

## Question 1

Alex is a recently-licensed attorney with a solo law practice. Alex was contacted by Booker, a friend during college, who is now a successful publisher of educational books and software. Booker asked Alex to perform the legal work to form a partnership between Booker and Clare, a creative writer of books for children. In a brief meeting with Booker and Clare, Alex agreed to represent both of them and set up the partnership for a fee of \$5,000.

Because Alex had no experience with forming partnerships, he hired Dale, a recently-disbarred attorney, as a “paralegal” at a wage of \$250 an hour. Although Dale had no paralegal training or certification, he had decades of experience in law practice, including the formation of partnerships. Alex notified the State Bar about hiring Dale and disclosed Dale’s involvement and disbarred status to both Booker and Clare.

Dale spent four hours on his own preparing the partnership documents and meeting with Booker and Clare about them. Alex paid Dale \$1,000 for his work. Alex spent a total of two hours on the partnership matter, including the initial meeting with Booker and Clare, reading the partnership documents in order to learn about partnerships, and a final meeting to have Booker and Clare sign the documents.

What ethical violations, if any, has Alex committed? Discuss.

Answer according to California and ABA authorities.

## Question 1

### *Professional Responsibility*

*(Topics: Conflict Of Interest; Fees for Legal Services; Fee Must be in Writing; Duty of Competence; Duty to Communicate; Unauthorized Practice of Law; Sharing of Legal Fees)*

Alex is a recently-licensed attorney with a solo law practice. (Factor as to the reasonableness of fees) Alex was contacted by Booker, (Alex did not solicit Booker, no issue) a friend during college, who is now a successful publisher of educational books and software. Booker asked Alex to perform the legal work to form a partnership between Booker and Clare, a creative writer of books for children. In a brief meeting with Booker and Clare, Alex agreed (In California, if attorney fees exceed \$1,000 the contract must be in writing) to represent both of them (Representation of both partners with opposite interests will lead to a Potential Conflict of Interest) and set up the partnership for a fee of \$5,000. (The fee must be reasonable)

Because Alex had no experience with forming partnerships, (To be competent a lawyer need not necessarily have special training or prior experience to handle legal problems with which the lawyer is unfamiliar) he hired Dale, a recently-disbarred attorney, as a “paralegal” at a wage of \$250 an hour. (A lawyer may employ the services of paraprofessionals and delegate functions to them as long as the lawyer supervises the work and retains responsibility) Although Dale had no paralegal training or certification, (A person can work as a paralegal without a certification) he had decades of experience in law practice, including the formation of partnerships. (Competent representation can also be provided through the association of a lawyer of established competence in the field in question) Alex notified the State Bar (Not 100% sure why this is here) about hiring Dale and disclosed Dale’s involvement and disbarred status to both Booker and Clare. (Duty to Communicate -A lawyer shall consult with the client about the means by which the client's objectives are to be accomplished and shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation)

Dale spent four hours on his own preparing the partnership documents (Preparing documents does not require professional judgment. Thus, it is not the practice of law) and meeting with Booker and Clare about them. (Dale’s meeting with Booker and Clare might constitute the Unauthorized Practice of Law) Alex paid Dale \$1,000 for his work. (No facts indicate Alex “shared” the fees with Dale. Alex simply paid him an hourly rate) Alex spent a total of two hours on the partnership matter, (Alex a recently-licensed attorney who had not had any experience with partnerships nor a past business relationship with either Booker or Alex, charged \$5,000 to set up their partnership which took Alex two hours and Dale four hours. The fee may be considered unreasonable) including the initial meeting with Booker and Clare, reading the partnership documents in order to learn about partnerships, (A lawyer can provide adequate representation through necessary study) and a final meeting to have Booker and Clare sign the documents.

What ethical violations, if any, has Alex committed? Discuss.

**Major Issues that Needed to be Discussed**

Professional Responsibility Issues Raised by Alex's Conduct

( )	Clearly separating and organizing the potential issues and ethical violations of Professional Conduct according to the facts	<b>7%</b>
( )	Conflict of Interest <i>Recognizing potential conflict</i>	<b>14%</b>
( )	Fee Agreement for Legal Services <i>Must be reasonable</i> California distinction: <i>Must be in writing</i> if over \$1,000	<b>22%</b> (16%)
( )	Duty of Competence <i>Ability to get Competent</i>	<b>19%</b>
( )	Duty to Communicate <i>Communicate all aspects of the case to client</i>	<b>8%</b>
( )	Unauthorized Practice of Law <i>Whether Alex allowed Dale to practice law</i>	<b>18%</b>
( )	Sharing of Legal Fees <i>Paid Dale an hourly rate</i>	<b>12%</b>

## Quick Glance at Relevant Issues

*Conflict Of Interest*

*Fees for Legal Services*

*In California, Fee Must be in Writing if over \$1,000*

*Duty of Competence*

*Duty to Communicate*

*Unauthorized Practice of Law*

*Sharing of Legal Fees*

### **Issue and Rule Outline** by One-Timers ©

What ethical violations, if any, has Alex committed?

Alex has committed several violations. His first violation occurred when he failed to memorialize his fee agreement in writing as it was over \$1,000. Alex may also have committed an ethical violation if his fee was unreasonable. In addition, Alex failed to realize that a reasonable lawyer would not have represented two partners whose interests are directly adverse to one another. Alex violated the duty to avoid Conflicts of Interest. Last, Alex may have aided Dale in the Unauthorized Practice of Law when he allowed Dale to meet with Booker and Clare.

