Attorneys Must Manifest Express Authority in Order to Create a Binding Settlement Agreement on Behalf of Their Client: *Reutzel v. Douglas*

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**CIVIL PROCEDURE – SETTLEMENT AGREEMENTS – APPARENT AND EXPRESS AUTHORITY** – The Pennsylvania Supreme Court held that an attorney may enter into a binding settlement agreement on behalf of his client only if the attorney is acting with express authority.


On November 23, 1994, Mark Reutzel lost control of his car along an interstate, crossed over the median into opposing traffic, and collided head-on with another car. Mark's wife Rozanna, the only passenger in the car, sustained serious back injuries which caused her to become paraplegic. Rozanna underwent back surgery at Allegheny General Hospital (hereinafter “AGH”) under the care of Dr. Richard Douglas. Dr. Douglas admitted to incorrectly placing a pedicle screw in the vertebrae of Rozanna's back, which further aggravated her condition. In 1996, the improperly implanted screw was removed from Rozanna's back, and the Reutzels filed suit against Dr. Douglas and AGH for the allegedly negligent surgical procedure.

The parties entered into negotiations to settle the case in 2002, but a personality conflict between the Reutzels' attorney, Paul Danielsen, and the attorney for Dr. Douglas, Diane Barr Quinlin, complicated the settlement. Danielsen and Quinlin often communicated either in writing, or through AGH's attorney, Terry Cavanaugh, who acted as their intermediary.

In an attempt to reach an agreement, Danielsen left Cavanaugh a voicemail message on July 30, 2002, which said:

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3. *Id.*
4. *Id.*
5. *Id.* Dr. Douglas later admitted that he improperly placed the screw in Rozanna's back, which allegedly aggravated her injuries. *Id.*
6. *Id.*

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Before I have a knockdown drag out of any kind with [Quinlin], my thought is if you could talk to her first, you guys get us a hundred, contribute what you want, I will make it go away. I don’t have client consent, but I’m not going to come back to you and say $125,000, I can guarantee you that. A hundred and it all goes poof.8

Quinlin, upon receiving the message from Cavanaugh, informed Danielsen that she would be out of the country.9 She instructed Danielsen to temporarily discuss the settlement with John Cleary, Dr. Douglas’ insurance agent.10

Cleary informed Danielsen on August 7, 2002, that Dr. Douglas had agreed to settle the suit for $100,000.11 When Quinlin returned to the country, she believed the case had been settled for $100,000, which was initially confirmed by Cavanaugh.12 Cavanaugh later warned Quinlin that subsequent to the establishment of the settlement amount, Danielsen contacted Cavanaugh to say that he may need more money to settle the case on behalf of the Reutzels.13

In response to Danielsen’s request for more money, Quinlin and Cavanaugh filed a Joint Petition to Enforce Settlement Agreement (hereinafter “Petition”) on October 7, 2002.14 They asserted that

8. Id. On August 2, 2002, Cavanaugh, after receiving Danielsen’s voicemail, sent Danielsen a letter attempting to put the voicemail’s pertinent facts into writing. The letter, in part, stated:

Dear Paul,
First it is important to note that you have not made a commitment to me yet. Nonetheless, what harm would there be in a letter that I direct to you with a copy to [Quinlin] as follows:

Dear Paul,
I do appreciate the tone and tenor of our recent conversations. You have indicated to me that you are prepared to recommend to your client that she abandon all claims against Allegheny General Hospital so that you can concentrate exclusively on your co-defendant, Dr. Douglas. Because you have advised that you and counsel for the neurosurgeon are beginning negotiations, I see no point in discontinuing the action as to my client and amending the caption at present. If negotiations break down, I do appreciate your willingness to abandon claims against Allegheny General.

Very Truly Yours,
Terry C. Cavanaugh

Id. at 789 n.1 (citing Pa. Super. Ct. Op. at 8-9 (Johnson, J., dissenting)).
9. Reutzel, 870 A.2d at 788.
10. Id.
11. Id.
12. Id.
13. Id.
an offer had been made in the July 30 voicemail to settle the case for $100,000, and that offer had been accepted when Cleary and Danielsen spoke on August 7.\textsuperscript{15} In response to the Petition, both Danielsen and the Reutzels claimed to have interpreted the voicemail and subsequent discussions to be part of an ongoing negotiation, not an offer and acceptance for a definite settlement amount.\textsuperscript{16}

