

SETTLEMENTS YOU CAN'T SIGN: ETHICAL IMPLICATIONS OF CHICAGO'S MACHINERY OF DENIAL

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Introduction

On February 28, 2006, Carlos Salazar,² a Latino construction worker in his early 40s, had just picked up his mother from a health clinic on the Southwest Side of Chicago when he saw the flashing blue lights of a police car approaching from behind. Mr. Salazar knew he had done nothing wrong. So did the police. The officers pulled him over at the request of Chicago Police Detectives who wanted to question him about a year-old murder—a cold case the police department had been unable to solve. Salazar wasn't a suspect—he wasn't even an eyewitness—but the detectives, several months earlier, learned that Salazar may have heard some guys in the neighborhood talking about the shooting. And the police wanted to know more.

Salazar was handcuffed, placed in a squad car, and driven to a local police station. Once there, detectives searched him, took his shoelaces, cigarettes, and driver's license, and then locked him in a windowless interrogation room. The barren interrogation room, brightly lit 24 hours a day by fluorescent overhead lights, was furnished with only a narrow steel bench bolted to the floor, and metal rings for handcuffing prisoners hanging from a cement wall a few feet above the bench. Between bouts of aggressive police interrogation, the detectives left Salazar cuffed to the metal rings above the bench for

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² Mr. Salazar's name has been changed to avoid compromising his privacy.

several hours. The detectives isolated Mr. Salazar in this room, denying him access to his lawyer and family.

The detectives were not acting “out of school” in detaining Mr. Salazar under these inhumane and unconstitutional conditions. They seized and detained Mr. Salazar pursuant to standard practice of the Chicago Police Department related to the treatment of witnesses. Detectives were trained to “force or compel” reluctant witnesses— people whom the police have no reason to believe have done anything wrong— to accompany them to police facilities.³ Before confining a witness in a police interrogation room, detectives “thoroughly searched” the witness from head to toe.⁴ They removed personal belongings, such as keys, identification, cell phones, belts, and shoelaces.⁵ They then locked the witness in a bleak interrogation room and held him incommunicado for extended periods of time—no family, no friends, and definitely no lawyers. If the witness’s lawyer requested to see her client, she was denied access, because her client was “only a witness.”⁶ As there were no toilets, running water, or food in police interrogation rooms, the witness was completely dependent upon the police for his basic needs. James Molloy, the former Chief of Detectives, testified that he would not be surprised if within the two year period leading up to Mr. Salazar’s detention, Chicago police confined more than a hundred witnesses under similar conditions for longer than

³ Test. of Joseph Moseley, Chicago Police Dep’t Training Coordinator, *Ayala v. City of Chicago*, No. 05 C 1967 (N.D. Ill. Oct. 11, 2005).

⁴ Test. of James Molloy, Chicago Police Dep’t Chief of Detectives., *Ayala v. City of Chicago*, No. 05 C 1967 (N.D. Ill. Oct. 11, 2005).

⁵ *Id.*

⁶ *Id.*

24 hours.⁷ Like Mr. Salazar, the victims of this practice were mostly Black and Brown residents who lived in low-income communities in Chicago.

Twenty-six hours after they had first imprisoned Mr. Salazar in the interrogation room, the detectives got exactly what they wanted from Mr. Salazar—testimony implicating the detectives’ desired suspect for the murder. After they compelled him to testify before a grand jury, the detectives told Mr. Salazar that he was free to go.

Salazar was one of hundreds of witnesses whom Chicago Police detained in violation of the Constitution, and one of several whom the University of Chicago’s Edwin F. Mandel Legal Aid Clinic and the MacArthur Justice Center (now based at Northwestern University School of Law) represented in civil rights suits against the City of Chicago. Victims of this unlawful practice won a settlement in late 2007 that requires Chicago police to promptly inform witnesses in police facilities that they are free to leave whenever they want.⁸

The Salazar litigation followed a common course: months of motion practice centered around the City’s repeated attempts to prevent discovery and any judicial scrutiny of police policies and practices. The City ultimately proposed a settlement that made sense for our client.

But it was a problematic settlement for us, his lawyers, for the Clinic, and for civil rights attorneys throughout Chicago and the country. The City demanded our stipulation to a stock clause that explicitly—and unethically—sought to impair our ability to represent future clients. This is a long standing practice on the part of the City in settling

⁷ *Id.*

⁸ See Release and Settlement Agreement, *Ayala v. City of Chicago*, No. 05 C 1967 (N.D. Ill. July 31, 2007).

police misconduct cases and a key tactic in its larger strategy of burying problems of systemic police abuse underground.

The City's Agreement provided that in contrast to any other lawyer in the world, *we as Mr. Salazar's attorneys* could not use evidence of the settlement in any other litigation. Ever! The City's boilerplate clause read as follows:

“Plaintiff and his attorney agree that they or any firm with which said attorney is affiliated or with which said attorney may later become affiliated shall not use this settlement as notice of misconduct on the part of any defendant and/or the City of Chicago and/or its future, current or former officers, agents and employees, or for any other purpose in any other litigation, and that such use is inconsistent with the terms of this Release and Settlement Agreement.”

This language goes far beyond the standard denial of liability and release of claims arising from the subject matter of the lawsuit. It requires plaintiff's attorneys (and anyone with whom they *ever* work) to renounce the use of evidence that might be relevant and admissible in future litigation on behalf of other present or future clients. In other words, it forces plaintiff's attorneys to promise that they will be less diligent, less vigorous, and less effective in their representation of other clients. And that is not a promise that any attorney can ethically make, or ethically ask any other attorney to make.

The City of Chicago has included similar language in its standard settlement agreements for several decades, and scores of plaintiffs' lawyers—including the authors of this article—have signed off on it. Some have signed it without thinking much about it; others have signed because they did not think it was fair to jeopardize their client's interests to stand on principle; still others have signed assuming—or hoping—that courts would never enforce such an obviously unethical provision.

