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Alex's Ethical Violations

The issue is whether Alex has violated any rules of professional responsibility.

Joint Representation of B and C

Conflict of Interest

The issue here is whether Alex violated a duty of loyalty when he jointly represented both B and C.

A lawyer owes a duty of loyalty to his clients. A lawyer breaches that duty if there is a conflict of interest. While a lawyer may not adequately represent his clients if an actual conflict of interest arises, he may do so under a potential conflict of interest situation. Under the ABA, a lawyer who jointly represents two parties may do so as a potential conflict of interest if both clients have similar interests and they are not directly adverse to one another. Once the interests of the clients become adverse, the lawyer must withdraw. He cannot adequately represent two joint parties once they have differing interests. A lawyer may represent both parties with a potential conflict of interest if he advises both parties of the potential conflict and receives informed consent. In CA, there must be written consent by both parties. In addition, the lawyer must reasonably believe he can adequately represent their interests.

Here, Alex was hired by B and C to form a partnership involving the publishing of books.

A potential conflict of interest exists because both B and C have similar interests because they both have an interest in the partnership. The interests are not

presently directly adverse to one another because they both want the same result - a partnership formation. A reasonable attorney could adequately represent both parties effectively because there are no facts to indicate any conflicting interests by either party. Therefore, a potential conflict of interest exists.

Because a potential conflict of interest exists, A breached his duty of loyalty to his clients by not informing the clients of the potential client and not receiving consent by either party.

Therefore, A breached a duty of loyalty to his clients.

Duty to Communicate

The issue here is whether A breached his duty to be a competent attorney to his clients when he failed to disclose he was not competent in the area of partnerships.

Under the ABA and CA, A lawyer has a duty to communicate all important issues to his clients.

Here, A had a solo practice and had no experience of forming partnerships. Instead, he hired D as a paralegal to assist him.

A breached his duty to communicate to his clients because he failed to communicate to B and C that he had no prior experience and that he would need to seek additional assistance by co-counsel, research, or need to withdraw.

Therefore, A breached his duty to communicate to his clients.

Fee Charge

The issue is whether A's fee of \$5,000 was proper for the representation of B and C in the formation of a partnership.

Under the ABA, an attorney may charge a fee so long as it is reasonable. However, under CA, the fee must not be unconscionable. In CA, if the fee is over 1, there must be a writing including the terms of the agreement. Once the monies received by the client are used, any remaining funds must be sent back to the client.

Here, A was hired by B and C to assist them with the formation of a partnership for the publication of educational books and software.

A will claim that 5 is a reasonable fee because it involved the formation of a partnership. A formation of partnership involves the preparation of a multitude of documents and research in order to satisfy all requirements needed. If 5 was a reasonable value of the services rendered by A, it may be proper and not a violation.

However, if A, a man who has no experience in the formation of partnerships decided to charge 5, a high fee because he knew he was not competent, failed to disclose this fact to the clients, and decided to use the additional funds needed to become competent, it may be unreasonable.

In addition, once A finished the formation of the partnership, he should send back to B and C the remaining funds not used for the representation.

Therefore, A may be subject to discipline depending if the fee A charged was reasonable.

Alex's action of hiring Dale

Duty to be Competent

The issue here is whether A breached his duty of competency when he hired D, a disbarred attorney as a paralegal instead of a new attorney to assist him in the matter.

Under the ABA and CA, A lawyer who has a license is presumed to be competent in all areas. However, where the lawyer is not competent he must become competent through either research, hiring additional attorney, or he must withdraw from representation of the client.

Here, A because he had no experience in forming partnerships, hired D, a recently disbarred attorney as a paralegal. D had no paralegal training or certification. A notified the state bar and disclosed D's involvement and notified B and C of his involvement.

A's actions may be improper and a breach of the duty of competency because the formation of a partnership may require legal research and services for which a paralegal cannot do. Because D was disbarred he could not act as an attorney. If D's actions involving his work in the partnership matter were those involving legal research and guidance as an attorney then A received improper assistance.

However, A may claim that the formation of a partnership is a general area of law and D could assist A with the preparation of boiler plate documents not requiring legal assistance. In addition, he reviewed the documents received by D to learn about the partnership formation to become competent.

Yet, because A relied on D as an attorney to make himself competent it was

improper. A should have hired an additional licensed attorney or done the research himself.

Therefore, A breached his duty of competency.

Unauthorized Practice of Law

The issue here is whether A assisted D with the unauthorized practice of law.

Under the ABA, and CA, A lawyer must not assist a non-lawyer with the practice of law. An individual who assists with the formation of a partnership may be considering the practice of law if he is making legal decisions. However, a lawyer may hire clerks to assist with the preparation of legal documents - such as filling out boiler plate forms or acting under the attorney's supervision.

Here, A hired D, a disbarred attorney to assist with the representation of B and C. D spent 4 hours at \$250 an hour, preparing the partnership documents and met with B and C to talk about them.

A may have assisted D with the unauthorized practice of law because D was a disbarred attorney. If D prepared the documents using legal decisions or his background he may be subject to discipline. A fee of \$250 appears to be a fee of an attorney rather than a clerk - who normally charges a fee of \$20 an hour.

However, if D merely filled out forms under A's supervision, he may have acted proper as a law clerk. While D had no paralegal training or certification, he did have enough experience to work as a law clerk. A law clerk may work under an attorney without any prior certification.

Therefore, A may not have assisted D with the unauthorized practice of law.

Alex's action of paying Dale and receiving his fee

Duty to not Split Fees

The issue here is whether A violated his duty to not split fees when A paid D a wage of \$250 an hour.

Under the ABA and CA, An attorney may split fees with an attorney. However, an attorney generally must not split his fees with a non-attorney. However, an attorney may pay a clerk a reasonable salary for his or her time when working under the attorney under the attorney's supervision. In addition, if the attorney splits the fee with an attorney not within their firm they must get the client's consent. In CA, an attorney who splits their fee with another attorney must received written consent by the clients.

Here, A hired D, a recently disbarred attorney at the rate of \$250 an hour. D spent four hours preparing the partnership documents and met with B and C. At the end of the representation, A paid D \$1000 for his work.

A may have violated his duty to not split fees if D's fees appeared to be that of another attorney rather than that of a law clerk.

A will claim that he was merely paying D his hourly salary working as a law clerk. Yet, because D's fee, that of \$250 seems to be that of an attorney and not a law clerk, a normal hourly rate of \$20 an hour, therefore he may have violated this duty.

A will also claim that he notified B and C of D's involvement in the case and received their consent. However, because there are no facts to indicate that they

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consented, D's involvement was improper. Even if the client's consented, D was a disbarred attorney and their consent would not trump the rule that an attorney must not practice law without a license.

Therefore, A breached his duty by splitting his fees.