

MINUTES

COMMITTEE: Ethics Committee

DATE: November 4, 1999

9. CHAPTER 4, RULE 1.1: WHETHER PROPER FOR LAWYER TO ASSIST CLIENT TO AVOID OPPOSING PARTY'S LAWYER

Lawyer A asked for an opinion on a hypothetical set of facts. Lawyer A has not made a complaint against the other lawyer ("Lawyer B") and does not intend to do so. However, he does want to know whether what occurred in certain circumstances is proper behaviour. Lawyer A advises as follows:

In this set of facts, we are the solicitors of record in a lawsuit filed against a contractor by our client, a lien holder. We have also filed a claim with a bonding company. To the best of our knowledge the contractor is insolvent.

The contractor's lawyer prepared settlement documents that were provided to the contractor, intending the documents to be executed by our client. This was done by the contractor's lawyer ostensibly on information provided by his client that our client had stated we were not to be involved in the settlement. It is common ground we would not have recommended that our client settle its claim with an insolvent company unless appropriate guarantees for payment were in place.

The Committee considered the issue of whether Lawyer B's actions in permitting his client to directly approach Lawyer A's client to execute documents prepared by the other lawyer is contrary to Chapter 4, Rule 1.1.

It was the Committee's view that the parties to a civil matter may voluntarily speak to each other without lawyer consent. A lawyer is not obligated to dissuade a client from talking to the other side and may give a client advice about such a contact. However, the lawyer may not plan and direct such a contact for the purpose of avoiding Rule 1.1.

It was the Committee's view that, on the facts given to them, Lawyer B's involvement in the matter fell short of the planning and direction required of him in order to contravene the rule.

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