

Put It in Writing – Missouri Requires It!

If your case settles at the mediation, many mediators strongly urge the parties to sign a written memorandum of settlement. A recent Missouri case provides a clear motivation for this practice in court-ordered cases: **the settlement will be unenforceable if not reduced to writing.**

In *Williams v. Kansas City Title Loan Company*, (Missouri Court of Appeals, Western District, Case Nos. WD 70941, WD 70969, filed July 13, 2010) the Missouri Court of Appeals unanimously ruled that, in a court-ordered mediation pursuant to Missouri Supreme Court Rule 17, oral settlement agreements are not enforceable.

Williams and Westlake were ordered to mediation by the trial court pursuant to Rule 17. At the conclusion of the mediation it appeared the parties reached a settlement. The mediator prepared a written memorandum of the terms which was signed by Westlake and its counsel, but Williams and his lawyer left the mediation without signing the memorandum.

At issue in the case was the application of Rule 17.06(c):

17.06. Confidentiality and Settlement

....

(c) Settlement shall be by a written document setting out the essential terms of the agreement executed after the termination of the alternative dispute resolution process.

The Court of Appeals held that “Rule 17 means what it says: the essential terms of settlements reached during court-ordered mediation sessions must be reduced to a writing signed by the parties in order for such settlements to be enforced.”

What about mediations that are not subject to Rule 17? The *Williams* court noted that oral settlement agreements have long been enforced in Missouri, but found no case enforcing an oral settlement arising from a mediation under Rule 17. As a result, oral settlement agreements from purely voluntary negotiations (i.e., not court-ordered) remain enforceable under common law principles.

The lesson for mediators and parties: if you make the effort to settle your case at a mediation, **don't leave without getting it in writing!**