

**ORR & RENO, P.A. ETHICS AND PROFESSIONAL LIABILITY
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**The Ethics of Agreements to Prevent a Client from Filing a Professional
Conduct Grievance against an Attorney**

Regrettably, lawyers sometimes find themselves involved in disputes with their own clients, often involving fees, the quality work, or other issues regarding the representation. In negotiating the settlement of such disputes, lawyers may be tempted to ask the client to agree not to file a professional conduct grievance or otherwise report the lawyer's conduct to disciplinary authorities. However, doing so raises additional ethical concerns, independent of those that may exist in the underlying dispute.

The New Hampshire Rules of Professional Conduct do not directly address this issue. Rule 1.8(h), which deals with agreements to limit and settle malpractice claims, does not address restricting a client's filing of professional conduct complaints. However, the NHBA Ethics Committee recently opined that settlement of a fee or malpractice dispute cannot be conditioned on the client's promise not to file a grievance against the lawyer or report the lawyer's misconduct to the appropriate disciplinary authority. *See* N.H. Ethics Committee Advisory Op. #2011-12/4 (2011). That conclusion is consistent with numerous other courts and ethics committees that have examined this issue. *See* ABA/BNA Lawyers Manual on Professional Conduct, §51:114; *People v. Moffitt*, 801 P.2d 1197 (Colo. 1990); *In re Freeman*, 835 N.E.2d 494 (Ind. 2005); *In re Wallace*, 518 A.2d 740 (N.J. 1986); *In re Goldberg*, 442 N.Y.S.2d 551 (N.Y. App. Div. 1981); *State ex rel. Oklahoma Bar Ass'n v. Colston*, 777 P.2d 920 (Okla. 1989); Arizona Ethics Op. 91-23 (1991); District of Columbia Ethics Op. 260 (1995); North Carolina Ethics Op. 84 (1988). This position holds true even if the lawyer believes the grievance to be unjustified. *See* Connecticut Informal Ethics Op. 97-13 (1997).

The reasoning behind such rulings is that the rules of professional conduct serve a purpose beyond rectifying a particular wrong to an individual client. The rules are also designed to regulate the bar and protect the public generally. Thus, when settling disputes with clients, lawyers should refrain from asking them to agree not to file professional conduct complaints or otherwise report alleged misconduct. This will eliminate at least one potential ethical violation, where other underlying misconduct may or may not exist.

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