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Call #1.

Attorney-client relationship

Attorney-client relationship establishes with an actual agreement. However, a lawyer has the relationship with prospective client, too.

In the case, Ellen (E) contacted Linda (L), and said that Nonprofit (N) would like to retain L to help it develop a formal employment agreement with Ellen. L agreed. Therefore, there's Attorney-client relationship between L and N.

However, E is the only employee of N, and the issue is to help it develop a formal employment agreement with E. therefore, there's a potential relationship between N and E, which will be discussed below.

Agreement in writing

ABA requires that all agreement between a lawyer and a client should be in writing unless it is a contract with a corporation provided that there was previous similar contract.

California additionally requires that every contract should be in writing if the fee is more than \$1,000.

In this case, N is a newly formed California non-profit corporation with few assets and limited income. Therefore, there was no previous contract between L and N. However, Linda agreed to accept the matter without written agreement.

Therefore, there is a violation under ABA. It is not clear if the fee is more than \$1,000. If the fee was more than \$1,000, it is also an ethical violation under California.

Conflict of interest

A lawyer should avoid a conflict of interest between clients or client and a third party. If there's a

possible conflicts, the lawyer should withdraw from the contract, or advise the client to seek another counsel and if the client still want to be represented by the lawyer, the he must have written consent from the client and it should not harm the lawyer's ability to represent the client under ABA.

In California, a lawyer is obliged to disclose his conflict to the client in writing.

In this case, E said that N would like to retain Linda to help it develop a formal employment agreement with E, to make E officially the Executive Director on N. E's position as Executive Director would be as an officer of the company, but not as a board member. Therefore, there's a possibility of conflict of interests between E and N because of the stake involved. And it can also be said that there might be a prospective attorney-client relationship between L and E.

Therefore, L should have withdrawn from the contract or provide full information regarding the possible conflicts of interest in writing. L didn't do so either, and thus there's a possible ethical violation

Call #2. a.

Duty of care, loyalty and competence

A lawyer has a duty of care that reasonably prudent person would do in similar circumstances. He also has a duty of loyalty that he should put a clients best interest before others' interest including the lawyer himself.

A lawyer should be capable regarding the representation and should be competent of his work.

E drafted an employment agreement that included a proposed salary. Although E told L that her proposed salary was data-driven from a survey of similar positions, it was based in the for-profit field. L is a lawyer with experience in representing small business, both for-profit and nonprofit and therefore familiar with N's case since it is a non-profit small business.

Therefore, L has a duty to put N's best interest before others and give prudent care to N. And

she is competent and able to do so.

The purpose of the agreement between N and L is to help N develop a formal employment agreement, to make E the Executive Director of N, N should give proper advice with her knowledge and expertise for the benefit of N. Since L saw many other provisions in the draft agreement that were more favorable to E than those in a typical employment agreement. Therefore, L should inform it to N.

It is also an L's duty of communication that a lawyer should disclose material information to help a client make an informed decision.

Fairness to others

A lawyer should act fairly and do no harm to others without a good cause.

Therefore, L should act fairly to E regarding the employment contract. However, communicating the provision that is more favorable to E to N is not L's ethical violation because she acted honestly within her knowledge and expertise.

Call #2. b.

Duty of confidentiality

A lawyer may not reveal information acquired about a (prospective) client during her scope of work to a third party.

In this case, L acquired the source of the survey data during the scope of her work and therefore, has a duty to keep the confidential information unless E waived the right herself.

Duty of communication and report

As discussed above, a lawyer should disclose material information to help a client make an

informed decision. However, a lawyer is not obliged to report a confidential information unless it is to prevent serious crime or other unlawful activity.

In California, a lawyer is not obliged but may report, but he should dissuade the person involved with honest effort.

In the case, E's agreement is not involved any serious crime. Therefore, L is normally be permitted to report the information to the board.

However, because of her duty of confidentiality, she can not report the data without E's consent. Therefore, L should inform the board members that she bears a duty of confidentiality to E and thus should refrain from discussing the matter involved.

Question #2 Final Word Count = 910

END OF EXAM