

You advise that you represent two clients (A and B) employed by the same employer in two civil lawsuits setting forth claims arising out of improper conduct by the employer in the past relative to both clients. Recently, A engaged in improper activity, which could serve as a basis for his lawful termination by the employer.

You wish to know whether it is unethical for you to propose to settle B's case upon the condition, inter alia, that the employer not fire A. You state that it may be assumed that both employees fully understand and agree to the proposed course of action.

DR:5-107 states that "a lawyer who represents two or more clients shall not make or participate in the making of an aggregate settlement of the claims of or against his client, unless each client has consented to the settlement after being advised of the existence and nature of all the claims involved in the proposed settlement, of the total amount of the settlement and of the participation of each person in the settlement."

The Committee opines that "if each client has consented to the settlement after being advised of the existence and nature of all the claims involved in the proposed settlement, of the total amount of the settlement and of the participation of each person in the settlement," it would not be improper for you to propose settling these cases upon the condition that the employer not fire A. Although you state that the employees understand and agree to the proposed course of action, the Committee advises that the employees must be advised of all the factors set forth in DR:5-107. See also LE Op. 616 and LE Op. 781.

Committee Opinion  
April 18, 1988