
**TO AGREE OR NOT
TO AGREE –
WHAT'S THE
DIFFERENCE?**



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TYPES OF FAMILY LAW AGREEMENTS AND STATUTORY AUTHORITY

- Rule 11 Agreements – TRCP 11
 - Mediated Settlement Agreement (MSA) on property issues – TFC 6.602
 - Informal Settlement Agreements (ISA) on property issues – TFC 6.604
 - Agreed Parenting Plan – TFC 153.007
 - Mediated Settlement Agreement (MSA) on kid issues – TFC 153.0071
 - Agreements on child support – TFC 154.124
 - Partition & Exchange – TFC 4.102-105
 - Agreement Incident to Divorce (AID) – TFC 7.006
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WHAT IS A RULE 11 AGREEMENT

- In writing, signed by attorney, and filed in court
 - Or announced in open court and read in the record
 - States the essential terms of the agreement within the agreement – *CherCo Props v. Law, Snakard, & Gambill, P.C.*, 985 S.W.2d 262 (Tex. App. – Fort Worth 1999, no pet.).
 - Judgment must conform to the agreement. *Bachus v. Bachus*, 2002 WL 1965458 (Tex. App. – Corpus Christi 2002, no pet.).
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WHAT IS NOT A RULE 11 AGREEMENT?

- Agreement read into deposition record – *Tindall v. Bishop*, 961 S.W.2d 248 (Tex. App. – Houston [1st Dist.] 1997, no writ), but see *Kosowska v. Kahn*, 929 S.W.2d 505 (Tex. App. – San Antonio 1996, writ denied).
 - No pending lawsuit – *Estate of Pollack v. McMurrey*, 858 S.W.2d 388 (Tex. 1993).
 - Ambiguous agreement will be disregarded. *Rosenboom Mach. & Tool, Inc. v. Machala*, 995 S.W.2d 818 (Tex. App. – Houston [1st Dist.] 1999, pet. denied).
 - A trial court cannot supply terms or details to an agreement. *In re S.A.H.*, 2001 WL 124496 at *3, n. 4 (Tex. App. – Houston [14th Dist.] 2001, no pet.).
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REVOCAION OF CONSENT TO RULE 11 AGREEMENT

- Consent can be revoked at anytime before judgment is rendered. *San Antonio Rest. Corp. v. Leal*, 892 S.W.2d 855 (Tex. 1995).
 - What is “render”? A judgment is rendered when the court officially announces, either orally or in writing, of its decision of the matter submitted for adjudication. But the oral pronouncement must indicate present intent to render full, final and complete judgment when it is recited. It cannot allude to a future act. *In re Joyner*, 196 S.W.3d 883 (Tex. App. – Texarkana 2006, pet. denied). Acceptance of a settlement agreement does not constitute rendition. *Cooper v. Cooper*, 2021 WL 1747856 (Tex. App. – Dallas 2021, no pet.).
 - Trial court cannot render judgment of a revoked Rule 11 Agreement. *Davis v. Wickham*, 917 S.W.2d 414 (Tex. App. – Houston [1st Dist.] 1996, no writ).
 - If agreement is revoked before rendering by the court, remedy is suit for breach of contract.
 - The trial court must have the present jurisdiction or authority to render judgment. *In re Dixon*, 2014 WL 806373 (Tex. App. – Tyler 2014, no pet. h.).
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MODIFICATION OR ADDITION OF TERMS TO RULE 11 AGREEMENT

- The court has no power to supply terms, provisions, or details not previously agreed to by the parties. In re S.A.H., 2001 LW 124493 (Tex. App. – Houston [14th Dist.] 2001, no pet.).
 - If a Rule 11 agreement doesn't dispose of all issues, then the trial court should set it for contested trial. In re Hallman, 2010 WL 619290 (Tex. App. – Texarkana 2010, pet. denied).
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TECHNOLOGY AND SIGNATURES

- Courts are split on whether, under Texas Rule of Civil Procedure 11, Plaintiff's counsel should be deemed to have “signed” the email under these circumstances.
 - *Cunningham v. Zurich American Ins. Co.*, 352 S.W.3d 519, 529 (Tex. App. – Fort Worth 2011) (finding that an automated signature block does not constitute a signature)
 - *Williamson v. Bank of New York Mellon*, 947 F.Supp.2d 704, 719 (N.D. Tex. 2013) (disagreeing with *Cunningham* in dicta)
 - *Khory v. Tomlinson*, 518 S.W.3d 568, 578 (Tex. App. – Houston [1st Dist.] 2017, no pet.) (A signature block in an email performs the same authenticating function as a “from” field, so it satisfies the Uniform Electronic Transactions Act.)
 - Texas Business and Commerce Code 322.001-.021 (if the law requires a signature, an electronic signature satisfies the law.)
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INFORMAL SETTLEMENT AGREEMENTS (ISA)

- “Not subject to revocation” must be in **bold**, CAPS, or underlined (only has to be one, not all three).
 - Signed by party and attorney
 - Property issues only
 - Entitled to judgment on the agreement
 - Still subject to just and right test
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AGREED PARENTING PLAN

- Agreements regarding kid issues
 - Still revocable
 - Still subject to the best interest test
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MEDIATED SETTLEMENT AGREEMENTS (MSA)

- “not subject to revocation” in **bold**, CAPS, or underlined.
 - Signed by party and attorneys
 - A MSA requires a mediation and a mediator – Lee v. Lee, 158 s.W.3d 612 (Tex. App. – Fort Worth 2005, no pet.).
 - Entitled to judgment on the agreement
 - Doesn't require a pending suit.
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GETTING OUT OF MSA

- Revocable for domestic violence exception or court finding not in best interest of children.
 - Not subject to a just and right property division standard.
 - Mutual mistake
 - Fraud, misrepresentation, failure to disclose
 - Illegality – violates law or public policy
 - Doesn't meet the statutory requirements – Spinks v. Spinks. 939 S.W.2d 229 (Tex. App. – Houston [1st Dist.] 1997, no writ).
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MODIFY OR TERMINATE BY AGREEMENT

- In re Minix, 543 S.W.3d 4546 (Tex. App. – Houston [14th Dist.] 2018, ___):
 - Parties entered into MSA on kid issues complied with statutory requirements. Court did not render judgment.
 - Attorneys announced to court that parties agreed to set aside the MSA. No document was signed setting aside the MSA.
 - Wife sought entry of judgment on the MSA and disavowed agreeing to set aside the MSA.
 - Court: agreement met the statutory requirements for a binding MSA.
 - Court: We conclude that section 153.0071 does not allow the parties to agree to set aside the MSA.
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