
**E-87-11 Settlements: Attorneys as parties to as
guarantors against lien claims**

Question

Do any standards of professional conduct preclude attorneys from proposing, demanding and/or entering into settlement agreements that include indemnification and hold harmless provisions binding an attorney to personally satisfy any unknown lien claims against the settlement funds or property?

Opinion

Under both the Code of Professional Responsibility [repealed effective Jan. 1, 1988, and cited herein as Code or “SCR 20.”] and the Rules of Professional Conduct for Attorneys [created effective Jan. 1, 1988 and cited herein as Rules or “SCR 20:.”], inclusion of such indemnification and hold harmless provisions in settlement agreements is improper. Accordingly, lawyers may not propose, demand or enter into such agreements.

The primary ethical problem with conditioning a settlement agreement on a lawyer’s becoming a guarantor against lien claims is that the lawyer’s interests are placed clearly at odds with his or her clients. Although the U.S. Supreme Court’s holding in *Evans v. Jeff D.*, 106 S. Ct. 1531 (1986), suggests that settlement proposals may sometimes legally and ethically drive such a potential wedge between attorney and client, this committee concurs with other bar association ethics committees in holding that it is unprofessional conduct to enter into or to propose such agreements, at least in contexts other than the 1976 Civil Rights Attorneys Fees Act, which was at issue in *Evans, supra*. See, e.g., District of Columbia Opinion 147 (1/24/85); New York City Opinion 82080 (reaffirming Opinion 80-94).

In addition, both the Code and Rules narrowly circumscribe the extent to which lawyers may acquire a financial interest in representation for which they are responsible. See generally SCR 20.26 and SCR 20:1.8. Neither the Code nor Rules expressly or, in the committee’s opinion, implicitly sanctions the usage of such indemnification and hold harmless provisions. In summary, we conclude that a lawyer’s participating in settlement agreements incorporating such provi-

sions would constitute a prohibited acquisition of a financial (although potentially negative) interest in the cause of action or subject matter of the litigation that the lawyer is conducting, as well as an improper advance of financial assistance to a client. *See* SCR 20.26 and SCR 20:1.8(e) and (j).