

ADVISORY COMMITTEE ON PROFESSIONAL ETHICS

Appointed by the Supreme Court of New Jersey

OPINION 721

Agreement as Condition of Settlement That Client Refrain From Filing an Attorney Ethics Grievance or Withdraw a Grievance Already Filed

The Advisory Committee on Professional Ethics received an inquiry asking whether an attorney may seek or agree, as a condition of settlement of an underlying dispute, that the client not file an ethics grievance with regard to conduct of the attorney in the matter. The Committee finds that such an agreement is prejudicial to the administration of justice and, accordingly, violates *Rule of Professional Conduct* 8.4(d). An agreement conditioned on the withdrawal of a grievance already filed similarly would violate *Rule of Professional Conduct* 8.4(d).

Attorney discipline is not a private cause of action or private remedy for misconduct that can be negotiated between an attorney and the aggrieved party. The discipline process furthers public, not private interests: it is not intended to punish the attorney or vindicate the aggrieved party but, rather, “to preserve the confidence of the public in the integrity and trustworthiness of lawyers in general.” *In re Wilson*, 81 N.J. 451, 456 (1979).

Rule of Professional Conduct 8.4(d) provides that “[i]t is professional misconduct for a lawyer to . . . engage in conduct that is prejudicial to the administration of justice.” A demand, as a condition of settlement of an underlying dispute, that the client refrain from filing an ethics grievance or withdraw a grievance already filed is prejudicial to the administration of justice because it thwarts the disciplinary system from serving its principal purpose of preserving the confidence of the public in the integrity and trustworthiness of attorneys. Such agreements are also against public policy and, presumably, are unenforceable.

Inquirer suggested that *Rule of Professional Conduct* 1.8(h) may be relevant to the analysis. *Rule of Professional Conduct* 1.8(h) prohibits an attorney from settling a claim for legal malpractice with a client who is not represented by counsel and has not been advised to obtain independent counsel. The attorney negotiating disposition of a malpractice claim with a client is settling a purely private matter. As noted above, disciplinary charges concern public, not private, interests. Discipline may not be the subject of private negotiation between the attorney and client, even when the client is represented in the negotiation by independent counsel.

Accordingly, an attorney may not seek or agree, as a condition of settlement of an underlying dispute, that the client not file an ethics grievance with regard to conduct of the attorney in the matter or withdraw a grievance already filed. Such an agreement is prejudicial to the administration of justice and, accordingly, violates *Rule of Professional Conduct* 8.4(d).