

**FILED**

JUL 30 2010

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
B: \_\_\_\_\_

NO. 290689

COURT OF APPEALS, DIVISION III  
OF THE STATE OF WASHINGTON

---

CHELAN COUNTY

Appellant

v.

CHELAN COUNTY DEPUTY SHERIFF'S ASSOCIATION and  
DALE ENGLAND

Respondents

---

APPEAL FROM THE SUPERIOR COURT  
FOR CHELAN COUNTY  
JUDGE JACK BURCHARD  
(Visiting Judge)

---

**Brief of Appellant**

---

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Jeffers, Danielson, Sonn  
& Ayiward, P.S.  
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(509) 662-3685  
Counsel for Appellant

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## **I. Introduction**

This case is not complicated. In summary, it involves a written settlement contract which was negotiated by the parties during mediation. A few days later, the respondents tried to rescind the written settlement contract which forced the County to file this lawsuit requesting judicial enforcement. Unfortunately, the trial court refused to enforce the written settlement contract, granted the respondents motion for summary judgment, and dismissed the case. Chelan County then filed this appeal.

## **II. Assignment of Error**

The trial court erred when it granted the respondents motion for summary judgment and dismissed the case with prejudice.

## **III. Statement of the Case**

Dale England was employed by the Chelan County Sheriff's Office as a commissioned deputy sheriff from 1983 to 2008. CP 164. He was discharged by the Sheriff in November, 2008. CP 164. At the time, he was a member of the Chelan County Deputy Sheriff's Association (CCDSA) which is the employee organization representing most of the employees of the Chelan County Sheriff's Office for purposes of collective bargaining. CP 164.

The decision to discharge Dale England was the final result of a long and extensive internal investigation which began in July, 2008. CP 164. Dale England was on administrative leave with pay during this investigation.

The investigation began on July 17, 2008 and it was prompted by an incident that occurred the previous day. CP 165. Dale England, while on duty, placed a phone call to an acquaintance in Montana and left a message on what he thought was the voicemail of his acquaintance. CP 165. Unfortunately, the call actually went to the wrong number and the voice message included references to guns and a death threat by England to the recipient of the phone call. The recipient took the threat seriously and called the police in Montana, who then traced the call back to Dale England in Chelan County. CP 165. The police in Montana notified the Chelan County Sheriff's Office. CP 165. The internal investigation was then initiated by Chelan County Sheriff Mike Harum. CP 165.

The internal investigation included both a criminal investigation and an internal disciplinary investigation. CP 165. The criminal investigation was conducted by the Wenatchee Police Department. CP 165. The internal disciplinary investigation was

conducted by Undersheriff Greg Meinzer and Lieutenant Jerry Moore, both of the Chelan County Sheriff's Office. CP 165. Both investigations were eventually completed. No criminal charges were filed against Dale England, but the result of the internal investigation indicated that he had violated several office policies. CP 165. Based on these findings and conclusions, Sheriff Harum decided to discharge Dale England. CP 165.

One of the primary reasons that Sheriff Harum decided to discharge Dale England, instead of imposing a less severe form of discipline, was because he concluded that England had not been truthful during both investigations. Specifically, Sheriff Harum made the following finding:

There is clear and convincing evidence that Dale England was untruthful throughout both investigations. England was untruthful when interviewed by Sergeant John Kruse and Undersheriff Greg Meinzer. England has chosen repeatedly to deny violations, withhold information and not provide truthful and complete answers in the course of this investigation.

CP 166, 224.

In the opinion of Sheriff Harum, this finding of untruthfulness made Dale England less effective and less credible as a law enforcement officer because the finding itself became exculpatory

evidence which was required to be disclosed in criminal prosecutions of suspects investigated by Dale England. CP 166-167.

After Dale England was discharged, Sheriff Harum became aware of three additional incidents involving England's actions and behavior. CP 167. These incidents were all serious enough to warrant separate internal investigations, but Dale England had already been discharged. CP 168. Therefore, complete internal investigations were not done and the disciplinary process was not initiated for these incidents. CP 168. Sheriff Harum's intent was to initiate internal investigations and the disciplinary process if Dale England was reinstated to his County employment. CP 168.

The collective bargaining agreement between Chelan County and the CCDSA includes a grievance arbitration provision whereby the parties agree that all grievances will be resolved by binding arbitration. CP 181-183. This grievance arbitration provision applies to grievances regarding discipline and discharge issues.

Dale England and the CCDSA filed a grievance regarding his discharge from the Sheriff's Office. CP 168. Eventually, the parties jointly hired Mike Beck to serve as the arbitrator for the

grievance. CP 168. Mr. Beck is a very experienced labor lawyer and arbitrator. CP 168. The arbitration was originally scheduled for hearing in April 2009 but it was continued to mid November, 2009. CP 168.

