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# Unsettling Negotiations

## Remember Your Client When Conveying Offers

THE INTERACTION OF LAWYERS, clients and settlement is addressed in ERs 1.2(a) (lawyer shall abide by a client's decision whether to accept an offer of settlement) and 1.4 (communication),<sup>1</sup> which require that a lawyer promptly convey offers of settlement to the client and that the lawyer not settle a matter without the client's consent.<sup>2</sup> But how about the case in which a lawyer fails or refuses to convey the client's offer of settlement to the opposing party, especially when the lawyer strenuously disagrees with the client's decision? A recent case from Minnesota indicates that there are varying views on this subject and that a lawyer proceeds at his own risk when he refuses to convey his client's message to the other side.

In *In re Panel File No. 99-5*, 607 N.W.2d 429 (Minn. 2000), the Minnesota Supreme Court admonished a lawyer for intentionally ignoring his client's unequivocal instructions to reach a settlement with the opponent. The lawyer had taken


the client's case on a contingent fee. When instructed by the client to settle the case on certain terms prior to a settlement conference, he ignored the client's wishes, apparently believing that the amount of money the client instructed him to settle for would not result in the fee the lawyer had anticipated. The lawyer also told the judge at the settlement conference that his client refused to settle.

The case was settled several months later for approximately \$10,000, which would have yielded a gross fee to the

lawyer of around \$3,000. However, the lawyer took the position that he was no longer bound by the contingent-fee agreement and that he was entitled to \$40,000 for the value of his work. We are not talking about a very bright attorney here, especially because the lawyer then started litigation against the client to recover what he thought was a reasonable fee. The lawyer ended up withdrawing his fee claim when he was threatened with court sanctions.

To make matters worse, the client then filed a disciplinary complaint alleging that the lawyer had acted unethically by failing to communicate the client's settlement proposal to opposing counsel at the settlement conference. A minority of the

Minnesota Supreme Court held that lawyers have an absolute duty, unless they withdraw from the representation, to communicate to the opposing party all settlement offers proposed by the client. In contrast, the majority held that once the client makes it clear that he wants to settle the case on specific terms, the lawyer has three choices: (1) abide by the client's wishes, (2) persuade the client that settlement on those terms would be ill-advised, or (3) withdraw. The court held that simply ignoring the client's expressed objective was not an option.

Although there seems to be a difference of opinion on the subject, there is no doubt about the fact that a lawyer cannot simply ignore a client's instruction to settle a case on specific terms.<sup>3</sup> This is true even though the resulting fee may work an unfairness to the lawyer. The most obvious situation would be in which the client insists on settling a contingent-fee case for a lower figure than the lawyer believes is reasonable. Concerns such as these can be addressed in the fee agreement, where the client can agree to a higher contingent fee in the event the case is settled below a certain figure. Absent that, it is wise to remember that the settlement belongs to the client, not to the lawyer. 

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### ENDNOTES

1. Rule 42, ARIZ.R.S.C.T.
2. For an excellent treatment on the ethics of settlement negotiations, see STUART, THE ETHICAL TRIAL LAWYER § 19.1 (State Bar of Arizona 1994).
3. Arizona lawyers can get in trouble over this issue, too. See *In re Cardenas*, 791 P.2d 1032 (Ariz. 1990).