The trial court granted the Petition, ordering AGH and Dr. Douglas to pay $100,000 to the Reutzels.\textsuperscript{17} Specifically, the court interpreted Danielsen's July 30 voicemail to have communicated his ability to settle the suit on behalf of the Reutzels, even though he openly stated that he did not have their consent.\textsuperscript{18} Additionally, the court held that Cavanaugh and Quinlin had relied on Danielsen's representation that he had the capability to settle the suit on behalf of the Reutzels.\textsuperscript{19} Relying on \textit{Hannington v. Trustees of the University of Pennsylvania},\textsuperscript{20} the trial court concluded that an attorney acting with apparent authority\textsuperscript{21} is sufficient to bind his client.\textsuperscript{22} On appeal, the superior court affirmed the trial court's decision, which determined that apparent authority was present.\textsuperscript{23}

The Reutzels appealed to the Pennsylvania Supreme Court, challenging the superior court's determination that Danielsen's...
apparent authority was sufficient to create a binding settlement.\textsuperscript{24} They argued that Danielsen's express statement that he was acting without client consent prevented him from having the necessary authority to negotiate a settlement agreement on their behalf.\textsuperscript{25}

The primary issue addressed by the court was whether Danielsen exhibited the authority necessary to bind the Reutzels in an oral settlement agreement.\textsuperscript{26} The court explored both apparent and express authority\textsuperscript{27} in order to determine which type of authority was best supported by Pennsylvania precedent.\textsuperscript{28} Additionally, the majority opinion considered whether Danielsen's oral settlement attempt was fraudulent, in which case, the settlement agreement would be upheld regardless of what type of authority Danielsen exhibited.\textsuperscript{29}

Justice Nigro, writing for the majority,\textsuperscript{30} reiterated the well-established rule in Pennsylvania that clients can only be bound by an attorney acting with express authority.\textsuperscript{31} Since Danielsen did not have express authority, the settlement agreement was invalid.\textsuperscript{32} Furthermore, the court determined that Danielsen's representations to Dr. Douglas and AGH regarding the settlement agreement were not fraudulent.\textsuperscript{33}

In order for the court to reach its holding, it had to first understand the lower courts' rationale, as well as their principal reliance on \textit{Hannington v. Trustees of the University of Pennsylvania}.\textsuperscript{34} In \textit{Hannington}, the superior court held that a settlement agreement which the plaintiff's attorney executed with apparent

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\item \textsuperscript{24} \textit{Id.} The Pennsylvania Supreme Court granted this appeal under a plenary scope of review, since the issue in this case involved a question of law. \textit{Stoner v. Stoner}, 819 A.2d 529, 530 n.1 (Pa. 2003).
\item \textsuperscript{25} \textit{Reutzel}, 870 A.2d at 789.
\item \textsuperscript{26} \textit{Id.}
\item \textsuperscript{27} Express authority is defined as, "authority given to the agent by explicit agreement, either orally or in writing." \textsc{Black's Law Dictionary} 143 (8th ed. 2004).
\item \textsuperscript{28} \textit{Reutzel}, 870 A.2d at 789-90.
\item \textsuperscript{29} \textit{Id.} at 792. \textit{See also} \textit{Rothman v. Fillette}, 469 A.2d 543, 545 (Pa. 1983), (upholding the validity of a settlement agreement fraudulently negotiated by the plaintiff's attorney). The court decided the party who accredited the fraudulent attorney should bear the loss of the settlement agreement before any other innocent party. \textit{Rothman}, 469 A.2d at 545.
\item \textsuperscript{30} \textit{Reutzel}, 870 A.2d at 787. Joining Justice Nigro in the majority opinion were Justices Castille and Saylor. \textit{Id.} Chief Justice Cappy authored a concurring opinion which Justice Newman joined. \textit{Id.} at 793 (Cappy, C.J., concurring). Justice Eakin wrote a separate concurring opinion which Justice Baer joined. \textit{Id.} at 795 (Eakin, J., concurring).
\item \textsuperscript{31} \textit{Id.} at 789-90 (majority opinion).
\item \textsuperscript{32} \textit{Id.} at 789.
\item \textsuperscript{33} \textit{Id.} at 793.
\item \textsuperscript{34} \textit{Id.} at 790.
\end{itemize}
authority, but without the plaintiff's consent, was valid. Because the attorney's actions caused the opposing party to reasonably believe the attorney had the right to exercise this authority on the plaintiff's behalf, the settlement agreement was upheld.