But far from harmless, the City's insistence on this clause in all of its settlement agreements operates as part of its larger pattern of suppressing evidence of police misconduct and City liability for that misconduct, and a broader strategy of "solving" the problem of police misconduct by concealing it from the courts, from the public, and even from elected officials responsible for the oversight of the police department.⁹ In this respect—in the great lengths to which it will go to cover up police misconduct—the City of Chicago is in a class of its own. It appears to be the *only* city—or town, or county—in the country that insists on including such blatantly restrictive language in its settlement offers.¹⁰

⁹ See Craig B. Futterman, H. Melissa Mather, and Melanie Miles, *The Use of Statistical Evidence to Address Police Supervisory and Disciplinary Practices: Chicago Police Department's Broken System*, 1 DePaul J. Soc. Just. 251, 289 (2008) (“[N]ot knowing about police abuse in Chicago. . . . requires a deep commitment to the machinery of denial, including denying incidents of brutality, turning a blind eye to patterns of abuse, refusing to look at data that is just a key stroke or two away and passively encouraging a culture of silence in the face of abuse perpetrated by fellow officers.”) See also Jamie Kalven, *Kicking the Pigeon* 42 (2005–2006), http://www.viewfromtheground.com/wp-content/media/ktp/kicking_the_pigeon.pdf (last visited Mar. 30, 2009) (“Taken together, the code of silence among officers on the ground, the OPS machinery for converting citizen complaints into findings of ‘not sustained,’ and the institutional resistance to effective monitoring form a single, unified system—a regime of not-knowing.”); Jennifer Chen, Kimbriell Kelly, and Jeff Kelly Lowenstein, *Hidden From Public View*, *The Chicago Reporter*, Nov. 2007, http://www.chicagoreporter.com/index.php/c/Web_Extras/d/Hidden_From_Public_View (last visited Apr. 2, 2009) (describing the City's fight to keep secret from the public and City Council the identities of the Chicago Police Officers charged with the most abuse in the City); Frank Main, “*No One Is Above the Law*”; *Weis Apologizes for Delay, Hands Over Complaint List*, *Chicago Sun Times*, Mar. 9, 2009, at 4 (describing City's and Police Superintendent's defiance of a routine federal court order to provide plaintiff's attorneys, subject to a protective order, with a list of officers who were charged with repeated abuse). Also illustrative, Chicago pioneered obscurantist litigation techniques to prevent inquiry into the constitutionality, propriety, or wisdom of the police department's policies, procedures, or customs by seeking, as a matter of practice, to bar discovery of and thwart litigation of municipal practices in almost every case involving constitutional claims of municipal liability in the police abuse context. See, e.g., *Cadiz v. Kruger*, No. 06 C 5463, 2007 WL 4293976, at *8 (N.D. Ill. Nov. 29, 2007). Then, when the City settles a police misconduct matter, it attempts to force feed a restrictive covenant upon settling attorneys, barring them from using evidence of the settlement in other cases.

¹⁰ In preparing this article, we surveyed civil rights and police accountability attorneys across the country by sending out a general inquiry on the National Police Accountability Project listserv, and by contacting individual lawyers in several states by e-mail and/or telephone. None outside

To the extent that the City’s secretive settlement tactic serves its broader strategy of institutional denial by preventing lawyers from presenting, and courts from hearing, relevant evidence about police department custom and practice, it violates both legal ethics and the public trust. And to the extent the provision forces plaintiffs’ attorneys to be complicit cogs in the City’s machinery of denial, attorneys are obligated by their professional ethics to refuse to sign off on it.

I. The Federal Rules and the Permitted Uses of Settlement Evidence

Evidence of prior settlements—the same evidence that the City prevents settling attorneys from using— can indeed be powerful in civil rights police misconduct cases. This evidence goes to the heart of one of the most contentious and challenging aspects of a police policy and practice case—the municipality’s deliberate indifference. Prior settlements can be used to show the city’s notice of systemic problems and knowledge of those issues, both of which are key to proving deliberate indifference. Similarly, prior settlements in which the municipality paid out money for the charged misconduct of certain officers are powerful evidence of the individual police defendants’ motive, bias, and interest to provide false testimony and cover up misconduct when charged with abuse again.

All too many practitioners mistakenly assume that Rule 408 of the Federal Rules of Evidence, and analogous state evidentiary rules, preclude effective use of prior settlements. They are wrong. While Rule 408 prevents litigants from using settlements

Chicago reported encountering the same—or even similar—language in any settlement agreement. Many said that they would refuse to sign such an “unethical” or “obnoxious” settlement.

as evidence of misconduct, it *does not* bar parties from using settlements as evidence of notice, bias, or a host of other purposes that may be pertinent in police misconduct litigation.

Rule 408, mirrored by state rules of the same number, prohibits the introduction of evidence of a settlement or settlement negotiations when such evidence is offered to prove “liability for, invalidity of, or amount of a claim that was disputed as to validity or amount, or to impeach through a prior inconsistent statement or contradiction.”¹¹ The rule is designed to encourage settlement by ensuring parties feel free to discuss sensitive issues without concern that those frank discussions will be used against them in court if settlement talks fail. Rule 408 and the related state rules reflect a long-standing preference for settlement over costly litigation, and a concern that allowing settlement offers or information into evidence to prove liability would undermine parties’ willingness to engage in future settlement negotiations.

Those same concerns do not, however, apply when settlement information is offered to prove anything *other* than validity of a claim, and Rule 408 and its state counterparts specifically permit the introduction of settlement evidence when it is offered for any other purpose.¹²

A. Proof of Notice, Knowledge, and Deliberate Indifference

Evidence of a settlement agreement may be used to establish notice, knowledge, and deliberate indifference when plaintiffs seek to hold municipalities accountable for Constitutional harm resulting from deficient supervisory, disciplinary, or training

¹¹ Fed. R. Evid. 408(a). *See also, e.g.*, Ind. Evid. R. 408.

¹² The explicit list of permitted uses outlined in Fed. R. Evid. 408(b) is meant to be illustrative, not exhaustive. *E.g., United States v. Technic Servs., Inc.*, 314 F.3d 1031, 1045 (9th Cir. 2002).

practices. To prove municipal liability in these cases, a plaintiff must show more than that the city’s training or supervisory practices caused his or her constitutional injuries. The plaintiff must also show that the municipality’s failure to train or supervise “amounts to deliberate indifference to the rights of persons with whom the police come into contact.”¹³

Settlement evidence has proven invaluable in these cases. Take, for example, the facts behind the Fourth Circuit’s decision in *Spell v. McDaniel*.¹⁴ Henry Spell charged that he was “brutally assaulted” by Fayetteville, N.C. police officer Charles McDaniel after being arrested for drug possession.¹⁵ Spell filed a § 1983 action against McDaniel, police supervisors, and the city asserting, in part, that the city had a “condoned custom” of allowing the use of excessive force against detainees.¹⁶ Spell sought, and the district court granted, the admission of the city’s settlement of an earlier police brutality claim to show that the city was sufficiently aware of the “developed practice or custom” of such conduct.¹⁷ The Fourth Circuit held that the district court properly admitted this evidence “as an essential element of Spell’s ‘condoned custom’ theory of liability.”¹⁸ It’s worth noting that this “essential element” of evidence helped the plaintiff’s attorney secure a \$900,000 jury verdict against the city.¹⁹

¹³ *City of Canton v. Harris*, 489 U.S. 378, 388 (1989).

