

Rule 11 Agreements

Essentially, Rule 11 agreements are contracts relating to litigation. Federal Rule of Civil Procedure 11 provides that no agreement between attorney or parties touching any suit pending will be enforced unless it is in writing and signed and filed with the papers as part of the record unless the agreement is made in court and entered of record. The agreement can accomplish anything from extending deadlines to a final agreement.

The purpose of a Rule 11 agreement is to ensure that agreements of counsel affecting the interests of their clients are not left to the fallibility of human recollection and that the agreements themselves do not become sources of controversies. With respect to the terms of the agreement, you must include all material terms and the agreement must be clear and unambiguous. If you cannot agree upon certain terms or if any terms are left out, they are considered to still be contentious and will not be included by default.

In some cases, a dispute will arise as to the meaning or interpretation of a Rule 11 agreement. In such controversy, a court will examine a Rule 11 agreement applying contract law principles. The court's primary objective in construing a written contract is to ascertain and give effect to the intentions the parties have objectively manifested in the written instrument. Contract terms are given their plain, ordinary, and generally accepted meanings. Furthermore, the Rule 11 agreement will be construed as a whole in an effort to give effect to all provisions of the agreement.

How do you enforce a Rule 11 agreement if disputed issues arise or one party contends that it has withdrawn consent (before judgment has been entered by the court)? The method available for enforcing a Rule 11 Agreement is through summary judgment or trial. The action to enforce a Rule 11 Agreement must be based on proper pleading and proof.

Ultimately, for a revoked or disputed Rule 11 Agreement, the party seeking the enforcement must pursue a separate breach of contract claim subject to the normal rules of pleading and proof. Accordingly, remedying a conflict in interpretations over a Rule 11 Agreement should begin with an amendment to the pleadings to assert a breach of contract claim for the alleged violation of the Rule 11 Agreement. The movant must then follow the normal rules of pleading and proof (i.e. filing a motion for summary judgment) seeking a judicial determination that the other party has breached the Rule 11 Agreement. Of course, as with most breach of contract claim in Texas, attorney fees can be recovered for the claim.

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