PRACTICE
Makes Perfect

By Brian J. Lindsey

SETTLEMENT AUTHORITY: CONFIRM IT IN WRITING

Introduction: A Twenty-Eight-Second Cautionary Tale

Twenty-eight seconds. That is the duration of the phone call that ultimately cost a national personal injury firm more than $4.3 million. In *Wyrosdick v. Morgan & Morgan Atlanta, PLLC*, AAA Case No. 01-25-0001-6505, an arbitrator found that the Morgan & Morgan attorney settled Robert Wyrosdick's truck-accident claim for $45,000 based on what was described as a 28-second phone conversation in which the client supposedly authorized the settlement. Wyrosdick denied that any settlement discussion occurred during that call. There were no contemporaneous notes, no confirming email, no text message and no entry in the firm's case-management system documenting that authority to settle was given.

The arbitrator awarded $450,000 in compensatory damages, $250,000 for emotional distress, over $413,000 in attorneys' fees, and $3.15 million in punitive damages against both the firm and the individual attorney.

The Wyrosdick arbitration is not a Louisiana case, but the cautionary lesson it delivers could not be more relevant to Louisiana practitioners. Louisiana law is unequivocal: The decision whether to settle belongs exclusively to the client, and the authority to enter a compromise must be given expressly. Moreover, a settlement reached without client authority is not enforceable.

Louisiana Framework

Louisiana law is clear that a client's settlement authority must be express, not implied.



Rule 1.2(a): The Client Decides

Rule 1.2(a) of the Louisiana Rules of Professional Conduct provides that "[a] lawyer shall abide by a client's decision whether to settle a matter." This is not a suggestion. It is a mandatory directive that places the settlement decision squarely and irrevocably in the client's hands. The lawyer's role is to advise, counsel and recommend; the client decides.

Civil Code Article 2997(5): Express Authority for Compromise

Civil Code article 2997(5) provides that "[a]uthority must be given expressly to . . . enter into a compromise or refer a matter to arbitration." La. Civ. Code art. 2997(5). A compromise is itself defined as "a contract whereby the parties, through concessions made by one or more of them, settle a dispute or an uncertainty." La. Civ. Code art. 3071. Because a compromise must be "made in writing or recited in open court," La. Civ. Code art. 3072, and because Article 2993 provides that "when the law prescribes a certain form for an act, a mandate authorizing the act must be in that form," settlement authority from the client should be in writing, although Louisiana courts have recognized that express oral authority, if proven, may suffice.

Authority to Negotiate Is Not Authority to Settle

Louisiana's appellate courts have drawn a bright line between authority to negotiate and authority to accept a settlement offer. In *Coppage v. Transdev Services, Inc.*, 2020-0419 (La. App. 4 Cir. 3/19/21), 320 So.3d 1206, the 4th Circuit held that the general authority granted to an attorney in an attorney-client contract of employment to "settle" the client's case constitutes only authority to negotiate a settlement, not authority to bind the client to a particular deal. The court emphasized that an attorney's signature alone is insufficient to establish a valid compromise under Article

2997, and that the opposing party assumes the risk of failing to verify that the attorney has the client's specific authorization.

The 5th Circuit reached the same conclusion in *Porche v. Porche*, 23-471 (La. App. 5 Cir. 4/24/24), 386 So.3d 695, holding that a draft consent judgment signed only by the attorneys was unenforceable without the client's "clear and express consent." The 3rd Circuit, in *Lemoine v. Thornton*, 2013-889 (La. App. 3 Cir. 2/12/14), 161 So.3d 666, reversed a trial court's enforcement of a settlement where the attorney had a "firm belief" that he had client consent but nothing more.

The distinction between authority to negotiate and authority to accept a settlement is one that every Louisiana practitioner should understand. A standard engagement agreement that authorizes the attorney to "negotiate and settle" the client's claim does not, standing alone, empower the attorney to bind the client to a specific settlement amount. As the 4th Circuit explained in *Coppage*, such language gives the attorney authority to engage in settlement discussions, exchange offers and counter offers, and explore the parameters of a potential resolution. But the final decision to accept any particular offer remains with the client.

