

## Alternative Dispute Resolution

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**Western District rules that in a Rule 17 court-ordered mediation, settlement must be evidenced by a written agreement setting out the essential terms. Request for attorney's fees because of refusal to acknowledge settlement properly denied. *Tyrone Williams v. Kansas City, Title Loan Co., Inc.*, Nos.70941 and 70969 (Mo. App. W.D., July 13, 2010), Ahuja, J.**

Plaintiff/Appellant Williams sought damages before the trial court. The trial court ordered mediation pursuant to Supreme Court Rule 17. One of the defendants, Appellant Westlake took the position that the parties had settled the matter. Westlake maintained that plaintiff and his counsel left "prior to signing the final written settlement agreement", after advising the mediator that they "would return shortly to sign the agreement". After the waiting almost an hour for plaintiff and his counsel to return, the defendants, their attorneys and the mediator signed the agreement and left.

Westlake maintained that discussions continued after the mediation but plaintiff's counsel "quibbled" over the drafts of the proposed settlement agreement. Westlake filed a motion to enforce the settlement and asked for attorney's fees due to plaintiff's unreasonable refusal to "acknowledge the existence of a binding settlement agreement."

The trial court denied Westlake's request for attorney's fees but granted Westlake's motion to enforce the settlement.

Williams appealed to the Western District seeking a reversal of the motion to enforce the settlement. Westlake appealed the denial of the attorney's fee request.

It was undisputed that no written agreement "setting out the essential terms of the agreement" was executed by all the parties. Clearly, Williams did not execute the agreement. The court of appeals found that the absence of a written agreement pursuant to Rule 17.06(c) made the mediation process "non-binding" under Rule 17.01(d) and reversed the trial court's ruling on the validity of the settlement agreement.

The court of appeals, citing Rule 17.06(a), noted that ".the back-and-forth of the parties' settlement discussions during a court-ordered mediation session are inadmissible as evidence." Accordingly, the affidavits and other documents filed in the instant case "would appear to be in violation of the clear directive of Rule 17.06(a)".

Attempts to call the mediator to testify or provide an affidavit about matters occurring during the

mediation were described as expressly prohibited by Rule 17.06(b).

However, the appellate court noted that Rule 17.06(d) provides that a mediator may be called to discuss matters surrounding the execution of the written settlement agreement itself as well as post mediation events.

The appellate court contrasted the difference between the requirement of a written agreement in court-ordered mediations and the common law acceptance of oral settlement agreements under purely voluntary settlement discussions. The Western District found that the higher threshold in court-ordered mediations was appropriate and the common law would not "displace the plain language of Rule 17's provisions".

The Western District held that:

".Rule 17 means what it says: the essential terms of settlements reached during court-ordered mediations sessions must be reduced to a writing signed by the parties in order for such settlements to be enforced."

The Western District also ruled that since the "premise underlying Westlake's request for attorney's fees" was rejected, there was no error in denying the request.

**NOTES:** The agreement to mediate executed by the parties referred to Rule 17 and required a written agreement in order for the settlement to be binding.

The reader may want to compare this with the case of *Kenney v. Embe*, 972 S.W.2d 616, 620 (Mo. App. E.D. 1998).

Though not mentioned by the court, this would presumably include mediations conducted pursuant to Section 435.014, RSMo.

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