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***Cruz v. Chavez:***  
**Court of Appeals Cites “No Contact” Rule in Rejecting Settlement**

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The “no contact” rule—RPC 4.2—usually arises in the disciplinary context. Recently, however, Division I of the Court of Appeals cited the rule in rejecting a settlement. *Cruz v. Chavez*, \_\_\_ Wn. App. \_\_\_, \_\_\_ P.3d \_\_\_, 2015 WL 1648979 (2015), involved a wage claim by three plaintiffs against their former employer. All of the plaintiffs were represented by the same attorney. Two of the three eventually settled at a mediation. The third plaintiff, Ramirez, moved forward toward trial. Five days before trial, the defendant revealed that Ramirez, too, had signed a settlement agreement and moved to enforce the settlement under CR 2A. Ramirez argued that the agreement had been obtained improperly—including through an asserted violation of the “no contact” rule. The trial court denied enforcement and Division I affirmed.

Like the trial court, the Court of Appeals concluded that there was a genuine issue of material fact over the validity of Ramirez’s assent. In doing so, both courts focused on the circumstances of Ramirez’s signature on the agreement. The defendant had contacted him directly and encouraged him to settle his claim. The defendant told Ramirez that “according to . . . [the defendant’s lawyer] . . . , if they settled, there would be no need for Ramirez to

contact his attorney.” (*Id.* at \*4.) The Court of Appeals cited RPC 4.2 and observed: “The evidence shows that . . . [the defendant’s lawyer] . . . may have made prohibited communication by providing Chavez the release paperwork and instructing Chavez to contact Ramirez directly in an effort to obtain a settlement without the involvement of Ramirez’s counsel.” (*Id.*)

*Cruz* serves as a useful reminder of two facets of the “no contact” rule. First, although the rule is framed in terms of lawyers rather than clients, Comment 4 to RPC 4.2 notes that “[a] lawyer may not make a communication prohibited by this Rule through the acts of another.” Second, as the Court of Appeals illustrated in *Engstrom v. Goodman*, 166 Wn. App. 905, 271 P.3d 959 (2012), where it affirmed the exclusion of evidence obtained in violation of RPC 4.2, “no contact” rule remedies extend beyond the disciplinary realm.

## **ABOUT THE AUTHOR**

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