¹⁴ 824 F.2d 1380 (4th Cir. 1987).

¹⁵ *Id.* at 1383–84.

¹⁶ *Id.* at 1384, 1391.

¹⁷ *Id.* at 1400.

¹⁸ *Id.*

¹⁹ *Id.* at 1385.

Plaintiffs also successfully used settlement evidence to prove notice and deliberate indifference in several § 1983 cases challenging the “over-detention” practices of the Los Angeles County Jail.²⁰ In 1997, former jail inmates filed a class action suit against the County, the Sheriff, and other jail supervisors, alleging that the jail’s sluggish procedure for processing releases resulted in a failure to timely release inmates who were legally free to go.²¹ In 2002, the County settled this suit, and several related suits, for \$27 million.²² But the County did not settle every pending over-detention suit, and in at least two of those other cases, the plaintiffs were able to introduce evidence of that earlier settlement to prove that the Sheriff had notice that over-detentions were occurring at the jail.²³ For example, in *Green v. Baca*,²⁴ the California district court recognized “that showing defendant [Sheriff] was aware of the number of alleged over-detentions is essential to establish liability under *Monell*” and held that evidence of the number of previous settlements into which the Sheriff had entered was admissible to prove that knowledge.²⁵ Other federal courts have similarly allowed the use of prior settlements to prove notice, knowledge, or deliberate indifference.²⁶

²⁰ *Green v. Baca*, 226 F.R.D. 624, 642 (C.D. Cal. 2005) (admitting evidence of past settlements to show that “defendant was on notice that there was an over-detention problem at the facility”); *Mortimer v. Baca*, 478 F. Supp. 2d 1171, 1177 n.1 (C.D. Cal. 2007) (admitting evidence of settlement recommendations made by a county sheriff’s office because they were “not used to show liability, but rather a raw number of potentially unreasonably overdetrained individuals”).

²¹ The case was originally filed in state court, but was removed to federal court and consolidated with several other cases as *Williams v. County of Los Angeles*, No. CV 97-03826-CW (C.D. Cal. Nov. 16, 2001).

²² Order Regarding Settlement and Order Awarding Class Counsel Attorneys’ Fees and Costs, *Williams v. County of Los Angeles*, No. CV 97-03826-CW (C.D. Cal. Nov. 27, 2002).

²³ *Green v. Baca*, 226 F.R.D. at 641–42; *Mortimer v. Baca*, 478 F. Supp. 2d at 1177 n.1.

²⁴ 226 F.R.D. 624 (C.D. Cal. 2005).

²⁵ *Id.* at 642. It’s important to note however, that the settlement evidence was admitted only to prove that the Sheriff had notice or knowledge that over-detentions were occurring, and *not* to

B. Proof of Bias, Motive, and Interest

Evidence of prior settlements also provides officers with a substantial motive, bias, and interest to cover up their abuse and provide false testimony to avoid increased scrutiny, discipline, and job loss. Bias and interest evidence is plainly admissible under the express terms of Rule 408.²⁷

Many police abuse cases turn on a swearing contest between witnesses. Who is the jury going to believe in most wars of credibility—the police or alleged victim of

prove that the Sheriff or the County had a policy or custom of over-detaining inmates. *Id.* at 640–41. This is a subtle, but important, difference.

²⁶*E.g., Bowers v. Philadelphia*, 2008 WL 5234318 at *6 (E.D. Pa. Dec. 12, 2008) (admitting evidence of earlier consent decree to prove that the city had notice of unconstitutional crowding at the municipal jail, and holding that Rule 408 permits the admission of settlement evidence “to show that defendants had notice and knowledge on the issue of deliberate indifference”); *Perri v. Dagg*, 776 F.Supp. 1345, 1349 (N.D. Ind. 1991) (admitting settlement evidence in excessive force case to show that police chief “would have had greater reason to know of, and to act upon, [the police officer’s] alleged misadventures” and holding that “Rule 408 does not prohibit the use of a settlement to show a defendant’s knowledge...or to demonstrate the unreasonableness of (or deliberate indifference inherent in) subsequent conduct”). Settlement evidence has also been used successfully to prove notice or knowledge in non-civil rights suits. *E.g., United States v. Austin*, 54 F.3d 394, 400 (7th Cir. 1995) (holding that evidence that a defendant had entered into a settlement with the Federal Trade Commission, formalized in a consent decree, had been properly admitted in a criminal trial to prove that the defendant had notice that his subsequent conduct was wrongful); *United States v. Hauert*, 40 F.3d 197, 200 (7th Cir. 1994) (holding that the trial court properly admitted Rule 408 evidence to demonstrate that a criminal defendant had knowledge of the tax laws); *Breuer Elec. Mfg. Co. v. Toronado Systems of America, Inc.*, 687 F.2d 182, 185 (7th Cir. 1982) (holding that settlement evidence was properly admitted to show that defendant had notice of plaintiff’s trademark infringement claims, and stating that defendant’s argument that admission of settlement evidence violated Rule 408 was “ridiculous”); *Gagliardi v. Flint*, 564 F.2d 112, 116 (3d Cir. 1977) (stating that evidence of settlement negotiations was properly admitted to show the defendant’s knowledge regarding its employees’ past behavior); *Cerqueira v. Am. Airlines, Inc.*, 484 F. Supp. 2d 232, 237 (D. Mass. 2007) (consent order admitted pursuant to Rule 408(b) to show “motive, intent, and notice” in a suit alleging racial profiling on the part of the airline); *United States v. Jorgensen*, 2004 WL 1774529 at *3 (D. Minn. Aug. 8, 2004) (evidence of settlement properly admitted under 408(b) to prove defendant’s knowledge of claim even when defendant denied wrongdoing in settlement).

