

# Enforcing Settlement Agreements: Don't Let the Court Lose Jurisdiction

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It is well known that the majority of civil lawsuits end in settlement. Not only does the law favor settlements, but judges have discretion to encourage settlement agreements amongst litigants. Less well known is what happens in the court after a settlement agreement is reached. All parties involved expect that a final settlement agreement will truly bring an end to the controversy, but that is not always the case. The terms of settlement agreements often require enforcement. Until recently, the rule on who has jurisdiction to enforce settlement agreements was hazy. However, in *Infinite Sec. Solutions, L.L.C. v. Karam Props. II*, 143 Ohio St. 3d 346 (Ohio 2015), the Supreme Court of Ohio has clarified the issue holding that a trial court may retain jurisdiction over a dismissed civil action for the purposes of enforcing a settlement agreement only by including certain language in the dismissal.

Two related cases brought this issue to light. The trial court consolidated the cases, and the parties participated in a pretrial settlement conference on May 19, 2011. Despite a local rule allowing litigants 30 days following settlement to file an entry of dismissal, the trial court dismissed the action one week after the parties agreed to settle. Arguing that the dismissal was a mistake, the appellant asked the trial court to vacate the entry and reopen the case, which the appellees and nonparties opposed. Finding that the dismissal entry acted as a “placeholder entry,” the trial court denied all motions as

moot and held that the dismissal was conditional. The court further found that it retained jurisdiction over the issues relating to the settlement, and made rulings on the contested issues.

Upon appeal, the Sixth District Court of Appeals held that the trial court did not retain jurisdiction over the settlement issues as it had “unequivocally dismissed the action.” Although the trial court deemed its dismissal “conditional,” the Court of Appeals found the dismissal to be unconditional “because it neither incorporated the terms of the parties’ settlement nor expressly retained jurisdiction to enforce the settlement agreement.” This ruling conflicted with two Eighth District cases, which found dismissal entries conditional if they state “all claims were settled and dismissed, even though the entries did not incorporate the terms of the settlements or expressly retain jurisdiction.” In light of these conflicting decisions, the Supreme Court of Ohio certified the case to determine the implications of a dismissal that does not incorporate the terms of a settlement agreement or expressly reserve jurisdiction to the trial court.

In Ohio, many counties’ local rules address the procedure courts should follow once a settlement is reached. Although neither the Ohio Civil Rules nor local rules provide for conditional dismissals, a number of trial courts often issue these types of dismissals when handling cases after settlement. Whether a trial court’s dismissal was conditional has been the primary factor for appellate

courts in determining whether the court retained jurisdiction to enforce the settlement agreement. Appellate courts relied on several Supreme Court of Ohio decisions stating that a court loses jurisdiction when it unconditionally dismisses a case. Despite this language, the idea of a “conditional” dismissal was never addressed by the Supreme Court of Ohio. Nor do the Civil Rules provide for such an entry.

In this case, the Supreme Court of Ohio expressly rejected the idea of a conditional dismissal, but held that a court may retain jurisdiction to enforce a settlement agreement, if certain conditions are met. Although some states, as well as some jurisdictions within Ohio, reject the concept that a court may retain jurisdiction following a dismissal, the United States Supreme Court has also endorsed the concept, in certain circumstances. A court’s retention of jurisdiction following settlement is not only beneficial to the parties, but to the court as well. It is in the parties’ interest to bring any disputes over a settlement agreement before a court that is well versed in the issues. Additionally, bringing such disputes before a familiar court is a more efficient use of court resources.

Just as important as whether a court can retain jurisdiction in this situation, is how the court retains jurisdiction. A number of Ohio appellate courts have addressed this issue, and require a dismissal entry

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I need to take advantage of public speaking opportunities to improve and get more comfortable with speaking—practice, practice, practice.

**Where do you work?** – Nationwide Mutual Insurance Company, Columbus, Ohio

**Do you specialize or have a niche?** – Personal lines claims.

**If you weren't a lawyer, what would you be?** – If I were not a lawyer, I would do something where I could help/care for animals.

**What is your dream job?** – I feel very fortunate to have a job I enjoy, and to work for a great company. Nationwide has provided me with the ability to learn, grow and develop, including the ability to participate in the Institute. I would have to say I have my dream job.

**What would you like to tell us about yourself (i.e. your family, hobbies, etc.)?** – This past August I celebrated my tenth wedding anniversary. My husband and I live in Powell, Ohio, and have two Weimaraners (aka our kids). I enjoy running, sports, and spending time with family and friends. ■

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to either (1) incorporate the settlement agreement; or (2) expressly state that the court retains jurisdiction to enforce the settlement agreement. Expressly rejecting the idea that an entry need only allude to a settlement to retain jurisdiction, the Court adopted these requirements. In doing so, the Court acknowledged both the potential desire to maintain confidentiality and the concrete need for unambiguous and final dismissal entries. Accordingly, parties are not required to incorporate the terms of a settlement in the entry of dismissal, although this is one option to allow the court to retain jurisdiction. Rather, a court's intent to retain jurisdiction need only be expressed by simple but clear language such as "The court hereby retains jurisdiction to enforce the settlement agreement reached between the parties." The language itself is not nearly as critical as the need to create a clear indication of the court's intention.

Inclusion of this language now makes up a small but critical part of an entry of dismissal. Without it, lawyers risk subjecting their clients to increased costs, inconsistent rulings, and valuable time if the parties have to file another lawsuit. In a time where settlement agreements are the most common conclusion to civil cases, lawyers must be aware of the repercussions if dismissal entries are not carefully drafted. While the necessary language may seem to be such a small piece of the puzzle, it can completely change the scene for disputes over settlements and thus a client's future. ■

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## Cincinnati's Largest Law Firm Merges with West Coast Group

Cincinnati's largest law firm is continuing its expansion with its third merger of 2015, this time with a California-based law firm founded by a former White House attorney.

Dinsmore & Shohl merged with San Diego-based Leventhal Law effective November 1.

Leventhal Law represents Fortune 250 corporations, emerging companies and high-profile individuals. The firm was founded in 2012 by Joe Leventhal, former deputy assistant to vice president Dick Cheney.

"Establishing a West Coast presence is essential to support our clients' current business needs," George Vincent, Dinsmore managing partner and chairman, said in a news release. "We focused on California given the wealth of innovation in the state and discovered we have a lot of synergies with Leventhal Law."

The merger increases Dinsmore's ranks to 625 attorneys in 21 cities throughout California, Colorado, Connecticut, Illinois, Kentucky, Michigan, Ohio, Pennsylvania, West Virginia and Washington, D.C.

Downtown-based Dinsmore is Cincinnati's largest law firm with 211 local active attorneys, according to Courier research.

The Leventhal merger is the firm's third of 2015. In September it merged with Detroit-based Gifford, Krass, Sprinkle, Anderson & Citkowski. In February Dinsmore merged with West Virginia-based Huddleston Bolen. ■