While preparing for the arbitration hearing, Chelan County and the CCDSA had some disagreements regarding discovery and the exchange of information. CP 168. Eventually, the CCDSA filed an Unfair Labor Practice (ULP) complaint with the Public Employment Relations Commission (Case No. 22617-U-09-5785) in which one of the allegations involved this discovery dispute regarding the Dale England arbitration. CP 168. The ULP complaint also involved other issues not relevant to the Dale England grievance arbitration. CP 168. The Public Employment Relations Commission scheduled a hearing for January, 2010. CP 169.

The parties agreed to discuss settlement of both the pending ULP complaint and the Dale England grievance, and jointly hired Fred Rosenberry to serve as the mediator. CP 169. Mr. Rosenberry is a well respected and experienced labor mediator, formerly employed by the Public Employment Relations Commission. Mediation was scheduled for November 5, 2009. CP

169.

The mediation was successful and the parties settled the Dale England grievance. CP 169, 246-247. The parties agreed to settle all of the pending issues between Dale England and Chelan County and most, but not all, of the issues between the County and the CCDSA. In summary, Chelan County agreed to reinstate Dale England for an additional six months, to amend the findings against him to “not sustained”, and to pay back wages. The County also agreed not to investigate the other post-discharge incidents against England. CP 247-48. Appendix A.

In return, Dale England agreed not to return to active duty, and to waive all rights to file civil claims against the County, and the CCDSA agreed to dismiss the pending grievance regarding Dale England’s discharge. The parties did not resolve the pending ULP, but agreed to engage in future settlement discussions. CP 247-48.

A Memorandum of Understanding (MOU) was signed by all parties and their attorneys at the mediation. CP 247. The purpose of the MOU was to act as the interim settlement contract until a final and more formal contract could be prepared, typed, and printed. CP 169. However, the MOU included all essential terms of the

settlement agreement and there were no remaining unresolved issues, except the pending ULP which was not material to resolution of the grievance. CP 169.

Arbitrator Mike Beck was notified of the settlement on both November 6 and November 9, 2009. Mr. Beck canceled the arbitration hearing. CP 144.

On November 9, 2009, Chelan County prepared a formal typed Settlement Agreement and a copy was sent electronically to the attorney for Dale England and the CCDSA. CP 144. Chelan County also notified the CCDSA that the County Commissioners had approved the settlement agreement. CP 262, 264.

Early in the morning on November 12, 2009, a local radio station contacted both Dale England and Sheriff Mike Harum regarding the settlement agreement. CP 170. Both Dale England and Sheriff Harum gave statements which were broadcast by the radio station. CP 170, 249-253, 265.

Later that day on November 12, 2009, the CCDSA and Dale England notified Chelan County that they were no longer willing to comply with the settlement contract. CP 145. This notification was made by email from their attorney to the attorney for Chelan County. CP 154.

Chelan County then filed this lawsuit pursuant to RCW 7.24, the Washington Declaratory Judgment Act, seeking an order declaring the signed Memorandum of Understanding to be the binding settlement agreement between Chelan County, the CCDSA, and Dale England. CP 3-7. The parties then filed motions for summary judgment, and the trial court heard the motions simultaneously on April 23, 2010. CP 280. The trial court denied the motion filed by the County and refused to enforce the settlement agreement signed by the parties and their attorneys. Instead, the trial court granted the motion filed by the CCDSA and Dale England and dismissed this case with prejudice. CP 280-282. The written settlement agreement was effectively rescinded. Chelan County filed this timely appeal. CP 283.

#### **IV. Argument**

##### ***A. The written settlement contract is binding and enforceable as a matter of law.***

The written settlement contract signed by the parties and their attorneys constitutes a binding, enforceable agreement. It was signed by all parties, it was signed by the attorneys for both parties, and it includes all relevant and material terms to the settlement agreement. It is a complete agreement and it includes a

summary of all material terms to the settlement contract reached during the mediation. Nothing was missing, and nothing was left out. Therefore, it should be enforced by this court.

Washington courts have routinely encouraged and enforced informal settlement agreements. In re Marriage of Ferree, 71 Wash. App. 35, 41, 856 P.2d. 706 (1993); Eddleman v. McGhan, 45 Wash. 2d 430, 432, 275 P.2d 729 (1954); Bryant v. Palmer Coking Coal Co., 67 Wash. App. 176, 834 P.2d 662 (1992) *review denied*, 120 Wash.2d 1027 (1993). This policy is also consistent with Civil Rule 2A and RCW 2.44.010, which both indicate that informal settlement agreements are enforceable. For example, Civil Rule 2A provides as follows:

No agreement or consent between parties or attorneys in respect to the proceedings in a cause, the purport of which is disputed, will be regarded by the court unless the same shall have been made and assented to in open court on the record, or entered in the minutes, or unless the evidence thereof shall be in writing and subscribed by the attorneys denying the same.

