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Subject: [External]REQUESTING COMMENTS ON RECOMMENDATIONS,RELATING TO RETAINER FEE AGREEMENTS
IN,STATUTORY FEE-SHIFTING CASES
Date: Tuesday, November 30, 2021 7:51:51 PM
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Dear Sir/Madam:

I disagree with the recommendation 7. A Retainer Agreement May Not Prohibit Client from Settling Case When Settlement Waives Lawyer's Fee Award.

Any offer in any case that involves fee-shifting for a prevailing plaintiff that includes a fee waiver is not a lawful settlement offer under New Jersey law and our Rules of Professional Conduct. Coleman v. Fiore Bros, Inc., 113 N.J. 594, 606 (1989) (requiring in fee-shifting cases that “defense counsel [must] not insist on waiver of fees as a condition for settlement”); Pinto v. Spectrum Chemicals and Laboratory Products, 200 N.J. 580, 599 (abrogating Coleman on other grounds but affirming that its “prohibition on a defendant conditioning settlement on the waiver of attorney’s fees has continuing validity in fee-shifting cases.”) Indeed, as the court in Pinto described such an offer, “a defendant’s demand that a plaintiff’s attorney waive her statutory fee as the price of a settlement is not only an unwarranted intrusion into the attorney-client relationship, but a thinly disguised ploy to put a plaintiff’s attorney at war with her client.” Id.

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