Final

Rhode Island Supreme Court
Ethics Advisory Panel Op. 2025-11
Issued October 9, 2025

FACTS

The inquiring attorney's firm represents a client in an ongoing state tort suit. Concurrently, the firm agreed to represent the client, as trustee, in an unrelated federal compensation matter. The client alleges that the firm failed to timely file his or her claim in the federal matter, thereby causing it to be barred.

After consultation with outside counsel, the client proposes to settle his or her malpractice claim for a certain sum of money and the firm's agreement to handle the remainder of the state court suit free of charge. The firm wishes to accept this proposed settlement agreement but wonders whether it comports with the Rules of Professional Conduct.

ISSUE PRESENTED

The inquiring attorney asks whether the proposed settlement agreement comports with the Rules of Professional Conduct?

OPINION

It is the Panel's opinion that the proposed settlement agreement comports with the Rules of Professional Conduct.

REASONING

The facts as described by the inquiring attorney implicate Rule 1.8(h):

> (h) A lawyer shall not:
>
> (1) make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless the client is independently represented in making the agreement; or
>
> (2) settle a claim or potential claim for such liability with an unrepresented client or former client unless that person is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel in connection therewith.

This rule makes clear that "[a]greements settling a claim or a potential claim for malpractice are not prohibited" under the Rules of Professional Conduct. Rule 1.8, Comment [15]. It is equally clear, however, that such agreements are not permitted unless "the lawyer . . . first advise[s the client] in writing of the appropriateness of independent representation in connection with such a settlement" and "give[s] the client . . . a reasonable opportunity to find and consult independent counsel." Id. This is to avoid "the danger that a lawyer will take unfair advantage of an unrepresented client or former client" in such a scenario. Id.

In this case, the inquiring attorney affirmatively states that the client made the proposed settlement agreement to the inquiring attorney's firm only after consultation with outside counsel. Accordingly, the Panel concludes that the proposed settlement agreement comports with Rule 1.8(h)(2). See Oregon Ethics Op. 2005-61 (determining that an attorney who failed to timely file a claim on behalf of a client may "ethically effect a settlement with Client if Lawyer first advises Client 'in writing' that independent representation for Client is desirable in connection with any proposed settlement" pursuant to Oregon's Rule 1.8(h)).