

# Attorney's Authority to Bind a Client

## Introduction

An attorney retained to represent a client is not authorized to exercise complete control over that matter. Unless the attorney and client agree otherwise, the attorney has implied authority over procedural matters, but the client retains the right to make ultimate decisions affecting the outcome of the case affecting the client's substantive rights, although the client may later ratify acts not authorized. Insurer funded settlements may be enforced over the objection of a policyholder. Although not authorized, judicial admissions made by a lawyer may be admissible in evidence.

## Agency Relationship

“As a general proposition the attorney-client relationship, insofar as it concerns the authority of the attorney to bind his client by agreement or stipulation, is governed by the principles of agency. Hence, the client as principal is bound by the acts of the attorney-agent within the scope of his actual authority (express or implied) or his apparent or ostensible authority; or by unauthorized acts ratified by the client.”<sup>1</sup>

## Implied Authority Over Procedural Matters

“An attorney retained to represent a client in litigation is clothed with certain authority by reason of that relationship. The attorney is authorized by virtue of his employment to bind the client in procedural matters arising during the course of the action. In retaining counsel for the prosecution or defense of a suit, the right to do many acts in respect to the cause is embraced as ancillary, or incidental to the general authority conferred, and among these is included the authority to enter into stipulations and agreements in all matters of procedure during the progress of the trial. Stipulations thus made, so far as they are simply necessary or incidental to the management of the suit, and which affect only the procedure or remedy as distinguished from the cause of action itself, and the essential rights of the client, are binding on the client. ¶ The authority thus conferred upon an attorney is in part apparent authority - i.e., the authority to do that which attorneys are normally authorized to do in the course of litigation manifested by the client's act of hiring an attorney - and in part actual authority implied in law. In such tactical matters, it may be said that the attorney's authority is implied in law, as a necessary incident to the function he is engaged to perform.”<sup>2</sup>

## No Authority Over Substantive Matters

“An attorney is not authorized, however, merely by virtue of his retention in litigation, to impair the client's substantial rights or the cause of action itself. For example, the law is well settled that an attorney must be specifically authorized to settle and compromise a claim, that merely on the basis of his employment he has no implied or ostensible authority to bind his client to a compromise settlement of pending litigation. Similarly, an attorney may not stipulate to a matter which would eliminate an essential defense. He may not agree to the entry of a default judgment, may not stipulate that only nominal damages may be awarded and he cannot agree to an increase in the amount of the judgment against his client. Likewise, an attorney is without authority to waive findings so that no appeal can be made. Such decisions differ from the routine and tactical decisions which have been called procedural both in the degree to which they affect

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<sup>1</sup> *Blanton v. Womancare, Inc.* (1985) 38 Cal.3d 396, 403 (citations omitted.)

<sup>2</sup> *Id.* at 403-404 (citations, quotation marks and ellipses omitted.)

the client's interest, and in the degree to which they involve matters of judgment which extend beyond technical competence so that any client would be expected to share in the making of them."<sup>3</sup> Where client consent to an act is required, the attorney's unauthorized stipulations or actions are ineffective and may be set aside at any time.<sup>4</sup>

"The following matters are deemed to affect the client's substantive rights in litigation and therefore are within the client's authority, not the lawyer's:

- settlement or compromise of case;
- dismissal with prejudice;
- stipulation to matters that would eliminate an essential element of the claim or defense;
- stipulation to entry of default judgment or summary judgment against the client;
- waiver of jury trial;
- decision whether to testify;
- stipulation that judge can decide the case based on record made in a previous trial before a different judge;
- stipulation to binding arbitration."<sup>5</sup>

### **Insurer Funded Settlement Is Valid**

Standard liability policies confer upon the insurer the authority to settle without the policyholder's consent.<sup>6</sup> An insurer may settle over the objection of the policyholder and seek reimbursement from the policyholder under certain circumstances.<sup>7</sup> When a liability insurer is providing the defense without a reservation of rights and with sufficient coverage limits so that a defendant has no personal liability at stake, a settlement is enforceable under Code Civ. Proc. § 664.6 even though lacking the insured's personal assent.<sup>8</sup>

### **Ratification**

A client may ratify the attorney's unauthorized acts and thereby be bound by the attorney's action. Such ratification may be implied where the client accepts benefits flowing from the attorney's unauthorized acts or delays unreasonably in disavowing the unauthorized stipulation or settlement.<sup>9</sup>

### **Judicial Admissions**

Admissions of fact made in pleadings, pretrial statements or stipulations in the current action are deemed "judicial admissions" and are binding on the client unless the court permits them to

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<sup>3</sup> *Id.* at 404-405 (citations, quotation marks and ellipses omitted.)

<sup>4</sup> *Romadka v. Hoge* (1991) 232 Cal.App.3d 1231, 1236-1237.

<sup>5</sup> Vapnek et al., Cal. Practice Guide: Professional Responsibility (The Rutter Group 2014) ¶3:136.

<sup>6</sup> See, *Control of Settlement* at DutytoDefend.com.

<sup>7</sup> See, *Blue Ridge Reimbursement* at DutytoDefend.com.

<sup>8</sup> *Fiege v. Cooke* (2004) 125 Cal.App.4th 1350, 1353-1355.

<sup>9</sup> *Alvarado Comm. Hosp. v. Superior Court* (1985) 173 Cal.App.3d 476, 480; *Navrides v. Zurich Ins. Co.* (1971) 5 Cal.3d 698, 703-704.

be withdrawn.<sup>10</sup> Admissions of fact made by the lawyer may be admissible in evidence as authorized admissions by the client, but they are not conclusive.<sup>11</sup> An attorney's failure to assert the attorney-client privilege in response to civil discovery requests can result in waiver of the privilege.<sup>12</sup>

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<sup>10</sup> Wegner et al., Cal. Practice Guide: Civ. Trials & Evidence (The Rutter Group 2014) Ch. 8D.

<sup>11</sup> *Ibid.*

<sup>12</sup> *Scottsdale Ins. Co. v. Superior Court* (1997) 59 Cal.App.4th 263, 274.