Rejecting the Hannington court's holding that apparent authority is sufficient, the Pennsylvania Supreme Court further explored Rothman v. Fillette, the case on which the Hannington court based its holding. In Rothman, an attorney fraudulently negotiated a settlement on his client's behalf, forging his client's signature on the settlement agreement and pocketing the settlement funds. When the client realized he had been defrauded, his petition to re-open the case was granted, but the court still upheld the settlement agreement. The court decided if an innocent party had to sustain a loss for the fraudulent actions of his attorney, it should be the party who "put the wrongdoer in a position of trust and confidence and thus enabled him to perpetrate the wrong."

Contrasting the Hannington and Rothman opinions, the Pennsylvania Supreme Court in Reutzel emphasized that the superior court's analysis in Hannington misinterpreted Rothman; accordingly, the Reutzel court overturned the Hannington opinion. The Rothman court's decision to uphold the settlement agreement had nothing to do with the attorney's apparent authority, but instead was based on the principle that the party who hired the fraudulent attorney must suffer a loss on the settlement amount before any other innocent party. Hannington misread this opinion as stating that apparent authority alone was sufficient to make an attorney's action binding upon his client.

After overruling Hannington, the majority examined the Rothman holding and determined that it, too, was inapplicable to

35. Hannington, 809 A.2d at 407-08.
36. Id. at 411.
37. 469 A.2d at 543.
38. Reutzel, 870 A.2d at 792. The majority found that, "Hannington clearly misstated the law emanating from Rothman and the lower courts erred in relying on Hannington's misstatement to find that the Reutzels were bound to the negotiated settlement here." Id.
39. Rothman, 469 A.2d at 544-45.
40. Id. at 545.
42. Reutzel, 870 A.2d at 792.
43. Id. at 791.
44. Id. at 792.
the Reutzels’ case. The Reutzels alleged that Danielsen misled them; however, they did not characterize any of the misleading actions he took on their behalf as fraudulent.

After the majority rejected the principal case relied on by the lower courts, it followed the well-established precedent in Pennsylvania that an attorney who has exhibited express authority can create a legally binding settlement agreement on behalf of his client. Pennsylvania’s requirement of express authority was ultimately intended to protect the client, since entering into a settlement agreement often involved the forfeiture of substantial legal rights, and should only be entered into knowingly by all parties. Client knowledge, according to the court, is heightened under the express authority doctrine because the client must specifically grant his attorney the authority to act on his behalf. The majority held that any actions taken by an attorney without the client’s specific grant of authority are not binding. Concluding that Danielsen did not possess express authority, the court ultimately decided that the oral settlement agreement reached on behalf of the Reutzels was not binding.

Chief Justice Cappy joined the majority opinion, but wrote separately in order to recommend that Pennsylvania adopt the doctrine of apparent authority instead of the doctrine of express authority. Specifically, Chief Justice Cappy preferred the apparent authority doctrine for its “proper balancing of the competing policies of the client’s right to control settlement, protection of third parties, and [a] strong public policy in favor of settlement.”

45. Id. at 790. The court subsequently granted allowance of an appeal in Hannington, but the parties requested a discontinuation of the case. Id. at 790 n.3.
46. Id. at 792.
48. Reutzel, 870 A.2d at 790.
49. Id.
50. Id. See RESTATEMENT (SECOND) OF AGENCY § 7 cmt. c (1958).
51. Reutzel, 870 A.2d at 793.
52. Id. (Cappy, C.J., concurring). Justice Newman joined Chief Justice Cappy’s concurring opinion. Id.
53. Id. See also RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS section 27 (2000), which provides apparent authority is present if, “in dealings with a third person . . . the tribunal or third person reasonably assumes that the lawyer is authorized to do the act on the basis of the client’s (and not the lawyer’s) manifestations of such authorization.” Reutzel, 870 A.2d at 794 (Cappy, C.J., concurring) (citing RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 27 (2000)).
In his concurrence, Chief Justice Cappy expanded upon several faults in the doctrine of express authority that would be alleviated if the court adopted the doctrine of apparent authority. Chief Justice Cappy first explored the difficulty that each party involved in the settlement negotiations faces when trying to gauge whether a particular attorney is acting under the express authority of his client. He was particularly concerned that the evidence needed to prove the existence of express authority would frequently fall under the protection of the attorney-client privilege, preventing the other parties from obtaining such evidence.