The court rule is similar to the statute, which states as follows:

An attorney and counselor has authority:

(1) To bind his client in any of the proceedings in an action or special proceeding by his agreement duly

made, or entered upon the minutes of the court; but the court shall disregard all agreements and stipulations in relation to the conduct of, or any of the proceedings in, an action or special proceeding unless such agreement or stipulation be made in open court, or in presence of the clerk, and entered in the minutes by him, or signed by the party against whom the same is alleged, or his attorney;

RCW 2.44.010(1). In summary, both the court rule and the statute indicate that settlement agreements are enforceable even if the agreements are oral (if made in open court and on the record) or if signed only by the attorneys but not the parties.

This policy in favor of enforcing settlement contracts is also followed by the courts. Settlement contracts, even informal agreements, are governed by general principles of contract law. Morris v. Maks, 69 Wash. App. 865, 868, 85 P.2d 1357, *review denied*, 122 Wash. 2d 1020 (1993); Stottlemeyre v Reed, 35 Wash. App. 169, 171, 665, P.2 1383, *review denied*, 100 Wash.2d 1015 (1983). In determining whether informal writings, such as letters, are sufficient to establish a contract even though the parties contemplate signing a more formal written agreement, Washington courts consider whether (1) the subject matter has been agreed upon, (2) the terms are all stated in the informal writings, and (3)

the parties intended a binding agreement prior to the time of the signing and delivery of a formal contract. Loewi v Long, 76 Wash. 480, 484, 136 P. 673 (1913).

The case of Morris v. Maks is instructive to the case at bar. In Morris, the attorneys for the two parties exchanged letters confirming that a settlement agreement had been reached; however, neither of the actual clients had signed a settlement contract. A few days later, one of the clients tried to terminate the negotiations and rescind the settlement agreement. The courts eventually enforced the settlement agreement.

The Morris court analyzed two arguments similar to those made in the case at bar. First, the client that tried to rescind the settlement agreement argued that the attorney letters were not binding because the parties intended to draft a “definitive” or final agreement, which meant that the settlement was contingent upon the completion of a formal settlement contract. The court rejected that argument with the following analysis:

However, the fact that the parties contemplated drafting a formal settlement agreement does not necessarily mean that they intended to be bound only upon execution of that document. As the court stated in Loewi: “If the subject matter is not in dispute,

the terms are agreed upon, and the intention of the parties plain, then a contract exist between them be virtue of the informal writings, even though they may contemplate that a more formal contract shall be subsequently executed and delivered.”

Morris v. Maks, 69 Wash. App. at 872 (citing Loewi v. Long, 76 Wash. 484).

Next, the client trying to rescind the settlement agreement argued that the two letters by the attorneys were not binding because the second letter included more detailed terms than did the first letter. The court rejected this argument and concluded as follows:

...while the drafts of the settlement agreement dated after July 25 are more detailed than the July 19 letter, the subsequent refinements of the parties respective liabilities and the lease agreement did not materially alter the agreement.

Morris v. Maks, 69 Wash. App. at 870.

In the end, the court in Morris concluded that the trial correctly enforced the settlement agreement. Morris v. Maks, 69 Wash. App. 867. Similar results were reached in Patterson v. Taylor, 93 Wash. App. 579, 969 P.2d. 1106 (1999) and In re Marriage of Ferree, 71 Wash. App. 35, 856, P.2d. 706 (1993).

In the case at bar, it is undisputed that the parties reached a settlement agreement at the mediation on November 5, 2009. Additionally, the actual terms of the settlement agreement are undisputed – and in fact those terms are specified in the written settlement contract. It is undisputed that the written settlement agreement was signed by all parties and their attorneys. Finally, it is undisputed that the settlement agreement included all material terms. Therefore, the settlement agreement should be enforced. The trial court erred when it refused to enforce the agreement and instead dismissed this case with prejudice.

***B. Alternatively, the trial court should have ordered a trial to resolve any factual issues regarding the written settlement agreement.***

The only alternative result was to hold a trial or hearing on the issue of the intent of the parties at the time the settlement agreement was signed. If the non moving party raises a genuine issue of material fact, a trial court abuses its discretion if it enforces the settlement agreement without first holding an evidentiary hearing to resolve the disputed issues of fact. Binkerhoff v. Campbell, 99 Wash. App. 692, 994 P.2d. 911 (2000); In re Marriage of Ferree, 71 Wash. App. 35, 43, 856 P.2d. 706 (1993); Callie v. Near, 829 F.2d. 888, 890 (9<sup>th</sup> Cir. 1987).