²⁷ Fed. R. Evid. 408 (“[E]xamples of permissible purposes include proving a witness’s *bias or prejudice*.”) (emphasis added).

abuse?²⁸ Settlement evidence that highlights police bias can alter that calculus. Presumably, municipal employers do not like having to pay out large sums money to settle cases alleging police abuse. Settlements against officers impose financial and legal burdens on their employers and possibly themselves, jeopardize their jobs, insurance and reputations, invite unwanted scrutiny or job discipline, and more generally discredit police departments and peer officers. An adverse judgment against an officer who previously settled a case could compound these negative consequences. Thus, a police officer, in light of the earlier settlement, has a strong incentive to cover up abuse in the instant case. Admission of the settlement evidence would therefore allow the jury to fully assess the officer's credibility by considering his or her bias, motive and interest in avoiding these enhanced consequences. And in a swearing contest, credibility is everything.²⁹

C. Prejudice v. Probity—Where the Real Action Lies

Because Rule 408 operates as a bar to evidence of a settlement only when used to show the validity or value of the underlying claim, plaintiffs' lawyers can use settlement evidence for *any* other relevant purpose. Be creative. If the evidence is relevant to some other issue in a police abuse case, Rule 408 poses no barrier to its introduction.

²⁸ Indicative of the pro-government bias in these credibility contests, the United States Department of Justice found that of the tiny percentage of civil rights plaintiffs who are lucky enough to earn their right to a jury trial, fewer than one in three succeed at trial. Tracey Kyckelhahn and Thomas H. Cohen, *Civil Rights Complaints in U.S. District Courts, 1990-2006*, Bureau of Justice Statistics Bulletin No. NCJ 222989 (Aug. 2008).

²⁹ The authors acknowledge that convincing courts to admit settlement evidence to show that a witness testimony is biased can sometimes be an uphill battle, especially when that witness is a defendant in the case. Because parties are already presumed to be biased, some courts have excluded settlement evidence under Rule 403 as cumulative or as more prejudicial than probative. *E.g., Wallis v. Carco Carriage Corp., Inc.*, 1997 WL 580498 at *6 (10th Cir. Sept. 19, 1997) (noting that courts can exclude, under Rule 403, settlement evidence offered to prove bias if the danger of prejudice outweighs the relevance of the evidence).

Of course, just because settlement evidence may be admitted under Rule 408 does not mean that it will be. As with any evidence, it must also be relevant under Rule 401 and pass the Rule 403 balancing test. Three questions govern the court's inquiry into the admissibility of settlement evidence. *First*, is the settlement evidence offered to prove liability for the settled claim (in which case it's inadmissible under Rule 408), or is it offered for some other purpose? *Second*, if offered for some other purpose, is the evidence *relevant* to any matter at issue? *Third*, is the probative value of the evidence substantially outweighed by the dangers of unfair prejudice?³⁰ The real action around the admissibility of settlement evidence tends to be focused on the third question—the Rule 403 balancing of interests.³¹ In other words, admission of settlement evidence is a discretionary call for the trial judge.

Because evidence of prior settlements can be so powerful, ethical and zealous plaintiffs' lawyers should make every effort to persuade the court to admit this evidence in their cases. Whether it be to establish notice and deliberate indifference in a municipal liability case, to discredit an officer's testimony by exposing his or her motive, bias or interest, or for some other purpose relevant to the plaintiffs' theory of her case, persuading the court to admit this evidence can make the difference between winning and losing. Win or lose, it is a fight worth having.

³⁰ The California District Court moves relatively carefully, if quickly, through these steps in *Green v. Baca*, 226 F.R.D. 624, 641–42 (C.D. Cal. 2005)

³¹ *See, e.g., Spell v. McDaniel*, 824 F.2d 1380, 1400 (4th Cir. 1987) (holding that the relevance of evidence of the defendant city's settlement of earlier police brutality suit to establish notice "substantially outweighed the risk of any unfair prejudice within contemplation of Fed.R.Ev. 403"). *Cf. Kinan v. Brockton*, 876 F.2d 1029, 1034–35 (1st Cir. 1989) (upholding lower court's decision to exclude evidence that the defendant city had settled two earlier lawsuits alleging excessive force on the part of police officers because "whatever remote relevancy" such evidence had to prove that the city had notice that police officers received inadequate training in dispatching and reporting crimes was "outweighed by the potential for prejudice").

II. The Ethics Rules and Chicago's Unethical Settlements

A. Ethics Rules Prohibit Settlements that Restrict an Attorney's Right to Practice.

Chicago's stock settlement agreement, however, prevents plaintiffs' lawyers from using settlement evidence in representing victims of police abuse. Interestingly, it does not prevent all lawyers from using the settlement. Police misconduct settlements are a matter of public record in Illinois, just as they are virtually everywhere else in the nation.³² Only the particular plaintiff's lawyer, and anyone associated with that lawyer, are barred from using the settlement. Thus, the City's settlement tactic is not only malign, but it is also patently unethical, because it unlawfully restricts the settling attorneys' right to practice.