A second flaw that Chief Justice Cappy found inherent in the doctrine of express authority was that it punished the client for his attorney's actions in falsely manifesting express client consent in order to reach a legally binding settlement agreement. Conversely, he distinguished the doctrine of apparent authority and its focus on the actions of the client – not the attorney – in deciding whether the appropriate level of authority exists. Chief Justice Cappy believed that the doctrine of apparent authority correctly places fault on the client for any misrepresentations he provides to the other parties while attempting to reach a settlement agreement. Specifically, he noted that fairness prevails when the court chooses to uphold the settlement agreement against the client's wishes because the client's misrepresentations, instead of the attorney's, caused the other parties to believe a binding agreement had been reached.

The doctrine of apparent authority, according to Chief Justice Cappy, better served Pennsylvania's public policy goal of encouraging parties to enter into settlement agreements. Under this doctrine, he believed clients were more willing to enter into settlement agreements knowing they maintained ultimate control over their attorney's authority to settle their case. Furthermore,
Chief Justice Cappy commented that the risk of a client’s attorney falsely exhibiting express authority and creating a binding settlement agreement was alleviated under the doctrine of apparent authority. In his opinion, the rigidity of the apparent authority doctrine prevented settlement agreements from being reneged because the client maintained a heightened level of involvement in reaching the settlement agreement. This was a benefit which Chief Justice Cappy believed extended to all parties involved in a settlement negotiation, since they could be assured that their reasonable reliance on the client’s manifestations throughout negotiations would be upheld in a court of law.

Justice Eakin wrote a separate concurring opinion, which Justice Baer joined, in order to express the view in favor of imposing limits on the majority opinion. The majority, according to Justices Eakin and Baer, erred in its determination that apparent authority was present in this case. Both justices agreed that once the majority correctly determined that neither express authority nor fraudulent behavior was present in this case, the court should have concluded the settlement agreement was not binding without delving into a discussion of apparent authority.

For over one hundred years, Pennsylvania has held that a client’s approval is necessary in order to create a binding settlement agreement. In *Gable v. Hain*, the court examined whether Gable’s attorney, Samuel Baird, had the authority to settle the case by accepting money from Hain without Gable’s knowledge. The rule adopted by the Pennsylvania Supreme Court, similar to that in effect today, denied an attorney the power to act outside the scope of his profession by settling a case without the client’s express consent. The court held that Baird’s acceptance of Hain’s payment was not a legally binding settlement because Gable had not expressly authorized Baird to settle his cause of action.

64. Id.
65. Id.
66. Id.
67. Id. (Eakin, J., concurring).
68. Reutzel, 870 A.2d at 795 (Eakin, J., concurring).
69. Id.
71. 1 Pen. & W. at 264.
72. Id.
73. Id.
74. Id.
The issue of an attorney settling a client’s cause of action without express client consent was addressed by the Commonwealth over fifty years later in *Mackey’s Heirs v. Adair*. The Pennsylvania Supreme Court held that an attorney’s actions to settle a case were not effective unless the attorney had first been authorized by his client. In further exploring the boundaries of the attorney-client relationship, the court noted the absence of precedent in Pennsylvania, among other jurisdictions, which would have provided an attorney with the power to settle a case without first being expressly sanctioned by his client. In the absence of client consent, the court acknowledged two situations in which an attorney’s unauthorized actions would be binding. Legal settlements may be made without prior client consent when the client is present while his attorney performs the unauthorized actions and fails to object, or when the client subsequently acts upon and recognizes the attorney’s initially unauthorized actions as being valid.

The majority in *Mackey’s Heirs* rationalized the requirement of express authority as a way to promote settlement agreements, acknowledging Pennsylvania’s long-standing deference toward arbitration as opposed to traditional trials. In addition, the court noted that the express authority required for settlement agreements prevented an attorney from having a “dangerous” level of control over a client’s cause of action, since the client retained ultimate authority over his case.

In the twentieth century, the legality of unauthorized attorney settlement agreements continued to plague the Pennsylvania Supreme Court. In 1927, *McLaughlin v. Monaghan* raised the issue of the legal effect of a settlement letter written by McLaughlin’s attorney to the Philadelphia Rapid Transit Company. The letter agreed to hold the transit company harmless in exchange for information regarding one of the other parties involved in the ac-

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75. 99 Pa. 143 (Pa. 1881).
76. *Mackey’s Heirs*, 99 Pa. at 143.
77. *Id.*
78. *Id.*
79. *Id.*
80. *Id.*
83. 138 A. at 79.
84. *Id.* at 80.
McLaughlin had not authorized the letter written by her attorney and did not wish to release the Philadelphia Rapid Transit Company from liability. In the absence of any proof that McLaughlin had authorized to her attorney to write such a letter, the court held that the letter was not a binding release of the Transit Company's liability. Specifically, the court denied that an attorney was capable of surrendering his client's substantial rights without his client's prior knowledge and approval of the settlement agreement, or without his client's subsequent ratification of such agreement.