#### Conflict Of Interest:

##### Current Clients in the Client-Lawyer Relationship

**(Rule)** The Model Rules of Professional Conduct Rule 1.7(a) states a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if the representation of one client will ***be directly adverse to another client***.

(b) Notwithstanding the existence of a concurrent conflict of interest a lawyer may represent a client if:

- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation *to each affected client*; and
- (4) each affected client gives informed consent, confirmed *in writing*.

#### *Prohibited Representations*

Clients may consent to representation notwithstanding a conflict. However, ***some conflicts are non-consentable***, meaning that the lawyer involved cannot properly ask for such agreement or provide representation on the basis of the client's consent.

**(Analysis)**

- Booker asked Alex to perform the legal work to form a partnership between Booker and Clare
- A partnership, where both parties' interests are as much the same as they are different, is an example of a *non-consentable* representation (Similar to a pre-marital agreement)
- Alex should either represent only Booker or withdraw

**(Conclusion)** Alex should have realized that representation of both parties was improper as the clients' interests are directly adverse to one another. A reasonable lawyer would not have undertaken the relationship of both partners.

**(Issue)** Fees for Legal Services

**(Rules)** The ABA Model Rules of Professional Conduct Rule 1.5 governs the Client-Lawyer Relationship regarding Fees (a) A lawyer shall not charge an unreasonable fee. The factors to be considered in determining the reasonableness of a fee include the following:

- (1) the *time and labor* required and the skill requisite to perform the service properly;
- (3) the *fee customarily charged* in the locality for similar legal services;
- (5) the *time limitations* imposed by the client or by the circumstances;
- (6) the nature and length of the professional *relationship with the client*;
- (7) the experience, reputation, and *ability of the lawyer* performing the services

(b) The scope of the representation and the basis of the fee shall be communicated to the client, *preferably in writing*, before or within a reasonable time after commencing the representation.

California Rules of Professional Conduct Rule 4-200 states:

(A) A member shall not enter into an agreement for, charge, or collect an illegal or unconscionable fee. The factors to determine whether the fee is reasonable are similar to the ABA rules.

**(Analysis)**

- Fee for setting up a partnership was \$5,000. Is that customary in the locality?
- Alex spent a *total of two hours* on the partnership matter
- Dale spent *four hours* preparing documents and meetings
- Alex had *no experience* with forming partnerships
- Alex is a *recently-licensed* attorney

**(Conclusion)** Fee was unreasonable under the circumstances.

(Issue) Fee Must be in Writing in California if over \$1,000

(Rule) California's Business and Professions Code § 6148(a) states If the total expense to a client, including attorney fees, **will exceed one thousand dollars** (\$1,000), the contract for services in the case **shall be in writing**.

(Analysis)

- When Alex agreed to represent both Booker and Clare to set up the partnership for a fee of \$5,000 was it in *writing*?

(Conclusion) Failure to comply with §6148(a) **renders the agreement voidable** at the option of the client, and the attorney shall, upon the agreement being voided, be **entitled to collect a reasonable fee**.

Duty of Competence in the Client-Lawyer Relationship

(Rule) Rule 1.1 states a lawyer shall provide competent representation to a client. Competent representation requires the legal **knowledge, skill, thoroughness and preparation** reasonably necessary for the representation.

A lawyer can provide adequate representation through necessary study. Competent representation can also be provided through the association of a lawyer of established competence in the field in question. A lawyer may accept representation where the requisite level of competence can be achieved by reasonable preparation.

(Analysis)

- Alex had no experience with forming partnerships
- Alex hired Dale as a paralegal because he had decades of experience in law practice, including the formation of partnerships
- Alex read the partnership documents in order to learn about partnerships

(Conclusion) Alex became **competent** by obtaining the *knowledge, skill, thoroughness and preparation* necessary for representation.

Duty to Communicate

(Rule) Rule 1.4(a) states a lawyer shall (2) reasonably *consult* with the client about the means by which the client's *objectives are to be accomplished*; and (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

(Analysis)

- Alex notified the State Bar about hiring Dale
- Alex disclosed Dale's involvement and disbarred status to both Booker and Clare

(Conclusion) Alex *properly* communicated with his clients and has not committed a violation.

## Unauthorized Practice of Law

**(Rule)** Rule 5.5(a) of the Model Rules of Professional Conduct states a lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession ***or assist another in doing so.***

This Rule ***does not prohibit*** a lawyer from employing the services of paraprofessionals and delegating functions to them, so long as the lawyer supervises the delegated work and retains responsibility for their work.

California's Business and Professions Code § 6125 states no person shall practice law in California unless the person is an active member of the State Bar. § 6126 (b) states any person who has been disbarred from the State Bar with and thereafter practices law is guilty of a crime punishable by imprisonment in the state prison or a county jail.

### **(Analysis)**

- Alex was permitted to hire Dale as a paralegal
- The rules allow Dale to prepare partnership documents
- Alex may have *assisted* Dale in the *unauthorized practice of law* when Dale met with Booker and Clare regarding the documents

**(Conclusion)** Judgment call on whether Alex assisted Dale in the Unauthorized Practice of Law

## Sharing of Legal Fees - Professional Independence of a Lawyer

**(Rule)** Rule 5.4 states a lawyer shall not share legal fees with a nonlawyer.

### **(Analysis)**

- Alex hired Dale as a "paralegal" at a wage of \$250 an hour
- Dale spent four hours on his own preparing the partnership documents
- Alex paid Dale \$1,000 for his work

**(Conclusion)** Alex did *not* share legal fees with a nonlawyer.

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