³² Settlements in § 1983 civil rights cases are almost always public documents: all fifty states have some version of a "sunshine law," public records act, or freedom of information act on the books that requires almost all settlements with government bodies to be made public. *See* Ala. Code §§ 36-12-40 et seq.; Alaska Stat. §§ 45.25.100 to 45.25.220; Ariz. Rev. Stat. Ann. §§ 39-121 to 39-124; Ark. Code Ann. §§ 25-19-106 et seq.; Cal. Gov. Code §§ 6250 to 6270; Colo. Rev. Stat. Ann. §§ 24-72-201 et seq.; Conn. Gen. Stat. §§ 1-200 et seq.; Del. Code Ann. tit. 29, §§ 10001 et seq.; D.C. Code Ann. § 25-61-10; Fla. Stat. Ann. §§ 119.01 to 119.165; Ga. Code Ann. §§ 50-18-70 to 50-18-76; Haw. Rev. Stat. §§ 92F-1 et seq.; Idaho Code §§ 9-338 to 9-347; 5 Ill. Comp. Stat. Ann. § 140/1 to 140/11; Ind. Code Ann. §§ 5-14-3-1 to 5-14-3-10; Iowa Code Ann. §§ 22.1 to 22.14; Kan. Stat. Ann §§ 45-215 to 45-225; Ky. Rev. Stat. Ann. §§ 61.870 to 61.884; La. Rev. Stat. Ann. § 44:31; Me. Rev. Stat. Ann. § 408; Md. Code Ann., State Govt §§ 10-611 to 10-628; Mass. Gen. Laws Ann. ch. 4, § 7; ch. 66, § 10; Mich. Comp. Laws Ann. § 15.231; Minn. Stat. Ann. § 13.03; Miss. Code Ann. §§ 25-61-1 et seq.; Mo. Ann. Stat. §§ 109.180 to 109.190; Mont. Code Ann. §§ 2-6-101 to 2-6-111; Neb. Rev. Stat. § 84-712; Nev. Rev. Stat. Ann. §§ 239.005 to 239.040; N.H. Rev. Stat. § 91-A:1; N.J. Stat. Ann. §§ 47:1A-1 et seq.; N.M. Stat. Ann. §§ 14-2-1 et seq.; N.Y. Pub. Off. Law § 84; N.C. Gen. Stat. §§ 132-1 to 132-10; N.D. Cent. Code §§ 44-04-18 to 44-04-18.8; Ohio Rev. Code Ann. § 149.43; Okla. Stat. Ann. tit. 51, §§ 24A.1 to 24A.18; Or. Rev. Stat. Ann. §§ 192.410 to 192.505; 65 Pa. Cons. Stat. Ann. §§ 66.1 to 66.4; R.I. Gen. Laws §§ 38-2-1 to 38-2-14; S.C. Code Ann. § 30-4-10; S.D. Codified Laws Ann. §§ 1-27-1 to 1-27-19; Tenn. Code Ann. §§ 10-7-503 et seq.; Texas Code § 552; Utah Code Ann. §§ 63-2-101 to 63-2-207; Vt. Stat. Ann. tit. 1, § 316; Va. Code § 2.2-3704; W. Va. Code § 29B-1-1; Wash. Rev. Code Ann. §§ 42.17.250 to 42.17.311; Wis. Stat. Ann. §§ 19.31 to 19.39; Wyo. Stat. Ann. § 9-2-407. There are some narrow exceptions for settlements that deal with private personnel matters. *See, e.g.*, 5 Ill. Comp. Stat. Ann. § 140/7 (listing exceptions to the Illinois Freedom of Information Act).

Among the basic ethical tenets governing lawyers are that they are free to practice their profession and bound to provide the most effective representation for all their clients.³³ Any limitation of this right constitutes an unethical restrictive covenant. It is unethical to condition a settlement on a stipulation that restricts an attorney's right to practice law. And it is equally unethical for an attorney to sign such a restrictive covenant. The City's standard insistence on including restrictive covenants in all settlement agreements is simply a transparent attempt to hamstring an attorney's ability to use powerful evidence in representing victims of police abuse. And one that we should reject at every turn.

The American Bar Association (ABA) Model Rules of Professional Conduct Rule 5.6(b), adopted by 43 states and the District of Columbia, mandates that a lawyer "shall not participate in *offering* or *making* an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a client controversy."³⁴ The ABA Model

³³ See, e.g., Model Code of Prof'l Responsibility Canon 2-33 (1980) (stating that the "basic tenets" of the legal profession are "independence, integrity, competence and devotion to the interests of individual clients"); Model Code of Prof'l Responsibility 5-1 (1980) (stating that "[t]he professional judgment of a lawyer should be exercised, within the bounds of the law, solely for the benefit of his client and free of compromising influences and loyalties"); Model Rules of Prof'l Conduct R. 5.6 (2008) (prohibiting restrictions on the right to practice); Model Code of Prof'l Responsibility DR 2-108 (1980) (same); Model Rules of Prof'l Conduct R. 1.3 (2008) (requiring diligence in representation); Model Code of Prof'l Responsibility DR 7-101 (1980) (requiring zealous representation).

³⁴ Model Rules of Prof'l Conduct R. 5.6(b) (2008) (emphasis added). Most states and the District of Columbia have adopted a version of the Model Rule. See Ala. Rules of Prof'l Conduct R. 5.6(b); Alaska Rules of Prof'l Conduct R. 5.6(b); Ariz. Rules of Prof'l Conduct R. 5.6(b); Ark. Rules of Prof'l Conduct R. 5.6(b); Colo. Rules of Prof'l Conduct R. 5.6(b); Conn. Rules of Prof'l Conduct R. 5.6(b); Del. Rules of Prof'l Conduct R. 5.6(b); D.C. Rules of Prof'l Conduct R. 5.6(b); Fla. Rules of Prof'l Conduct R. 4-5.6(b); Ga. Bar R. 4-102, 5.6(b); Haw. Rules of Prof'l Conduct R. 5.6(b); Idaho Rules of Prof'l Conduct R. 5.6(b); Ill. Rules of Prof'l Conduct R. 5.6(b); Ind. Rules of Prof'l Conduct R. 5.6(b); Kan. Rules of Prof'l Conduct R. 5.6(b); Ky. Rules of Prof'l Conduct R. 5.6(b); La. Rules of Prof'l Conduct R. 5.6(b); Me. Code of Prof'l Responsibility R. 3.2(g)(2); Md. Rules of Prof'l Conduct R. 5.6(b); Mass. Rules of Prof'l Conduct R. 5.6(b); Mich. Rules of Prof'l Conduct R. 5.6(b); Minn. Rules of Prof'l Conduct R. 5.6(b); Miss. Rules of Prof'l Conduct R. 5.6(b); Mo. Rules of Prof'l Conduct R. 4-5.6(b); Mont. Rules of Prof'l Conduct R.

Code of Professional Responsibility requires that, “[i]n connection with the settlement of a controversy or suit, a lawyer shall not enter into an agreement that restricts his right to practice law.”³⁵ The Restatement of the Law Governing Lawyers explains that “[i]n settling a client claim, a lawyer may not offer or enter into an agreement that restricts the right of the lawyer to practice law, including the right to represent or take particular action on behalf of other clients.”³⁶

This rule against restrictive settlements serves three stated purposes. First, the rule seeks to protect and promote both attorney and client autonomy, both of which are