This distinction has practical implications. An attorney who receives a settlement offer must communicate it to the client, explain its terms and consequences, and obtain the client's specific, informed authorization before accepting. The attorney cannot simply exercise professional judgment that the offer is a good one and accept on the client's behalf. Even if the attorney sincerely believes that the client would approve, or where the client has previously expressed a willingness to settle at a certain figure, the attorney must obtain express authority for the specific offer on the table.

The Duty to Communicate Settlement Offers: Rule 1.4

Rule 1.4 of the Louisiana Rules of Professional Conduct imposes five distinct communication obligations on Louisiana lawyers. Among them: The lawyer must promptly inform the client of any decision or circumstance requiring the client's informed consent, must keep the client reasonably informed about the status of the matter and must provide sufficient information to permit the client to participate intelligently in decisions concerning the representation. La. R. Prof'l Conduct 1.4(a)–(b).

In the settlement context, Rule 1.4 requires the lawyer to communicate every settlement offer to the client, regardless of whether the lawyer believes the offer is reasonable. The preferred practice, as commentators have emphasized, is to communicate all settlement offers in writing as well as verbally, and to confirm the client's acceptance or rejection of any offer in writing. *See* 1 La. Prac. Pers. Inj. § 6:81. Failure to advise a client of a settlement offer may expose counsel not only to disciplinary action but also to malpractice and fiduciary-duty liability. *See Teague v. St. Paul Fire & Marine Ins. Co.*, 2007-1384 (La. 2/1/08), 974 So.2d 1266 (attorney's paramount duty is to the client; fiduciary duty to exercise care, skill and diligence of prudent attorneys).

Practical Recommendations

First, always confirm settlement authority in writing. This is the single most important recommendation in this article, and it applies without exception. Whether authority is initially conveyed in a face-to-face meeting, a telephone call or a text message exchange, the lawyer should follow up with a written communication that memorializes the client's authorization to settle at a specific amount or within a specified range. The writing need not be elaborate. A one-page "Acknowledgement of Settlement Authority" specifying the authorized dollar amount is sufficient. The key is that the document exists, that it is signed or acknowledged by the client, and that it is preserved in the client's file.

Second, document the client's understanding of all material terms**.** Settlement authority is not merely about a dollar figure. The written confirmation should reflect that the client understands the gross settlement amount, the contingency fee that will be deducted, any outstanding costs or expenses, any known liens (medical provider liens, Medicare or Medicaid liens, subrogation interests), and the approximate net recovery the client will receive. Documenting this understanding at the time authority is given protects the lawyer against subsequent claims that the client did not appreciate the financial implications of the settlement. As the Wyrosdick arbitration vividly demonstrated, the failure to ensure client understanding of the full financial picture can be as damaging as the failure to obtain authority itself.

Third, confirm the rejection of settlement offers in writing. The duty to document is not limited to settlements the client authorizes. When a client rejects a settlement offer, the prudent lawyer should send a confirming letter or email that memorializes the client's decision. This protects the lawyer against later claims that the offer was never communicated, that the client was not informed of the amount or that the client did not understand the consequences of rejection.

Fourth, re-obtain authorization to settle whenever there is a material change in the settlement terms**.** Settlement negotiations can be fluid. Each material change in the terms of the proposed settlement requires fresh authorization from the client.

Fifth, do not rely on general engagement-agreement language as settlement authority. A standard engagement agreement that authorizes the attorney to "negotiate and settle" the client's case is, as *Coppage* shows, only authority to negotiate, not settle. When a specific offer is on the table, the lawyer needs specific, documented authority to accept it.



Brian J. Lindsey practices at Kean Miller in Lafayette with a focus on offshore energy, maritime and complex civil defense litigation. His experience includes Jones Act claims, personal injury and property damage matters, vessel collisions and allisions, contract and indemnity disputes, and insurance coverage issues. A former insurance adjuster and federal judicial extern, Lindsey also serves as a 15th Judicial District delegate to the Louisiana State Bar Association House of Delegates and is on the Practice Assistance Committee.