Over a decade later, the Pennsylvania Supreme Court reviewed the precedent in this Commonwealth which addressed the type of authority an attorney must have in order to bind his client. In Starling v. West Erie Avenue Building & Loan Ass'n, in the absence of finding express authority on behalf of the attorney, the court examined whether implied or apparent authority provided the attorney with the power to lawfully act on his client's behalf. The majority held that, based upon its review of a century of Pennsylvania cases, the existence of valid authority between an attorney and client excluded both implied and apparent authority, thereby making express authority a requirement for any attorney to validly act upon his client's behalf.

In its rationale, the Starling majority stated that a client's act of merely retaining an attorney was not an act explicit enough to provide the attorney with express authority. Placing part of the burden on the opposing party, the Pennsylvania Supreme Court stated its expectation that every party should scrutinize and inquire as to the authority under which the opposing party's attorney is acting.

In 1973, the Pennsylvania Supreme Court was again faced with the decision of what type of authority was considered persuasive evidence for creating a binding settlement agreement in Pennsyl-

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85. Id.
86. Id.
87. Id.
88. Id.
90. 3 A.2d at 387.
91. Id. at 388.
92. Id.
93. Id.
94. Id.
Before specifically addressing the issue in Archbishop v. Karlak, the court noted two divergent views that were becoming prominent in jurisdictions across the United States. Some jurisdictions held that the implied authority of an attorney was sufficient to bind a client, while other jurisdictions mandated that the attorney act under the client's "direction, knowledge or consent" in order to make a binding settlement agreement.

It was decided in Archbishop that Pennsylvania has traditionally taken the position that, unless a client expressly manifests consent to his attorney, the attorney cannot execute a valid settlement agreement on behalf of the client. This view was ultimately derived from the Commonwealth's classification of the client as the master of his case, allowing the client to maintain complete control in both litigation and settlement matters.

While the Archbishop court admitted that attorneys have broader powers than most agents, the court, nonetheless, reinforced the rule that an attorney's apparent or implied authority will not validate unauthorized actions that would essentially surrender the client's substantial rights or impose new liabilities upon the client. According to the majority, attorneys have general authority while conducting matters involved in the course of litigation; however, this general authority ends once litigation over a cause of action ceases, and express authority is required once the settlement process begins.

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96. 299 A.2d at 294.
97. Id. at 296.
98. Id. (citing 7 AM. JUR. 2d Attorneys at Law § 175 (2004) (In Archbishop, this citation is incorrectly cited as 7 AM. JUR. 2d Attorneys at Law § 128)). See also 7 AM. JUR. 2d Attorneys at Law section 173 (2004), which states that the mere retention of an attorney does not provide the attorney with the authority necessary to settle a client's cause of action. 7 AM. JUR. 2d Attorneys at Law § 173. Apparent authority is only to be relied upon when a party has notice of his or her attorney's actions and fails to disavow those actions. Id. In that specific circumstance, the opposing party can reasonably rely on the validity of the attorney's actions even though express client consent is lacking. Id.
100. Id.
102. Archbishop, 299 A.2d at 297 (citing Lipschutz v. Lipschutz, 188 A. 556 (Pa. Super. Ct. 1936)). See also STANDARD PENNSYLVANIA PRACTICE, vol. 1, chap. 4, section 90 (2005),
Within five months of the Archbishop opinion, the Pennsylvania Superior Court followed the recent decisions of the Pennsylvania Supreme Court when it struck down the validity of a settlement agreement enacted without a client’s express authority in Lodowski v. Roenick. The majority rejected the lower court’s notion that “full authority” should be considered equivalent to apparent authority. Instead, the superior court decided that “full authority” demanded the same level of attorney-client consent as the doctrine of express authority.

In the Lodowski opinion, the Pennsylvania Superior Court suggested that the legislature codify the existing case law to more clearly define the express authority with which an attorney must act in order to create a binding settlement agreement. Specifically, the majority recommended that express authority from the client be manifested: 1) from a writing that gives consent, 2) from the client’s presence at the time the settlement agreement is formulated, or 3) from any other method which provides the court with substantial proof that the client had given his attorney direct consent to enact the settlement agreement. In acknowledging that the requirement of express consent is intended to protect both the client and the attorney, the Lodowski court recommended that the legislature adopt its suggestion to more formally cement what express consent entails.