5.6(b); Nev. Rules of Prof'l Conduct R. 190(2); N.C. Code of Prof'l Conduct R. 5.6(b); N.H. Rules of Prof'l Conduct R. 5.6(b); N.J. Rules of Prof'l Conduct R. 5.6(b); N.M. Rules of Prof'l Conduct R. 16-506(B); N.D. Rules of Prof'l Conduct R. 5.6(b); N.Y. Rules of Prof'l Conduct R. 5.6(a)(2); Okla. Rules of Prof'l Conduct R. 5.6(b); Pa. Rules of Prof'l Conduct R. 5.6(b); R.I. Rules of Prof'l Conduct R. 5.6(b); S.C. Rules of Prof'l Conduct R. 5.6(b); S.D. Rules of Prof'l Conduct R. 5.6(b); Tex. Rules of Prof'l Conduct R. 5.06(b) (permitting restrictive settlement agreements “as part of the settlement of a disciplinary proceeding against a lawyer”); Utah Rules of Prof'l Conduct R. 5.6(b); Vt. Rules of Prof'l Conduct R. 5.6(b); Wash. Rules of Prof'l Conduct R. 5.6(b); W. Va. Rules of Prof'l Conduct R. 5.6(b); Wis. Sup. Ct. R. 20:5.6(b); Wyo. Rules of Prof'l Conduct R. 5.6(b). California uses its own language, though that language largely mirrors the model rule. Cal. Rules of Prof'l Conduct R. 1-500(A) (“A member shall not be a party to or participate in offering or making an agreement, whether in connection with the settlement of a lawsuit or otherwise if the agreement restricts the right of a member to practice law.”). It’s important to note, however, that some states have stuck with an older version of the model rule, which, in its language, appears to apply only to settlements between private parties. *E.g.*, Ill. Rules of Prof'l Conduct R. 5.6(b). That version of the rule, however, has been interpreted to apply to settlements with government entities, as well. ABA Comm. on Prof'l Ethics and Grievances, Formal Op. 394 (1995). Many federal courts, too, have incorporated some version of Rule 5.6 into their local court rules. *E.g.*, C.D. Cal. Loc. R. 83-3 (2008) (incorporating the California Rules of Professional Conduct); N.D. Ill. Loc. R. 83.55.6(2) (“A lawyer shall not participate in offering or making an agreement in which a restriction on the lawyer’s right to practice is part of the settlement of a controversy between private parties.”).

³⁵ Model Code of Prof'l Responsibility DR 2-108(B) (1980). The Model Code was originally promulgated in 1969, and was superseded by the Model Rules in 1983. Several states, however, have retained some version of the Model Code. *See* Iowa Code of Prof'l Responsibility DR 2-108(B); Neb. Code of Prof'l Responsibility DR 2-108(B); Ohio Code of Prof'l Responsibility DR 2-108(B); Or. Code of Prof'l Responsibility DR 2-108(B); Tenn. Code of Prof'l Responsibility DR 2-108(B); Va. Code of Prof'l Responsibility DR 2-106(B). Some federal courts have incorporated some version of DR 2-108 into their local court rules. *E.g.*, N.D. N.Y. Loc. R. 83.4(j) (2009) (“The Code of Professional Responsibility of the American Bar Association shall be enforced in this court.”).

³⁶ Restatement (Third) of Law Governing Lawyers § 13(2) (2000).

compromised when an attorney refuses to represent a potential client in order to comply with the terms of a settlement agreement.³⁷ Restrictive settlements undermine attorney autonomy by restricting lawyers' future employment and limiting their professional mobility.³⁸ They undermine client autonomy by "restrict[ing] the access of the public to lawyers who, by virtue of their background or experience, might be the very best available talent."³⁹ Second, the rule seeks to ensure that settlement agreements reflect the merits of a plaintiff's claims rather than the defendant's desire to "buy off" plaintiff's counsel.⁴⁰ Third, the rule seeks to forestall potential conflicts of interest between lawyers, their present clients, and potential future clients.⁴¹

Restrictive settlement provisions like the ones proposed by the City of Chicago thus violate fundamental ethics principles—and the purposes of the ethics rules—by forcing attorneys to choose from one of three bad options. A lawyer faced with the City's proposed settlement provision could sign the settlement, then refuse to take any future cases that might require that settlement to be introduced into evidence. This is a direct attack on the lawyer's professional autonomy that undermines both the lawyer's freedom to represent whomever she pleases, and any potential client's freedom to choose whichever attorney he thinks can best represent his interests. Alternately, the lawyer could sign the settlement, and refrain from seeking to introduce it into evidence in future cases, even if it might prove to be relevant or even crucial in those other matters. This is

³⁷ Model Rules of Prof'l Conduct R. 5.6 cmt. 1 (2008).

³⁸ Model Rules of Prof'l Conduct R. 5.6 annot. (2008) (Reason for the Rule).

³⁹ Model Rules of Prof'l Conduct R. 5.6 annot. (2008) (Subsection (b) Generally). *See also* ABA Comm. on Prof'l Ethics and Grievances, Formal Op. 371 (1993).

⁴⁰ ABA Formal Op. 93-371.

⁴¹ *Id.*

a direct violation of the attorney's duty to provide her client with zealous representation.⁴² Finally, the lawyer could simply refuse to sign the offending settlement. But this creates a conflict of interest between the lawyer and her current client, who might very well wish to accept a favorable settlement at the expense of his lawyer, and his lawyer's future clients.⁴³

At bottom, Chicago's settlement tactic restricts the right of civil rights attorneys to practice law by impairing their ability to provide vigorous representation to their clients and creating conflicts of interest between those lawyers and their clients.

B. Any Restrictions, However Broad or Narrow, are Ethically Prohibited.

Unethical restrictive covenants come in many forms. For example, attorneys may not agree not to represent particular clients⁴⁴ or types of clients,⁴⁵ not to pursue particular claims or types of claims,⁴⁶ or not to sue particular defendants or types of defendants.⁴⁷

⁴² Model Rules of Prof'l Conduct Preamble 9 (2008) (noting that a basic principle underlying the ethics rules is "the lawyer's obligation zealously to protect and pursue a client's legitimate interests").

⁴³ ABA Formal Op. 93-371. A lawyer in this situation must also mediate the conflict between her current client, who might want to accept a favorable settlement, and potential future clients, who would want to be represented by the most effective counsel.

⁴⁴ *See, e.g.*, Ala. State Bar Disciplinary Comm., Ethics Op. 92-01 (1992) (plaintiffs' counsel may not agree, as part of settlement package, to withdraw from representing non-settling clients).

⁴⁵ *See, e.g.*, N.C. State Bar Ethics Comm, 2003 Formal Ethics Op. 9 (2004) (An agreement not to represent potential clients with claims similar to settling client's claim "denies members of the public access to the very lawyer who may be best suited, by experience and background, to represent them.")

⁴⁶ *See, e.g.*, N.M. Bar Ethics Advisory Comm., Op. 1985-5 (1985) (plaintiff's counsel may not agree, as a condition of settlement, to forego future representation of any future claims arising out of the same incident that gave rise to the claim being settled).

