



Committee on Professional Ethics

Opinion #295 - 5/23/73 (15-73)

Topic: Professional liability insurance; duty of lawyer to client; lawyer's settlement of claim which former client has against him

Digest: Lawyer who settles claim of former client against him should bear in mind possible effect upon his professional liability coverage, although policy cannot limit lawyer's ethical obligations.

Code: EC 6-6
DR 6-102

QUESTION

Should N.Y. State 275 (1972) be modified in view of provisions customarily included in professional liability insurance policies under which the insured shall not voluntarily make any payment, assume any obligation or incur any expense in connection with a claim covered by the policy, except at his own cost?

OPINION

N.Y. State 275 (1972), like all opinions of this Committee, decided only matters of professional ethics. Questions relating to the interpretation of specific provisions contained in a lawyer's professional liability insurance policy are matters of law, upon which this Committee does not pass.

We have, however, reviewed N.Y. State 275 (1972) and reaffirm its ethical conclusions. That opinion deals with a situation where a lawyer, who has undertaken to bring an action for a client, negligently failed to do so, thereby permitting the running of the statute of limitations against his client's cause. Our opinion recognized that the lawyer has a professional duty promptly to notify his client of his failure to act and of the possible claim the client may have against him. That opinion also held that the lawyer is ethically free to settle such a claim with a former client, following his withdrawal from the case accompanied by appropriate full disclosure and a recommendation that the client retain other counsel.

While a lawyer is thus obligated to tell his client of his failure to take timely action and of the possibility that the client may have a claim against him, his professional obligation under N.Y. State 275 (1972) does not require him to admit or concede actual liability. A lawyer who makes such a concession, or who elects to negotiate a settlement with a former client, must, of course, bear in mind the

OVER---

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinion

Opinion # 295

-2-

possible effect any voluntary concession of liability, payment, or assumption of obligation by him may have upon his professional liability insurance coverage.

We also take this occasion to call to the attention of the Bar that the Code expressly forbids a lawyer from attempting to limit his liability to any client for personal malpractice. EC 6-6; DR 6-102. A fortiori, lawyers may not by virtue of a contract with an insurance company in any way limit the scope of any professional duty or obligation owed to any client, as for example, by agreeing in a policy that he will not communicate to his client the fact that he has allowed the statute of limitations to run.