In Rothman v. Fillette, the Pennsylvania Supreme Court examined a new dimension of unauthorized attorney settlement agreements. The Rothman court was faced with an attorney who manifested apparent authority in settling his client’s case, but did so without client authorization. Not only were the attorney’s actions unauthorized, but his signing of the client settlement agreement states that an attorney’s general authority is meant to allow the attorney the ability to enter into agreements during litigation that are necessary, and that solely affect procedure or remedy. Id. Settlement agreements are distinguishable from litigation matters because they affect the cause of action itself, as contrasted with affecting procedure or remedy. Id. Since agreements which affect the cause of action cannot be considered incidental, general authority on behalf of an attorney is not sufficient in the settlement phase. Id.

103. 307 A.2d 439, 441.
104. Lodowski, 307 A.2d at 441.
105. Id.
106. Id.
107. Id.
108. Id.
110. Rothman, 469 A.2d at 544.
111. Id. at 544-45.
agreement and pocketing of the settlement funds rose to the level of fraudulent behavior.\(^{112}\) In examining the authority of an attorney in a case involving fraud, the court held that the parties interacting with the fraudulent attorney had reason to believe he was acting under the express authority of the client; therefore, the attorney's manifestation of authority was sufficient to bind his client in the unauthorized settlement agreement.\(^{113}\) The court's rationale stated that if an innocent, settling party must suffer, it should be the party who initially hired the fraudulent attorney, even though that party did not ultimately authorize the settlement agreement.\(^{114}\)

*Rothman* was not intended to impact the well-established holding in Pennsylvania that express authority, not apparent or implied authority, is required before an attorney's settlement actions will be binding upon his client.\(^ {115}\) Instead, the *Rothman* holding intended to address a narrow category of cases in which an attorney acted fraudulently by exuding a false sense of authority to the other parties involved in the settlement phase.\(^ {116}\) Within the *Rothman* opinion, the Pennsylvania Supreme Court reinforced the Commonwealth's long-standing requirement that an attorney must have express authority in order to settle a client's cause of action.\(^ {117}\)

As the twenty-first century began, Pennsylvania maintained its consistent stance that express authority is required to create a valid, binding settlement agreement.\(^ {118}\) In *Bennett v. Juzelenos*,\(^ {119}\) the Bennetts believed a settlement agreement enacted by the Juzelenos' attorney, Peterson, was a legally binding agreement.\(^ {120}\) The Juzelenos denied that Peterson had authority to settle their case, even though their son had told Peterson on the telephone that he could settle the case for $6,000.\(^ {121}\) Peterson believed Juze-

\(^{112}\) *Id.* at 545.

\(^{113}\) *Id.* at 544-45.

\(^{114}\) *Id.* at 545.

\(^{115}\) *Reutzel*, 870 A.2d at 791-92.

\(^{116}\) *Id.* (citing Keller v. N.J. Fidelity and Plate Glass Insur. Co., 159 A. 40 (Pa. 1932); Mundorff v. Wickersham, 63 Pa. 87 (Pa. 1869)).


\(^{119}\) 791 A.2d at 403.

\(^{120}\) *Id.* at 406.

\(^{121}\) *Id.* at 407.
lenos' son had been authorized by the Juzelenos to instruct Peterson to settle the case.122

The issue for the superior court to decide was whether the Juzelenos' son had the authority necessary to advise Peterson to settle the case.123 In the absence of express authority given by the Juzelenos themselves, the superior court had to determine whether the apparent authority conveyed by the Juzelenos' son to Peterson was sufficient to create a binding settlement agreement.124 The majority discussed Pennsylvania's infrequent use of the doctrine of apparent authority, which mostly occurs in cases where a third party conveys apparent authority to an agent, and the agent reasonably believes that authority was manifested directly from the principal to the third party.125 Finding that Peterson could not have reasonably believed the Juzelenos' son was acting under apparent authority, the majority held that the settlement agreement was invalid due to Peterson's lack of authority.126

Less than nine months after the Bennett opinion, the superior court made an unprecedented ruling in Hannington v. Trustees of the University of Pennsylvania.127 In Hannington, the court examined whether, in the absence of express authority, an attorney's actions could be binding under the doctrine of apparent authority.128 A settlement agreement was being negotiated between a Ph.D. student and a university over tuition fees that the Ph.D. student claimed were allegedly waived by the university.129 In an effort to reach a settlement, both attorneys negotiated what they believed to be a final agreement, but the student refused to sign the settlement agreement and immediately obtained new counsel.130

122. Id.
123. Id. at 408.
124. Bennett, 791 A.2d at 408.
125. Id. at 408-09 (citing Revere Press, Inc. v. Blumberg, 246 A.2d 407, 410 (Pa. 1968)). In Revere, the Pennsylvania Supreme Court defined apparent authority as:

[The] power to bind a principal which the principal has not actually granted but which he leads persons with whom his agent deals to believe that he has granted. Persons with whom the agent deals can reasonably believe that the agent has power to bind his principal if, for instance, the principal knowingly permits the agent to exercise such power or if the principal holds the agent out as possessing such power.

