

ETHICS: CASE STUDY SHOWS SETTLEMENT TERMS HAVE MEANING

by

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A lawyer representing a client attempts to help the client achieve her goals. In doing so, a lawyer may attempt to think of tactics that, depending on one's perspective, may be labelled creative or sharp or the like.

All is well if these tactics are within the Rules of Professional Conduct. When those tactics exceed the permissible limits set forth in the rules, however, trouble can arise and the lawyer can be exposed to professional discipline. An example based in part on a matter before the Office of Lawyers Professional Responsibility illustrates the point.

The lawyer represented a client in a real estate boundary dispute with the client's neighbor. The dispute was about title to a portion of property along the boundary between the parties' lakeshore property. The dispute was very contentious. The parties simply did not like each other, and the neighbor often looked for ways to "get at" the lawyer's client.

Ultimately, the neighbor commenced litigation. While a motion for summary judgment was pending, the parties reached a mediated settlement agreement. Pursuant to that agreement, the client agreed to execute a quit claim deed to the neighbor concerning the interest of the client in the disputed property.

Shortly thereafter, the neighbor's counsel drafted and then sent to the lawyer a quit claim deed. The lawyer stated that the deed "looked fine" and that the client would sign it. Ultimately, however, the client did not, in fact, sign the deed. Both parties then filed motions to enforce the settlement agreement.

Shortly before the hearing on the motions, the lawyer requested the neighbor to sign a stipulation which was, in essence, an agreement different from the mediated agreement reached previously. The neighbor declined.

The court thereafter ruled on the cross-motions to enforce the mediated settlement agreement. The court issued an order directing the lawyer's client to comply with the mediated settlement agreement within 30 days.

The client then executed a quit claim deed drafted by the lawyer. This deed, however, contained language regarding riparian rights not contemplated by the mediated settlement agreement.

Again the court had to hear the matter. The court found that the lawyer's client improperly submitted a quit claim deed that contained language regarding riparian rights that was not contemplated by and was not part of the parties' mediated settlement agreement. The lawyer argued that her conduct was not improper because the quit claim deed that the lawyer had drafted was not contrary to any of the express terms in the settlement agreement.

The deed the lawyer drafted and submitted contained language in addition to and beyond that envisioned in the settlement agreement. The lawyer was without authority to add this language absent agreement of all parties. By way of analogy, the parties in a personal injury matter may agree to a settlement which involves payment by the defendant to the plaintiff of a certain sum of money. The plaintiff may then want to refuse to accept payment unless the defendant also issues an apology for the alleged wrongful conduct. Although this additional condition would not be inconsistent with the express terms of the settlement agreement, it is a term which is not part of the agreement. In this case, as well, the lawyer acted improperly by adding language to the quit claim deed which was not envisioned in the four corners of the negotiated settlement agreement.

The drafting and filing of a deed which did not comport with the mediated settlement agreement violated Rules 3.1 and 8.4(d), Minnesota Rules of Professional Conduct (MRPC). Rule 3.1, MRPC, prohibits a lawyer from asserting claims that have no basis in law and fact. Here, there was no basis upon which to submit a deed that differed from the terms established in the negotiated settlement agreement. Rule 8.4(d), MRPC, prohibits a lawyer from engaging in conduct prejudicial to the administration of justice. The lawyer's filing of the non-conforming quit claim deed caused the court, as well as the neighbor, to unnecessarily spend time, effort and resources to deal with that issue.