

FORMAL OPINION NO 2005-47

Settlement Including Promise Not to Sue Again

Facts:

Plaintiff's Lawyer files a case against Defendant. Through Defendant's Lawyer, Defendant offers to settle the case if Plaintiff's Lawyer will agree never to sue Defendant again.

Question:

May Defendant's Lawyer make this offer or may Plaintiff's Lawyer accept this offer?

Conclusion:

No.

Discussion:

Oregon RPC 5.6 provides in part:

A lawyer shall not participate in offering or making:

....

(b) an agreement in which a direct or indirect restriction on the lawyer's right to practice is part of the settlement of a client controversy.

The proposed settlement would violate Oregon RPC 5.6(b). It would therefore be unethical either to propose or to accept such a settlement. *See also* Oregon RPC 8.4(a)(1) (it is professional misconduct for

lawyer to “knowingly assist or induce another” to violate the Rules of Professional Conduct).

Approved by Board of Governors, August 2005.

COMMENT: For additional information on this general topic and related subjects, see *Restatement (Third) of the Law Governing Lawyers* § 13 (2000) (supplemented periodically); ABA Model RPC 5.6. *Cf. In re Brandt*, 331 Or 113, 10 P3d 906 (2000) (lawyers violated *former* DR 2-108(B) by entering into agreement, in connection with settlement of controversy or suit, restricting lawyer’s right to practice law when they entered retainer agreement, in connection with settling client’s claim against tool manufacturer, which would have prevented them from representing other plaintiffs against manufacturer in future); *In re Vanagas*, 8 DB Rptr 185 (1994) (lawyer violated rule by offering, in conjunction with client’s settlement offer, not to pursue any employment claims on behalf of future clients against opposing party in exchange for \$25,000 to be paid to lawyer).