

MINUTES

COMMITTEE: Ethics Committee

DATE: May 9, 1996

7. CHAPTER 8, RULE 1(b); PROPRIETY OF SETTLEMENT WHICH EXCLUDES CRIMINAL PROSECUTION

A lawyer who acts for a client who has claimed damages for sexual assault in a civil action against the defendant requested the Committee's opinion on the propriety of a proposed term of a settlement agreement. The parties have agreed on most terms of a settlement. However, one of the terms of settlement proposed by the lawyer for the defendant prevents the plaintiff from discussing the allegations of assault with any person, save for a counselor where the disclosure of the assault is limited to obtaining psychological assistance.

Although the proposed agreement does not say so expressly, the clause prohibits the plaintiff from bringing the allegation of assault to the attention of the police to be dealt with according to the Criminal Law.

The Committee considered its own opinion from September 26, 1995. In that opinion the Committee was of the view that it would not be proper for a lawyer to assist a client to achieve a settlement agreement for a claim of sexual assault where a term of the agreement was that the client would agree to make no criminal complaint about the conduct of the potential defendant. The Committee was of the view that it is immaterial whether a criminal prosecution is expressly or implicitly proscribed by a settlement agreement, it would not be proper for a lawyer to assist a client to achieve a settlement that attempts to prevent someone from making a criminal complaint.