

IN THE SUPREME COURT OF THE STATE OF NEVADA

AGGIE MILLER, INDIVIDUALLY,  
Appellant,  
vs.  
DEANO IATAROLA, INDIVIDUALLY;  
SHELTER INSURANCE COMPANIES;  
AND ALLSTATE INSURANCE  
COMPANY,  
Respondents.

No. 43283

**FILED**

DEC 22 2005

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richards*  
CHIEF DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal of a district court's order granting respondents, Deano Iatarola and Allstate Insurance Company's motion to enforce a settlement agreement in a personal injury action. Eighth Judicial District Court, Clark County; Jennifer Togliatti, Judge.

Appellant, Aggie Miller, was involved in an accident while riding as a passenger in respondent Deano Iatarola's automobile. Miller retained the law offices of Adam S. Kutner to represent her in connection with a potential personal injury claim against Iatarola.

A paralegal employed by Kutner's firm sent a letter to Allstate demanding Iatarola's policy limits of \$25,000. A claims adjuster employed by Allstate contacted Kutner's office to advise that Allstate would submit a check for the policy limits. The claims agent mailed Kutner's office a check for \$25,000 and a release of claims form. Miller never signed the release or cashed the check.

Eight months later, Miller filed a compliant in district court alleging negligence against Iatarola. Subsequently, Iatarola filed a motion to enforce settlement agreement. Allstate filed a motion to intervene, which the court granted.

After argument on the motion to enforce settlement, the court concluded that Kutner had authority to bind Miller to the terms of the alleged settlement agreement and granted Iatarola's motion to dismiss Miller's case with prejudice. We now reverse.

#### EDCR 7.50

EDCR 7.50 provides that no settlement agreement "between the parties or their attorneys will be effective" unless the agreement is in writing and signed by the party against whom it is being enforced. EDCR 7.50 was created to help avoid disputes during litigation over alleged oral agreements between parties.<sup>1</sup> Miller claims that the district court erred by enforcing the alleged oral settlement, because it had never been reduced to writing and entered into the court minutes in the form of an order.

We hold that EDCR 7.50 is inapplicable to Miller's case because it applies only to settlements entered into after a complaint has been filed and the district court has asserted jurisdiction over the parties.

#### Attorney's Authority

The attorney, not his client, possesses the authority to bind the client "in procedural matters in any of the steps of an action or proceeding."<sup>2</sup> However, "[a] lawyer shall abide by a client's decision whether to accept an offer of settlement of a matter."<sup>3</sup>

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<sup>1</sup>Humana, Inc. v. Nguyen, 102 Nev. 507, 509, 728 P.2d 816, 817 (1986); Resnick v. Valente, 97 Nev. 615, 616, 637 P.2d 1205, 1206 (1981).

<sup>2</sup>See SCR 45.

<sup>3</sup>See SCR 152.

Miller contended below, and the district court agreed, that Miller did not give her attorney actual authority to settle the case and release all claims against Allstate without her consent. Kutner did not have apparent authority to bind Miller, because Miller did not make any representations to Allstate that Kutner could bind Miller to a settlement without Miller's consent. Miller did not ratify the actions of her attorney, as she neither signed the settlement agreement nor cashed the settlement check.<sup>4</sup> Miller merely gave her attorney authority to send a demand letter. A demand letter is normally an invitation to negotiate, and not an offer that is capable of being accepted. Authority to send a demand letter does not constitute authority to enter into a settlement agreement.

No attorney has the power to bind a client to a settlement agreement without the client's consent or ratification; to hold otherwise would abrogate the scope and purpose of SCR 152 and the attorney's traditional role in the attorney-client relationship.<sup>5</sup>

Therefore, the district court erred by finding that Kutner had the authority to bind Miller to a settlement agreement without her knowledge or consent.

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<sup>4</sup>By its own terms the settlement check expired one year after the date of issue. The settlement check and release agreement constituted an offer which Miller could have accepted or rejected. Miller never returned the release form or cashed the check, and never accepted Allstate's offer.

<sup>5</sup>See SCR 152; 7 Am. Jur. 2d Attorneys at Law § 173 (2004) ("In the absence of an emergency, either precedent special authorization or subsequent ratification by the client is essential before a compromise or settlement by the attorney will be binding on the client."); see also Harrop v. Western Airlines, Inc., 550 F.2d 1143, 1145 (9th Cir. 1977) ("an attorney has no authority, either actual or implied, to settle an action without the express permission of his client").

