation and making a decision that the client should have made.

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**END OF EXAM**