

LEGAL ETHICS OPINION 1264

SCOPE OF REPRESENTATION –
SETTLEMENT OFFERS: INFORMING
CLIENT OF SETTLEMENT PROPOSAL
EVEN IF IT IS NOT IN THE BEST
INTEREST OF THE CLIENT.

You have advised that you represent two former employees of a corporation who claim the right to stock in the company under an oral agreement. One employee has begun litigation; the other has not done so to date. Prior to the institution of litigation, accusations of embezzlement were made against the former employee who has not yet begun litigation, although no charges were ever brought against either former employee. You have now received a settlement offer which involves your clients' dropping their claim for stock, making some cash payment to the corporation (which has no pending suits or counterclaims against either of them), admitting what they have done (details of which you have not provided), agreeing to the entry of an injunction prohibiting them from future acts damaging to the corporation, and agreeing to cooperate and give complete and truthful information about the corporation's president in a pending divorce proceeding. In exchange, the corporation and its president agree not to initiate criminal proceedings against your clients or to volunteer incriminating information to the authorities.

You indicate that you believe the settlement offer to be an absurd proposal and offered as sheer intimidation. You request that the Committee opine on whether you are compelled to pass this offer on to your clients.

The appropriate and controlling disciplinary rules are DR:6-101(C) which provides that a lawyer shall keep a client reasonably informed about matters in which the lawyer's services are being rendered, and DR:6-101(D) which provides that a lawyer shall inform his client of facts pertinent to the matter and of communications from another party that may significantly affect settlement or resolution of the matter. Notwithstanding DR:6-101(C) and DR:6-101(D), a lawyer may exercise his professional judgment to limit or vary his client's objectives and waive or fail to assert a right or position of his client only if he has his client's express or implied authority to do so. (See DR:7-101(B)(1))

It is the view of the Committee that all settlement offers must be promptly communicated to the client unless the attorney has received prior express or implied authorization from the client to reject offers below a predetermined threshold of acceptability. The Committee opines that, absent any such prior authorization, the attorney is required to communicate all settlement proposals and not just ones that the lawyer believes are in the client's best interest. The question of whether the lawyer has express or implied authorization is a legal issue beyond the purview of this Committee. Where no such authority exists and the lawyer has received what is believed to be a less than acceptable settlement offer, the Committee believes that it is incumbent upon the lawyer to counsel the client as to the pitfalls of accepting such a settlement. The decision to settle, however, belongs only to the client and not the lawyer. (See New York County Lawyers' Association Opinion 667 (undated))

Committee Opinion
September 21, 1989

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