
COURT OF APPEALS ADDRESSES OFFERS OF JUDGEMENT

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Perry v. Ronan

Ct. Appeals, Div. One, June 22, 2010

Authored by the [JSH Appellate Team](#)

A mediator recommended that the defendant pay \$400,000 to resolve a dispute. Defendant agreed, but the plaintiff did not, and the mediation ended without settlement. Two weeks later, the plaintiff faxed a letter to his attorney authorizing her to settle the litigation for \$400,000 so long as the offer was accepted within 5 days. The plaintiff's attorney conveyed the offer to the mediator but failed to disclose the acceptance deadline. The mediator did not inform the defendant of the offer until after the deadline had passed, but once he did, the defendant accepted the offer within two days. When defendant contacted the plaintiff to confirm the settlement, the plaintiff refused to settle. The trial court denied the defendant's motion to enforce the settlement.

The court of appeals reversed. Expressly adopting Restatement (Second) of Contracts § 49, it held that the parties entered into an enforceable settlement agreement once the defendant accepted the plaintiff's delayed offer. This was because the delay in the offer was the offeror's (plaintiff's) fault, the offeree (defendant) did not know or have reason to know of the delay, and the offeree (defendant) accepted the offer within the same period of time that would have been permissible if there was no delay (5 days). The court further held that Rule 80(d), Ariz.R.Civ.P., did not preclude enforcement because neither the agreement's existence nor its terms were in dispute.