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Able and Dan Legal Agreement

The facts describe a set fee agreement for the legal services to be provided by AB&C to Dan for his divorce. The ABA rule is that a fee agreement should, but doesn't have to be in writing (Cal: all legal agreement fees are to be in writing), but that the terms of billing and other charges should be explained to the client. The rule is that all fees must be reasonable, based on factors such as complexity of case, experience of lawyer, results obtained, the extent to which firm will be precluded from other work, and whether or not it is contingent. Cal requires that fees not be unconscionable and, in addition to the ABA factors, can be based on the sophistication of the client and obtaining written consent.

Issue: is the fee to be charged reasonable?

We are given that the divorce is acrimonious. It is possible, based on the application of the factors described above, that such a fee would be reasonable. Given that it is a "standard" set fee, one would have to compare this fee with those charged by other firms for similar cases to determine if it is comparable. If the fee was determined to be unreasonable (or in Cal unconscionable), the contract could be determined to be void, and the firm would have to recover based on quantum meruit.

Issue: the main issue with the agreement is that it provides that the minimum fee is $25,000 and the entire amount would be owed even if the firm was discharged.

The agreement violates both ABA and Cal rules in that firms cannot keep/demand fees that are not earned. The firm would be subject to discipline for inclusion of this term in the agreement.

We are given the fact that Dan discharged the firm, which is the right of any client, and asked for his files, which must be returned (we are not give whether or not the files were returned. If not, then this is a violation of the rules and the firm would be subject to discipline). We are also given that Dan, up to the point, had been billed and had paid $6,000 in fees. Thus, we can conclude that those are the fees agreed to by the client that were earned by the firm up to that point. However, the firm demanded the remaining $19,000 or the "fixed" fee, and has threatened suit or would foreclose on the mortgage. Although securing a lien in advance of providing legal services is acceptable, the firms threat to sue or foreclose based on the flawed agreement would be violative of the rule regarding reasonable fees. Any action brought by the firm would be violative of the rules and would subject them to discipline. Dan may also have civil recourse for the firm bringing a frivolous or illegal suit.

I conclude that the contract would be void and that the firm would not be entitled to any additional recovery (if the $6000 represent the quantum meruit). They will be subject to discipline for this "non-refundable" agreement.

Establishing methods to detect conflict of interest

The rule is that a firm must put in place reasonable methods and practices to determine any potential conflict of interest issues for concurrent or prospective clients.

We are given that Baker ran the name of Little Corp through a "computerized" conflict check system and that no conflict was detected. As a result, the firm took on

Earl as a client for his action against Little Corp.

Given that Dan was the sole owner of Little Corp, any action by Earl against Little Corp would affect his interests. Thus, I conclude that the firm has not instituted sufficient measures to detect potential conflicts of interests. The firm would be subject to discipline for violation of this rule.

Conflict of interest in Earl v. Little Corp

The rule is that a firm cannot represent concurrent clients when there is a conflict of interest unless 1) the firm establishes, based on a reasonable lawyer standard, that they can provide competent and diligent representation of both clients; 2) there are no claims (or likely potential for claims) between the clients; and 3) each client provides written informed consent as to the conflict. The rule is that you cannot consent around the conflict when the parties have an adverse claim. Cal does not have the counterpart ABA rules, but does have a rule that you must competently represent your client, which essentially covers the same matter.

Issue: We are given that Earl retained the firm for the purpose of collecting judgment against Little Corp. Thus, given Dan's position in Little Corp as the sole owner, there is an obvious conflict of interest. When a firm learns of a conflict during concurrent representation that involves a claim between the parties, the firm must withdraw from representation; conflicts to one lawyer are imputed to all members of the firm. They can drop one party and continue to represent the other, but only if the parties consent in writing.

We are given that the firm did not inform their clients of the conflict or withdraw but brought suit against Little Corp. (side issues discussed below). Thus, the firm has violated the rule and is subject to discipline.

Obligation of Firm & Supervisor and Employee for conduct not conforming to the rules

The rule is that firms must ensure that the lawyers and employers conform to the rules of conduct. In the case of supervising lawyers, they are responsible for the conduct of their employees if they know, order or ratify conduct of an employee that violates a rule of conduct. A partner is liable if they know of conduct and do not take steps to rectify or mitigate the conduct. The rule is that a lawyer who engages in conduct that he knows does not conform to the rules remains liable even if the conduct was ordered by a supervisor. Lastly, the ABA rule is that an attorney must report to the bar conduct of a member that does not conform to the rules, even if within their own firm (Cal difference: you may but don't have to report such conduct)

Issue: What is the liability of Baker and Grunt?

We are given that Grunt learned of the conflict of interest between Earl v. Little Corp/Dan and informed Baker. Baker took the position that since the matters were unrelated, there was no conflict of interest. Although the rule is that in cases of arguable law, a supervisor can "make the call" and the employee may proceed without liability, I conclude that this present scenario does not involve such an arguable point. Clearly, the interests of Little Corp/Dan are not trivial: the firm has filed a suit alleging fraud. We are also given that Baker told Grunt not to inform the other partners, so it can be inferred that Baker knew his conclusion on the legal point was without basis.

As Baker knew and ordered the conduct, he will be liable for disciplinary action for the conduct of Grunt. In the case of Grunt, his position may be less clear-cut. He correctly informed his supervisor of what he thought was a conflict and was given a position on the legal point. Given that he was told not to inform the other partners, there is some evidence that he must have suspected that Baker gave him incorrect, and perhaps illegal instructions. Thus, I conclude that Grunt was obligated to not carry out the instructions. Grunt will also be liable for discipline if he did not report the misconduct of Baker to the bar association (although in Cal you may but are required to report misconduct). The other partners in the firm apparently did not know of the conduct, so would not be liable for the incident, but may face liability for not ensuring that their employees conformed to the rules.

END OF EXAM