ETHICAL PITFALLS IN SETTLEMENT NEGOTIATIONS

Restrictions on Future Representation

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ABA Model Rule 5.6(b)

“A lawyer shall not participate in offering or making:

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“(b) an agreement in which a restriction on the lawyer’s right to practice is part of the settlement of a client controversy.”
Direct Restrictions

- Can’t directly condition settlement on the lawyer promising not to take on cases against the settling party
- Based on public policy considerations
“Indirect” Restrictions

- *In re Brandt/Griffin*,
  10 P.3d 906 (Or. 2000)

- *Florida Bar v. St. Louis*,
  967 So.2d 108 (Fla. 2007)

- *Florida Bar v. Rodriguez*,
  959 So.2d 150 (Fla. 2007)
Other Restrictions

• ABA Formal Ethics Opinion 93-371 & settlement “opt out” restrictions

• ABA Formal Ethics Opinion 00-417 & restrictions on use of information
Whose Problem?

• Not just the claimant’s lawyer

• Model Rule 5.6(b) prohibits both making and offering

What Kinds of Problems?

• Regulatory Discipline

• Civil Liability Claims

For Further Reading

• February 2009 DRI *For the Defense* article included with program materials (reprinted with permission)

• ABA Center for Professional Responsibility web site—www.abanet.org/cpr