

## ***Sign Here, Please – the Final Mediation Paperwork***

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“Sign on the dotted line” is a directive lawyers have used for ages. Generally no agreement is enforceable against a party who has not attested to it by his signature. The law treats such an “agreement” as no agreement at all. Equity has carved out a few discrete exceptions to muddy these waters, but this general legal principle has become axiomatic.

So why is this simple truth frequently ignored and challenged? The latest iteration of this story comes from the Third District Court of Appeals. In Mastec, Inc. v. Cue, 994 So. 2d 494 (Fla. 3<sup>rd</sup> DCA 2008), the parties brought their personal injury dispute to mediation. A \$100,000 settlement “agreement” was apparently reached, but the Defendant was unsuccessful when seeking to enforce it – both at the trial level and on appeal. Why? As the court stated, “it is undisputed that the alleged mediation agreement was not reduced to writing and signed by the parties in accordance with Florida Rule of Civil Procedure 1.730(b).”

You may wonder why such an “agreement” was taken all the way to appeal. The written opinion is deficient in details, but there are plenty of lines that one can read between. The primary argument of the Defendant was that the missing signature of the Plaintiff was a “technicality”. This suggests that his was the only missing signature, that his lawyer and the Defense representatives all signed on the dotted line at the conclusion of the mediation. There is no indication that the Plaintiff was not physically present at the mediation, so it may be safe to presume that the Plaintiff was involved in the decision-making and the “agreement.”

One can speculate a myriad of reasons why Mr. Cue did not sign the document. Perhaps he was appearing by telephone at the consent of the parties. Perhaps he had to leave after reaching the agreement in principle (but before the paperwork was drawn up) to attend to another commitment. Perhaps he was called away emergently prior to placing his signature on the mediation settlement agreement. All of these scenarios presume that there was truly an “agreement” that was not fully consummated. The opinion and enforcement efforts by Mastec give that clear implication.

Yet Mr. Cue apparently changed his mind and refused to sign-off on his agreement. Again, one can speculate on the myriad of reasons why. Perhaps he was talked out of it by a spouse, relative or friend who was not present during the mediation conference (and thus was ignorant as to all the nuances of the claim). Perhaps he lost his job, got a sudden epiphany of wisdom, lost sight of all the problems in his case (i.e. reasons for agreeing to the settlement), etc.

I do not favor pressure mediations, yet cannot escape the high likelihood that progress made during a mediation conference is often undone during periods of continuance or requests to have a few days to “think it over”. Do not leave the drafting or signing of a mediation settlement agreement for another day. If there is truly an agreement, memorialize it then and there.

This is probably the sixth or seventh article that I have written about the importance of finishing the Mediation well – with a sufficiently complete, readily enforceable mediation

settlement agreement. Past articles have focused on taking the time to write up more than a cursory agreement memorandum, thinking through and including the essential terms. This recent case highlights what I may have wrongly presumed – that the signature portion of the agreement document was not the issue.

Indeed, the signature is perhaps the most important portion. I urge you to politely but resolutely rebuff any request to excuse the physical presence of a party from the mediation conference, especially its end stage. These requests may be sincere, genuine and innocent. Yet, innocent beginnings do not always lead to peaceful, innocent endings. Make sure that all parties “sign here, please”, or your agreement may not be worth the paper on which it is written.

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