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# The Buck Stops Here: Retainer Agreements Cannot Grant Attorneys The Right To Enter A Settlement Agreement Over Their Client's Objections

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On August 30, 2021, the Cal. Court of Appeal published *Amjadi v. Brown* (2021 WL 3855831), which clarified that attorneys cannot use retainer agreements to prospectively grant themselves the right to enter into settlement agreements over the objections of their clients. The appellate court has referred the attorneys involved in the action to the California State Bar for discipline due to several violations of the California Rules of Professional Conduct (“CRPC”).

## The Issue

Before trial, the attorney-client relationship between Plaintiff and her counsel, Kevin Jolly of Jolly Berry Law, soured, causing Jolly to file a motion to withdraw, which was denied by the trial court. Subsequently, Jolly approached Defense’s counsel regarding renewing their offer—which was previously rejected by Plaintiff—to settle the case for \$150,000. After Defense counsel renewed their offer, Jolly informed Plaintiff that he was signing the offer on her behalf. Although Plaintiff objected to the settlement offer and ordered Jolly to sign a substitution of attorney form, Jolly signed the settlement agreement.

The trial court accepted the settlement and dismissed Plaintiff’s subsequent declaration objecting to the settlement and dismissal. The trial court based its decision on the following provision within the settlement agreement between Plaintiff and Jolly:

CLIENT agrees that if a settlement offer is tendered in the case by any defendants and the ATTORNEY believes in good faith that the settlement offer is reasonable, and the acceptance of the offer is in the CLIENT’s best interest, and should be accepted, CLIENT authorizes ATTORNEY to accept said offer on CLIENT’s behalf, at ATTORNEY’s sole discretion.

## The Appellate Court’s Decision

The Court of Appeal rightly held that this provision of the retainer agreement runs afoul of CRPC 1.2(a), which states that “a lawyer shall abide by a client’s decision whether to

settle a matter.” While the commentary of CRPC 1.2 does allow advance approvals of settlements, it does not authorize attorneys to “settle a case over a client’s contemporaneous objection.” As such, because the provision was illegal and invalid, the order approving the settlement was overturned. Indeed, the Court of Appeal doubted that such a blanket authorization would be sufficiently specific to be valid, particularly in the absence of a waiver.

Additionally, the Court of Appeal found that the provision created an immediate and “direct conflict of interest under [CRPC] 1.7 (c)” when a client does object to a settlement. To wit, and additionally, the Court of Appeal referred the attorney to the State Bar for investigation for potential violations of CRPC 1.6, 1.7, and 1.9.

## The Takeaway

A necessary consideration not within the text of the *Amjadi* decision is whether or not the rest of the contingency fee agreement retains validity in light of the finding that the provision at issue is illegal. In this case, the retainer agreement will likely be rendered invalid. As such, if the client voids the agreement, the attorney will no longer be entitled to a contingency fee, but only to a “reasonable fee.” *Gutierrez v. Girardi* (2011) 194 Cal.App.4th 925; *Flannery v. Prentice* (2001) 26 Cal.4th 572.

A further note for any attorney still considering seeking advance authority to enter settlement agreements on behalf of their clients: it can be done legally, but it is difficult to do. As the Court of Appeal ruled in *Ramirez v. Sturdevant* (1994) 21 Cal.App.4th 904, a retainer agreement that granted an attorney the right to settle upon receipt of minimum offer of \$150,000 was not facially invalid. The specific circumstances, importantly the minimum amount of the offer, were key in determining the validity of that retainer agreement provision. However, that case still resulted in the attorney facing a potential conflict when the client objected to the final settlement.

Therefore, any attorney seeking advance approval from their clients in their retainer agreements to enter settlement agreements should proceed with caution.



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