Revere, 246 A.2d at 410.
126. Bennett, 791 A.2d at 408-09.
128. Hannington, 809 A.2d at 408.
129. Id. at 407-08.
130. Id.
Finding the settlement agreement to be valid, the superior court held that the presence of apparent authority provided the student’s attorney with the power to settle the case. The majority interpreted the doctrine of apparent authority as sufficient to enforce a settlement agreement in the absence of express authority when the parties with whom the lawyer negotiated reasonably believed that the lawyer had the authority to settle the case. The Hannington court’s statement of the law regarding the authority necessary to create a binding settlement agreement in Pennsylvania was flawed, and it was later overturned by the Reutzel court.

The Hannington majority’s incorrect statement of the authority which Pennsylvania typically requires for settlement agreements stemmed from a misinterpretation of the Rothman opinion. Specifically, the Hannington majority relied on Rothman as stating that, even in the absence of the fraud on part of the attorney, the settlement agreement would be upheld under the doctrine of apparent authority due to a reasonable belief imparted upon the other parties that the negotiating attorney had the necessary authority to settle his client’s cause of action. In addition, the majority relied on the Rothman court’s finding that, as long as the parties directly interacting with the attorney believed that he had authority, they were not under any duty to determine the scope and source of that authority. The superior court in Hannington used this reasoning as support for its decision that, as long as the university reasonably believed the opposing party’s attorney had apparent authority, they did not have a duty to look further into the attorney-client relationship to determine if that authority actually existed.

Furthermore, the majority in Hannington distinguished its opinion from the majority opinion in Bennett, where the Pennsylvania Superior Court held that the doctrine of apparent authority was inapplicable for purposes of enforcing a settlement agreement. The Hannington court found the Bennett decision irrele-

131. Id. at 408.
132. Id. at 409.
133. Reutzel, 870 A.2d at 792.
134. Hannington, 809 A.2d at 408-09.
135. Id.
136. Id. at 409 (quoting Rothman, 469 A.2d at 546-57).
137. Hannington, 809 A.2d at 410.
138. Id. at 410 n.4.
vant because the attorney in *Bennett* could not have reasonably believed that the Juzelenos' son had the necessary authority to provide a settlement amount.\textsuperscript{139} Also, the *Hannington* court argued that the attorney in *Bennett* could have looked further into the questionable authority on the part of the Juzelenos' son by contacting the Juzelenos directly, but chose not to do so.\textsuperscript{140} Distinguishably, in *Hannington*, not only was there a reasonable belief that the attorney had authority, but the university was barred, because of ethical constraints, from looking any further into the authority between the Ph.D. student and his attorney.\textsuperscript{141} For these reasons, the *Hannington* court dismissed the *Bennett* holding and relied solely on its misinterpretation of *Rothman* to uphold the settlement agreement in the absence of express authority.\textsuperscript{142}

Prior to the *Reutzel* opinion, the Pennsylvania Supreme Court and the Pennsylvania Superior Court did not endorse the same rules of law regarding the authority necessary to create a binding settlement agreement. The *Reutzel* court attempted to collectively examine the pre-existing law by providing a brief history in its opinion, which reinforced the requirement of express authority and simultaneously overturned *Hannington*.\textsuperscript{143}

Even though the Pennsylvania Supreme Court explicitly adopted the doctrine of express authority in *Reutzel*, the Pennsylvania legislature should codify a law regarding the type of authority than an attorney must possess in order to settle his client's cause of action. Such action by the legislature would prevent any future confusion in the interpretation of precedent, and would ensure that a uniform requirement of authority is used in negotiating settlement agreements within the state.\textsuperscript{144} The legislature has been presented with two different doctrines to adopt: the doctrine of express authority espoused within the recent case law of the Pennsylvania Supreme Court, or the doctrine of apparent authority, which Chief Justice Cappy discussed in his concurring opinion in *Reutzel*.\textsuperscript{145}

