

LEGAL ETHICS OPINION 1580

**ZEALOUS REPRESENTATION:  
ATTORNEY ARGUING THAT A PRIOR  
CASE DECISION IS CONTROLLING IN  
THE NEW CASE WHEN THE  
ATTORNEY KNOWS THE DECISION IS  
NOT REFLECTIVE OF THE OUTCOME  
OF THE PRIOR CASE.**

You have presented a hypothetical situation in which a Virginia Assistant Attorney General represented a State agency in an administrative hearing held pursuant to Virginia Code § 9-6.14:12 involving the rights/benefits of Party A. The hearing officer recommended that the agency deny in total the relief sought by Party A. Then Party A filed exceptions to the recommendation of the hearing officer, and Assistant Attorney General, on behalf of the agency, negotiated a settlement agreement ("Agreement") with Party A. Under the Agreement, the agency would pay Party A a sum of money which was less than the amount of money which Party A requested, but more than the hearing officer recommended to be due under the agency's regulations. The Agreement also contained a provision which allowed-the agency to issue its final case decision from which Party A would not appeal. Party A signed the Agreement before the final case decision was entered, and the agency signed the Agreement the next day. The agency's case decision did not reflect the underlying settlement agreement and was written as if the agency took a final action on the claim in a manner completely adverse to Party A. You state that, basically, the decision held that absolutely no money was owed to Party A, and that the decision did not divulge the amount, agreed to in the settlement, paid to the entity.

You further state that in another formal evidentiary hearing, before the same agency but involving a different entity, Party B, the same issue which was the subject of Party A's case arises. The same Assistant Attorney General represents the agency. Assistant Attorney General argues to the formal evidentiary hearing officer that the former case decision should control the hearing officer's decision. Finally, you indicate that when Party B attempts to put the former settlement agreement into evidence, Assistant Attorney General argues that the former settlement agreement is irrelevant and inadmissible in the present case.

You have asked the committee to opine whether, under the facts of the inquiry, it is unethical for an assistant attorney general to argue in a formal administrative hearing before a state agency (1) that a prior case decision of that agency, adverse to a like-situated claimant which does not reflect that it was the product of a settlement agreement favorable to the other claimant, should control the decision in another case; and (2) that the prior settlement agreement is irrelevant and inadmissible.

The appropriate and controlling Disciplinary Rule related to your inquiry is DR:7-102(A)(2) which states that a lawyer shall not knowingly advance a claim or defense that is unwarranted under existing law, except that he may advance such claim or defense if it can be supported by good faith argument for an extension, modification, or reversal

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[reversal] of existing law. Further guidance is available through Ethical Consideration 7-20 [EC:7-20] which states, in pertinent part, that the adversary system contemplates that each lawyer will present and argue the existing law in the light most favorable to his client.

Since the committee is of the opinion that the concept of zealous representation requires an attorney to argue vigorously for his client within the bounds of the law, the committee opines that it is not improper for an assistant attorney general to argue that a prior case decision of that agency should control the hearing panel's decision in another case, irrespective of the possibility that the prior case decision does not reflect that it was the product of a settlement agreement and not the product of a panel opinion. See LE Op. 1476.

As to your inquiry regarding the relevance and admissibility of the prior settlement agreement, the committee finds that it raises an evidentiary question within the purview of the fact-finder and outside the committee's authority.

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