⁴⁷ *See, e.g.*, ABA Formal Op. 93-371 (lawyer may not offer, and opposing counsel may not accept, settlement agreement obligating latter not to sue defendant in the future); State Bar of Cal. Standing Comm. on Prof'l Responsibility and Conduct, Formal Op. 1988-104 (1988) (settlement agreement prohibiting attorney from representing "any person or entity in any litigation or

Different jurisdictions have formulated slightly different tests for determining when a settlement provision violates the rule against restrictions on the right to practice. The New York bar, for example, asks whether a settlement provision imposes restrictions on the lawyer's conduct that his or her current client would not be entitled to insist upon.⁴⁸ For the Colorado Bar, the "test of the propriety of a settlement provision under Rule 5.6(b) is whether it would restrain a lawyer's exercise of independent judgment on behalf of other clients to an extent greater than that of an independent attorney not subject to such a limitation."⁴⁹ The Florida Bar looks to several factors to determine whether a settlement provision violates ethics rules, including whether the provision benefits the lawyer's client or the opposing party instead.⁵⁰ In all states, however, the "essential question" remains the same: does the questionable provision negatively affect the attorney's ability to represent a future client?⁵¹ If so, the provision violates the ethical bar on settlements that restrict the right to practice.

arbitration proceeding against [defendant] or its affiliated entities" is unethical).

⁴⁸ N.Y. State Bar Ass'n. Comm. on Prof'l Ethics, Op. 730 (2000).

⁴⁹ Colo. Bar Ass'n. Ethics Comm., Op. 92 (1993). *Accord* State Bar Assoc. of N.D. Ethics Comm., Op. 97-05 (1997) (adopting Colorado's test).

⁵⁰ Florida Bar Prof'l Ethics Comm., Op. 04-2 (2005).

⁵¹ *Id.* See also, e.g., ABA Comm. on Prof'l Ethics and Grievances, Formal Op. 417 (2000) (noting that the question is whether, "as a practical matter, [the] proposed limitation effectively would bar the lawyer from future representations" by "materially limit[ing] his representation of the future client...[or] adversely affect[ing] that representation"); Ill. State Bar Ass'n., Advisory Op. 00-01 (2000) (attorneys may not agree to keep interpretations of the law confidential because doing so would "impede the lawyer's ability to perform legal services for [future] clients"); Bd. of Prof'l Responsibility of the Sup. Ct. of Tenn., Ethics Op. 97-F-141 ("[S]ettlement of one client's case to the detriment of another client's case" violates ethics rules); N.M. Ethics Op. 1985-5 (settlement agreement that required plaintiff's attorney to turn over the complete case file, including attorney work product, to the defendant violated ethics rules because doing so might inhibit the lawyer's ability to represent future clients).

The City of Chicago’s proposed settlement provision clearly has a negative effect on any signing attorney’s ability to represent a future client.⁵² The wholesale exclusion of potentially damning settlement evidence from the lawyer’s arsenal unquestionably burdens the zeal and effectiveness with which the attorney must approach each client’s cause. A lawyer, shackled by a restrictive covenant, stymied in her ability to even consider attempting to admit settlement evidence, is left, when facing the choice of assuming representation, with two equally distasteful options: she could either refuse to represent that potential client, or unethically choose to provide that potential client with inadequate and inhibited representation. Either option is unacceptable, and both are avoidable by simply and categorically refusing to become a party to covenants that restrict one’s right to practice.

C. What About Confidentiality Provisions?

As noted above, police misconduct settlements are generally a matter of public record.⁵³ To the extent any jurisdiction allows some aspect of a negotiated settlement to be confidential, attorneys may ethically agree to keep any such provision secret.⁵⁴

⁵² It’s worth noting again just how broad the City’s settlement language is. Taken literally, it would have a negative effect on a signing attorney’s ability to represent his or her current client, as well, should that current client be forced to go to court to enforce the agreement.

⁵³ See public records statutes, *supra* note 32.

⁵⁴ See, e.g., ABA Formal Op. 00-417 (noting that all “information relating to the representation of the attorney’s present client”—like the particular terms of a settlement agreement—is already protected by confidentiality rules, and that any settlement provision requiring such information to be kept confidential does “no more than what is required by the Model Rules absent client consent, and does not necessarily limit the lawyer’s future practice”). See also, e.g., L.A. County Bar Ass’n. Prof’l Responsibility and Ethics Comm., Formal Op. 512 (2004) (approving agreement that “would prohibit the plaintiff’s lawyer from revealing the terms of the settlement, but *would not* ban the lawyer’s use of information from the case in future representations”) (emphasis added); N.M. Ethics Op. 1985-5 (“A settlement condition providing for nondisclosure of the amount and terms of a settlement is not only proper, but should be recognized where the details are not a matter of public record.”)

Attorneys may not, however, agree to any settlement that would prevent them from revealing otherwise public information.⁵⁵

The public nature of the settlement agreements makes Chicago's regime of information control all the more absurd. Every lawyer other than the attorney signing the agreement (and anyone ever associated with the signing attorney) has the right of access to and lawful use of all settlements involving the City and its officers. Importantly, other lawyers are not bound by the City's restrictive covenant and may therefore use settlement evidence to the benefit of their clients for any purpose permitted by law.

But even if § 1983 civil rights settlements were not public records as a matter of public policy, ethics rules would still prohibit lawyers from offering or accepting any settlements that contained restrictive language like that urged by the City of Chicago. In a formal opinion issued in 2000, the American Bar Association's Committee on Ethics and Professional Responsibility considered whether Rule 5.6(b) bars a lawyer from agreeing to a settlement conditioned on the lawyer not using any of the information learned during the current representation in any future representation against the same opposing party.⁵⁶ The ABA Committee concluded that lawyers may not agree to settlements that limit the future use of information—even otherwise confidential information—gained during the course of representation or litigation. Such settlement

⁵⁵ *E.g.*, N.Y. State Ethics Op. 730 (Settlement agreement in employment discrimination case prohibited by ethics rules because it included confidentiality "provisions [that] would restrict the lawyer's right to practice law by requiring the lawyer to avoid representing future clients in cases where the lawyer might have occasion to use information that was not protected as a confidence or secret under [the ethics rules] but was nevertheless covered by the settlement terms."); Colo. Ethics Op. 92 ("A lawyer may enter into a settlement agreement conditioned upon nondisclosure of the amount and terms of the settlement, provided this information is not already a matter of public record.").