The doctrine of express authority may have its proponents; however, the Pennsylvania legislature would be well advised to

\textsuperscript{139} Id.
\textsuperscript{140} Id.
\textsuperscript{141} Id.
\textsuperscript{142} *Hannington*, 809 A.2d at 410 n.4.
\textsuperscript{143} *Reutzel*, 870 A.2d at 789-91.
\textsuperscript{144} *Lodowski*, 307 A.2d at 441.
\textsuperscript{145} *Reutzel*, 870 A.2d at 794-95 (Cappy, C.J., concurring).
adopt the doctrine of apparent authority as codified in section 27 of the Restatement (Third) of the Law Governing Lawyers. The apparent authority doctrine focuses on the client's manifestations, instead of the attorney's, in order to determine whether an attorney has the necessary authority to settle the case. This approach, in contrast with that of the express authority doctrine, allows the client to maintain complete control in the settlement of his cause of action. Under this doctrine, a binding settlement agreement cannot be reached unless the third party reasonably believes, through interaction with the client, that the client provided such authority to his attorney. Therefore, the apparent authority doctrine prevents an attorney from fraudulently or mistakenly manifesting client consent, since the third party's basis of authority stems directly from the client's actions.

The doctrine of apparent authority better serves the public policy goal in Pennsylvania by promoting settlement agreements. Clients are more willing to settle their cause of action when they maintain direct control over what settlement terms are acceptable. The nature of the apparent authority doctrine encourages clients to actively engage in settlement negotiations because without their participation, the third party has nothing from which to conclude the attorney has the necessary authority to settle the case.

In addition, the doctrine of apparent authority fosters more trust in the attorney-client relationship. Unlike the express authority doctrine, an attorney cannot act with apparent authority independently of his client. Apparent authority is not something an attorney can claim to possess, instead, it must be outwardly manifested by the client in a manner which would give notice of such authority to a third party.

A settlement agreement executed under the express authority doctrine is invalidated upon any finding that authorization was not expressly given; however, this seemingly fair principle results

146. Id. at 793. Apparent authority is considered to be present to the extent that a client causes a reasonable belief in a third party that the lawyer is authorized to act on the client's behalf. Restatement (Third) of the Law Governing Lawyers § 27 (2000).


148. Id. at cmt. c. This Restatement comment discusses the doctrine of apparent authority and its combination of both subjective and objective elements, which provides greater assurance to the third party that the settlement agreement was the desired outcome of the client. Id.

149. Reutzel, 870 A.2d at 794 (Cappy, C.J., concurring).

150. Id. at 795.
in many settlement agreements being overturned because an attorney manifested express consent that he did not actually possess. In addition, the evidence necessary to prove or disprove the existence of express consent between a client and attorney is often protected by attorney-client privilege and is, therefore, unavailable to the third party.\textsuperscript{151} This is an unfair result to the third party, who typically bears the burden of proof in order to show that the attorney was not acting under the express authority of the client.\textsuperscript{152}

In contrast, fewer settlement agreements are reneged under the apparent authority doctrine because the authority underlying the settlement agreement is based upon the client's manifestations, not the attorney's.\textsuperscript{153} As long as the third party \textit{reasonably} construed the client's manifestations as providing authority to his attorney, the settlement agreement will be upheld.\textsuperscript{154} The principles of fairness prevail when a client is bound to an agreement that was reached under authority which the client objectively provided to his counsel, satisfying the other negotiating parties that the necessary authority was present.

The agent-principal relationship inherent in the doctrine of express authority does not serve to promote the Pennsylvania public policy goals, and instead allows the client to be bound by authority which his attorney fraudulently or mistakenly manifests.\textsuperscript{155} If the Pennsylvania legislature adopted the doctrine of apparent authority as codified in section 27 of the Restatement (Third) of the Law Governing Lawyers, the legislature would ensure that the ultimate control in settlement agreements rests in the client's hands, putting more trust in the attorney-client relationship, and prompting more clients to settle their causes of action.

\textit{Leann M. Petrilla}

\begin{itemize}
\item \textsuperscript{151} Id. at 794.
\item \textsuperscript{152} 7 AM. JUR. 2d \textit{Attorneys at Law} § 173 (2004).
\item \textsuperscript{153} \textit{Reutzel}, 870 A.2d at 795 (Cappy, C.J., concurring).
\item \textsuperscript{154} \textit{RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS} § 27 cmt. c (2000).
\item \textsuperscript{155} Id. at cmt. b.
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