



Taking Action Without Client Consent May Result in Discipline

In many states, Rule 1.2(a) provides that a lawyer must abide by a client's decisions concerning the objectives of representation, consult with the client as to the means by which they are to be pursued and "abide by a client's decision whether to settle a matter." Rules 1.4(a) and (b) require lawyers to "reasonably consult with the client about the means by which the client's objectives are to be accomplished, keep the client reasonably informed about the status of a matter, and explain a matter to the extent reasonably necessary to permit the client to make informed decisions about the matter."

Attorneys who violate these rules could face exposure to disciplinary proceedings. Examples include:

- The Illinois Supreme Court suspended an attorney for thirty days for making decisions in client matters without the client's knowledge or consent, specifically negotiating four outstanding medical bills and advancing his own funds to the claimant (for which he was reimbursed from the settlement funds). *In re Margolis*, 2014 PR 31, M.R.27546 (Illinois Supreme Court, September 21, 2015).
- Another attorney was disciplined for conduct which included settling the client's personal injury claim without her knowledge or consent. *In re Stillo*, 68 Ill. 2d 49 (1977).
- An attorney was suspended for conduct that included rejecting a settlement offer without disclosing the offer to his client or obtaining the client's decision regarding the offer. *In re Rossiello*, 2003 PR 33, M.R.21894 (Illinois Supreme Court, January 23, 2008).

Even in instances in which the client cannot be located, except when the client has given prior direction, attorneys cannot make decisions for the client. In *In re Walner*, 119 Ill.2d 511, 519 N.E.2d 903 (1988), the Illinois Supreme Court censured an attorney for settling the claim of a client who could not be located, when his attorney-client agreement provided that no settlement would be made without the consent of the injured party. In another case, the attorney-client agreement granted the firm a general power of attorney to execute releases and drafts. When the attorney received offers to settle the two claims, he could not locate the clients. Although the Court found that the attorney had the authority to settle the clients' claims pursuant to the powers of attorney, it cautioned that any power of attorney should be narrowly drawn to limit the attorney's power to settle within a certain range of options and for a certain time period.

In addition to disciplinary matters, attorneys may also expose themselves to claims by clients for unauthorized actions which caused damage to their legal matters. Attorneys should be aware of the requirements contained in the Rules of Professional Conduct as well as any specific state rules regarding communicating with clients, particularly when there is an offer to be accepted or rejected, or when some other important decision needs to be made. Good communication with clients is almost certain to reduce the risk of Bar grievances and civil claims.

Risk Management Tips

- Be aware of the Rules of Professional Conduct as well applicable state specific rules regarding communicating with clients.
- Should you have questions, consider consulting with an attorney or risk management professional.

We invite Allied World policyholders to access additional information on this and other Risk Management topics. The lawyers' risk management website, <http://awac.lawyerlaw.com>, contains resources as well as related topics.

Also, the **Risk Management Hotline** is included for up to 2 free hours per year, per firm of confidential advice regarding risk management questions that your law firm may have. If you are an Allied World policyholder, the hotline can be accessed through the risk management website, <http://awac.lawyerlaw.com>. Once you log on to the website, the link to contact the hotline is on the upper left side, under the Allied World logo.

If you are not a current Allied World policyholder and would like information on our program and our risk management services, please contact your agent or broker.

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