

# Agreed Judgments

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## *Topics:*

- Settlement agreements
- Rule 11
- Agreed judgments

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# Settlement Agreements

Purpose?

*Resolution of the  
case*



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What does  
one look like?  
What are the  
contents?

#### SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the "Agreement") is made and entered into between Steven Boyer, his heirs, agents, attorneys, representatives and assignees ("Boyer"), Sara Feyen, her heirs, agents, attorneys, representatives and assignees ("Feyen"), and the Board of Education of East Dubuque Unit School District No. 119, Jo Daviess County, Illinois, its members, officers, employees, insurers, agents, attorneys, assignees, successors and all other representatives ("District 119").

#### RECITALS

**WHEREAS**, Boyer and Feyen are members of the District 119 community;

**WHEREAS**, on November 17, 2017, Boyer and Feyen attended an athletic competition at Warren CUSD 205. District 119 was a participant in the athletic competition. Boyer and Feyen were involved in an event at Warren CUSD 205 on November 17th which ultimately resulted in each of them signing a document regarding attendance of athletic events. Boyer and Feyen have verbally alleged claims against District 119 in connection with the November 17th event.

**WHEREAS**, on June 5, 2018, Boyer and Feyen filed a complaint for declaratory and injunctive relief against District 119 in the Circuit Court of the Fifteenth Judicial Circuit, Jo Daviess County, Illinois, which was assigned Case No. 2018CH14 (the "Lawsuit").

**WHEREAS**, Boyer, Feyen, and District 119 (hereinafter collectively referred to as the "Parties") desire to avoid further expense and resolve by settlement all claims at issue in the Lawsuit and which are related to the subject matter of the Lawsuit, as well as any and all claims, whether known or unknown, asserted or unasserted, related in any way to the November 17, 2017 event at Warren CUSD 205, all without any admission of wrongdoing, responsibility, or liability, upon the terms and conditions set forth herein.

**NOW THEREFORE**, in consideration of the foregoing recitals, execution of this Agreement by each of the Parties hereto and the mutual covenants hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by each party to the other party, the Parties agree as follows:

#### Section 1. Incorporation of Recitals

The foregoing recitals shall be considered a part of this Agreement and shall be binding upon the Parties.

#### Section 2. Non-Admission of Liability

This Agreement does not contain or constitute any admission, concession, or agreement by any party concerning the merits of any issue that has been or could have been raised in the Lawsuit or in any other claim, charge, action or cause of action by Boyer or Feyen, and shall not be construed as constituting or containing any such admission, concession, or agreement.

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Rule 11

*What is it?*

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### 'AGREEMENTS TO BE IN WRITING'

Unless otherwise provided in these rules, no agreement between attorneys or parties touching any suit pending will be enforced unless it be in writing, signed and filed with the papers as part of the record, or unless it be made in open court and entered of record.

- TRCP 11

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Does the rule  
even apply in  
Justice Courts?

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### “Application of Other Rules”

The other Rules of Civil Procedure and the Rules of Evidence **do not apply** except:

(1) when the judge hearing the case determines that a particular rule must be followed to ensure that the proceedings are **fair to all parties**;

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Fair to ALL  
parties?

*Who are the  
parties?*

Does it make a  
difference?

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Intended Purpose vs. Trends

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if it IS being used for a settlement:

“The purpose of TRCP 11 is to avoid disputes over the terms of oral agreements made between attorneys in a pending lawsuit.”

*Padilla v LaFrance*, 907 S.W. 2d 454, 461 (Tex.1995)

“Oral settlement agreements are unenforceable for rule 11”

*Knapp Med Ctr v De La Garza*, 238 S.W.3d at 768 (Tex.2007)

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Can the court ‘enforce’ the rule 11 settlement agreement?

***Yes ... but might not be what you think***

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## 'Enforcing' a Rule 11

- The court is confirming that the agreement was MADE
- *If it was to settle the case (even if specific terms were included), the court enforcing it would mean that the agreement exists*
- If the agreement exists to resolve the case under certain terms, the enforcement would be the court finds the case is settled and closed

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Other issues if the court was to  
'enforce' a payment plan or  
deadline?

*Due process violation*

*No right to trial*

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How to make the judgment debtor pay according to the payment plan or other terms?

*A new suit for breach of contract*

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“A settlement agreement is enforceable as a contract even if its terms are not incorporated into the judgment”

*Compania Financiara Libano, S.A. v. Simmons*, 53 S.W.3d 365 (Tex. 2004)

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“If the accord is in writing, signed by the parties or their attorneys, and filed of record, it does not matter whether a party no longer agrees to it when the trial court is finally asked to enforce it. This is so because the agreement becomes a contract when executed, not when the trial court attempts to enforce it.”

- *Coale v. Scott*, 331 S.W.3d 829 (Tex.App.-Amarillo 2001, no pet.)

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## Agreed Judgment

- Not actually a rule in TRCP
- There is an “Agreed Case” Rule 263:

*Parties may submit matters in controversy to the court upon an agreed statement of facts filed with the clerk, upon which judgment shall be rendered as in other cases; and such agreed statement signed and certified by the court to be correct and the judgment rendered thereon shall constitute the record of the cause.*

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# Agreed Judgments

both parties sign a judgment with an agreed to amount and possibly other terms

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What is in a judgment?

A judgment must:

- clearly state the determination of the rights of the parties in the case;
- state who must pay the costs;
- be signed by the judge; and
- be dated the date of the judge's signature.

TRCP 505.1 (C)(1)-(4)

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*Should you sign  
judgments with  
payment plans,  
deadlines, etc.?*

TJCTC opinion is NO

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**Why?**

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impression given to  
the parties

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## Contempt

NEVER a remedy to a party  
failing to pay

cannot be used to force a  
party follow a payment  
schedule

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So how does a judgment creditor 'make' a judgment debtor pay?

***new lawsuit for breach of contract***

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Thank you!

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