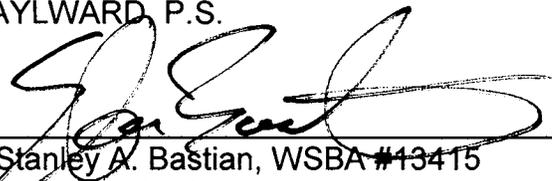
In the case at bar, it remains unclear exactly why the trial court refused to enforce the settlement agreement. But, to the extent that genuine issues of material fact exist, then the appropriate result was to hold a trial to resolve those factual issues. The trial court should not have summarily dismissed this case.

**V. Conclusion**

The trial court should be reversed and the written settlement contract dated November 5, 2009, should be declared to be binding and enforceable. Alternatively, this case should be remanded for a hearing to resolve any factual disputes – specifically any disputes regarding the intent of the parties at the time the settlement contract was signed.

RESPECTFULLY SUBMITTED this 29<sup>th</sup> day of July, 2010.

JEFFERS, DANIELSON, SONN  
& AYLWARD, P.S.

By   
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Wenatchee, WA 98807  
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M.O.U.

Nov 5 2009. ①

- ① Rescind discharge - reinstate to pay status effective Nov. 10 2008
- ② charges for/re phone msg incident - not sustained
- ③ return to paid leave status until May 31 2010
- ④ retro active pay applies to salary plus ~~performance~~ <sup>assignment</sup> premiums, but not overtime, - includes new contract retro pay.
- ⑤ medical premiums waived looking back + future
- ⑥ post event issues - discipline resolved with no further action by the CCSO -
  - Ⓐ cell phone
  - Ⓑ gun purchase
  - Ⓒ educ. pay.
- ⑦ ULP - England info : CCSO will develop policy by March 31 2010 re: records retention consistent with Seattle case - share with CCOSA and bargain if necessary.
- ⑧ Dale Englund waives all rights to file civil claims
- ⑨ leave accruals waived looking back and future.

⑩ Co needs approval from Commission and will recommend ratification on Monday Nov 9 2009.

⑪ Parties will continue to engage in discussions to resolve pending U.P.

Shu Bastian

Cathy Mulhall

Mustam  
Moore

James McQuinn

Cathy Lawrence  
W. G. ...  
B. B. ...

**FILED**

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By: \_\_\_\_\_

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IN THE COURT OF APPEALS  
FOR THE STATE OF WASHINGTON  
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CHELAN COUNTY	)	
	)	
Appellant,	)	AFFIDAVIT OF MAILING
	)	
vs.	)	
	)	
CHELAN COUNTY DEPUTY	)	
SHERIFF'S ASSOCIATION and	)	
DALE ENGLAND,	)	
	)	
Respondents.	)	
<hr/>		
STATE OF WASHINGTON	)	
	)	ss.
COUNTY OF CHELAN	)	

KIMBERLY D. WHITE, being first duly sworn on oath,  
deposes and says: That she is, and all times hereinafter mentioned  
was, a citizen of the United States of America and a resident of the  
state of Washington, over the age of twenty-one (21) years, and  
competent to be a witness in this action and not a party thereto;

That on the 29<sup>th</sup> day of July, 2010, she mailed the original **Brief of Appellant** in this action by depositing in the United States mails, postage prepaid, the original of said **Brief of Appellant** addressed as follows:

Ms. Renee S. Townsley  
Washington State Court of Appeals, Division III  
P.O. Box 2159  
Spokane, WA 99210

and mailed copies of said **Brief of Appellant** by depositing in the United States mails, postage prepaid a copy of **Brief of Appellant** to:

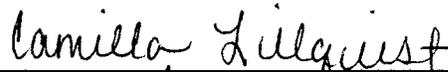
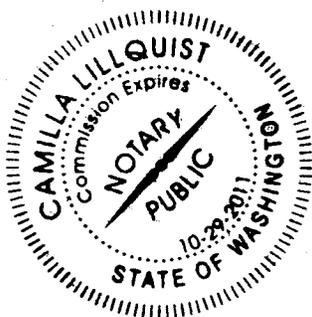
Mr. James M. Cline  
Cline and Associates  
2003 Western Avenue, Suite 550  
Seattle, WA 98121

DATED this 29<sup>th</sup> day of July, 2010.



KIMBERLY D. WHITE

SUBSCRIBED AND SWORN to before me this 29 day of July, 2010, by Kimberly D. White.



Typed/Printed Name Camilla Lillquist  
NOTARY PUBLIC  
In and for the state of Washington.  
My commission expires 10-29-11