## Settlement Agreement

An agreement to settle a legal dispute “is a contract and its enforceability is governed by familiar principles of contract law.”<sup>6</sup> The essential elements of a contract include “offer, acceptance, and bargained for consideration.”<sup>7</sup>

We recently explained, in May v. Anderson,<sup>8</sup> that although we interpret a contract under a de novo standard, “the question of whether a contract exists is one of fact, requiring this court to defer to the district court’s findings unless they are clearly erroneous or not based on substantial evidence.” In May, we recognized that a settlement contract is formed when the parties have agreed to its material terms, even though the exact language is finalized later; the release is a material term that is required for an enforceable settlement agreement to exist. Although several parties in May refused to execute the release document, we upheld the parties’ settlement agreement because all parties had orally agreed to the release’s essential terms.<sup>9</sup>

In this case, unlike May, the parties did not negotiate at all with respect to any release. Consequently, any preliminary negotiations, even if Kutner had possessed authority to settle on Miller’s behalf, could not constitute an enforceable settlement agreement.

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<sup>6</sup>Miller v. Fairchild Indus., 797 F.2d 727, 733 (9th Cir. 1986).

<sup>7</sup>D’Angelo v. Gardner, 107 Nev. 704, 744, 819 P.2d 206, 233 (1991).

<sup>8</sup>121 Nev. \_\_\_, 119 P.3d 1254 (2005).

<sup>9</sup>Id.

## Offer

Allstate and Iatarola contend the demand letter sent by Kutner represented an offer of settlement. We disagree. An offer must be definite and certain, and must be made under circumstances evidencing the “express or implied intent of the offeror that its acceptance shall constitute a binding contract.”<sup>10</sup>

The demand letter was an invitation to negotiate, requesting Allstate to remit information, pursuant to NRS chapter 690B, regarding Iatarola’s policy limits. Finally, the letter concluded by inviting Allstate to reply. None of the respondents submit persuasive arguments that the letter constituted an offer to settle Miller’s claim that could be accepted. Rather, Allstate assumed that once it sent the check for the policy limits three months after the date of the demand letter, the deal was complete. Allstate’s reliance on the statements of Kutner’s paralegal is of no avail. The paralegal merely acquiesced to Allstate’s request to send the check. The record shows that the paralegal knew he never had the ultimate authority to bind Miller to a settlement agreement.

The demand letter did not constitute a valid offer, and the district court erred by finding that Kutner entered into a valid settlement agreement with Allstate on behalf of Miller.<sup>11</sup> In the absence of a valid offer, a valid contract cannot exist.

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<sup>10</sup>Maurice Elec. Supply v. Anderson Safeway Guard Rail Corp., 632 F. Supp. 1082, 1087 (D.D.C. 1986).


<sup>11</sup>The district court did not expressly state that it found the letter to be a valid offer. However, in order to reach the agency decision, the court would have necessarily determined there was a valid offer. Moreover, because the court ordered the evidentiary hearing to determine the  
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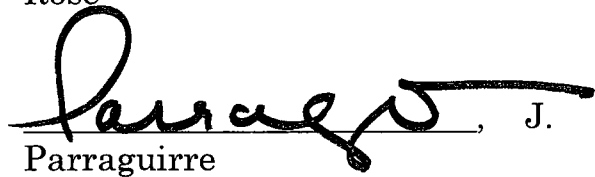
CONCLUSION

The district court erred in finding that Miller's attorney had unfettered authority to bind Miller to a settlement agreement. Therefore, the district court erred by finding that Miller was bound to a settlement she never authorized, agreed to, or ratified. It was error to grant the respondents' motion to enforce a nonexistent agreement. Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.

 \_\_\_\_\_, J.  
Douglas

 \_\_\_\_\_, J.  
Rose

 \_\_\_\_\_, J.  
Parraguirre

cc: Hon. Jennifer Togliatti, District Judge  
Paul W. Vanderwerken  
Emerson & Manke, LLP  
Prince and Keating, LLP  
Clark County Clerk

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*... continued*

authority of previous counsel to "accept offer," it appears that the court determined beforehand that there was a valid contract.