⁵⁶ ABA Formal Op. 00-417.

terms, according to the ABA, “effectively...bar the lawyer from future representations because the lawyer’s inability to use certain information may materially limit his representation of the future client and, further, may adversely affect that representation.”⁵⁷

D. Don’t Count on Courts to Save You

Although restrictive settlements are unethical, they are not necessarily unenforceable. While the law in this area is far from clear, it *is* clear that no lawyer can count on the court to undo her decision to sign a settlement that restricts her ability to practice. On the one hand, the Restatement of Law Governing Lawyers declares provisions that restrict an attorney’s right to practice to be “void and unenforceable.”⁵⁸ And some courts have indeed held that such provisions are void as a matter of public policy.⁵⁹ But other courts have held that the agreements are enforceable, even if they’re unethical.⁶⁰ And they’ve done so in sweeping language that suggests that contract law

⁵⁷ *Id.* These settlements can be distinguished from attorney agreement to a protective order, which may be entered to keep confidential private or sensitive material that is exchanged between the parties in pretrial discovery, when “good cause” is demonstrated to the Court. Fed. R. Civ. P. 26(c). Unlike Chicago’s attempts to prohibit attorneys from the use of public settlements in other cases, if information governed by a protective order is relevant in another matter, attorneys may seek independent access to such information. For example, counsel may request the same or similar information from the municipality in the other case, subject to an independent judicial evaluation of its discoverability and use in that case. *See Hu-Friedy Manufacturing Co., Inc. v. General Electric Co.*, No. 99 C 0762, 1999 WL 528545 at *2–3 (N.D. Ill. July 19, 1999) (explaining that while protective orders can legitimately regulate the use of information in a given case, they cannot bar “future use of confidential information that is independently relevant and discoverable in a subsequent action” because doing so would place “a restriction on an attorney’s right to practice law.”)

⁵⁸ Restatement (Third) Law Governing Lawyers §13(2) (2000).

⁵⁹ *E.g., Jarvis v. Jarvis*, 758 P.2d 244 (Kan. Ct. App. 1988) (holding that a settlement agreement that purported to bar a party from retaining a particular lawyer violated Kansas DR 2-108 and was thus void as a matter of public policy).

⁶⁰ *E.g., Shebay v. Davis*, 717 SW.2d 678, 682 (Tex. App. 1986) (reasoning that presence of clause that might violate rule was irrelevant to whether settlement should be approved, but was a matter

always trumps ethics rules. A New York appeals court, for example, reversed the trial court's refusal to enforce a restrictive settlement, arguing that a "failure to enforce a freely entered into agreement would appear unseemly, and the 'clean hands' doctrine would preclude the offending attorneys from using their *own* ethical violations as a basis for avoiding obligations undertaken by them."⁶¹ The court went on to hold that "an agreement by counsel not to represent similar plaintiffs in similar actions against a contracting party is not against the public policy of the State of New York....Even if it [were] against the public policy of this State," the court continued, "the 'violation' can be addressed by the appropriate disciplinary authorities."⁶² A Florida appeals court took a similar tack in disqualifying a plaintiff's attorney who had signed an earlier settlement agreeing not to participate in a suit against the defendant.⁶³ Again, the court used wide-ranging language: "To use rule 4-5.6 as the basis for invalidating a private contractual provision," the court declared, "is manifestly beyond the stated scope of the Rules and their intended legal effect."⁶⁴ Here in Chicago, the City's restrictive settlements have come back to haunt some signing attorneys. One experienced civil rights lawyer, for

for the state bar grievance committee); *Feldman v. Minars*, 658 N.Y.S.2d 614, 617 (1st Dept. 1997); *Lee v. Florida Dept. of Ins. & Treasurer*, 586 So.2d 1185, 1188 (Fla. Dist. Ct. App. 1991).

⁶¹ *Feldman*, 658 N.Y.S.2d at 617. It's important to note, however, that New York is one of the small number of states that has adopted Rule 2-108 of the Model Code of Professional Ethics. That rule, unlike the similar provision in the ABA Model Rules, places the ethical onus squarely—and solely—on the shoulders of the attorney who agrees to accept an unethical restriction on the right to practice. However, as of April 1, 2009, New York adopted revised Rules of Professional Conduct, which, like most states following the ABA Model Rules, make it unethical for an attorney either to *offer* or to *accept* an unethical practice restriction.

⁶² *Id.*

⁶³ *Lee*, 586 So.2d at 1188.

⁶⁴ *Id.* The court had no need to make such a broad statement of policy, since it found that the attorney in question faced an unethical conflict of interest that would have barred him, under other ethics rules, from litigating the case at bar.

example, was prevented from introducing potentially relevant settlement evidence in a federal police misconduct case because he had signed off on the earlier settlement, which included the City's standard restrictive clause.⁶⁵

In addition to being bound by restrictive covenants, lawyers who accept them may also be subject to disciplinary proceedings and penalties, including suspension from practice.⁶⁶ Thus attorneys who accept settlement agreements that restrict their right to practice may find themselves faced with the worst of both worlds: limited in their ability to represent potential clients and faced with disciplinary sanctions.

Conclusion

Thanks to the courage of people like Carlos Salazar, Chicago agreed to stop locking up witnesses and holding them incommunicado against their will. The City's unethical settlement practices, however, continue. And they restrict our ability to represent other victims of police abuse.

The City's machinery of denial, which operates to suppress the conditions and practices that have allowed certain officers to abuse the most vulnerable among us with impunity, also continues. It is up to us—lawyers who work for social justice—to challenge the City's restrictive settlements and throw a wrench in the machine.

⁶⁵ Confidential interview with a Chicago civil rights and police accountability attorney (Mar. 19, 2009).

⁶⁶ *E.g.*, *In re Brandt*, 331 Or. 113 (Or. 2000) (suspending attorneys who agreed to a settlement provision that indirectly limited their right to practice law). *See also Shebay*, 717 SW.2d at 682 (noting that attorneys who violated rule against restrictive settlements would be subject to bar discipline); *Lee*, 586 So.2d at 1188 (noting that “[f]ailure to comply with an obligation or prohibition imposed by a rule is a basis for invoking the disciplinary process”).

With a concerted effort, we can cause that machinery to grind to a halt and cultivate a climate of accountability in its place. Without it, that machinery will continue to hum along here in Chicago, and in any city that chooses to import Chicago's Amazing Denial Machine™.