

## CITY DENIED SETTLEMENT TIED TO AN ORAL AGREEMENT

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### **Body**

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UNDER ITS CURRENT procedures, New York City cannot settle a civil case without a signed agreement from the plaintiff, a Southern District federal judge has ruled.

The City had offered to pay Robert McCoy \$1,000 to settle his police brutality claim. Mr. McCoy orally accepted the offer, and even claimed in writing that he had signed copies of the settlement agreement.

When he changed his mind and refused to forward the documents, the City claimed the settlement was binding and the suit should be dismissed. But Judge Robert P. Patterson Jr. found that neither side intended the agreement to be final until a signed copy was returned to the Corporation Counsel's Office.

In addition, the judge noted that the strong public interest in exposing police misconduct, enforcing criminal laws and vindicating an individual's constitutional rights favors allowing plaintiff to proceed.

Mr. McCoy claims that when he was arrested by three officers from Harlem's 30th Precinct on Dec. 21, 1993, he was beaten with flashlights, radios, nightsticks and closed fists. He was choked and spit on, and an officer sprayed his face with pepper spray, he claims.

Assistant Corporation Counsel Steven Kirkpatrick initially offered him \$500 to settle his claims, which he refused. Mr. McCoy agreed to a subsequent offer of \$1,000.

This past April 8, Mr. Kirkpatrick mailed copies of the settlement agreement to Mr. McCoy. Nine days later, Mr. McCoy said he had not received them. Another set was mailed, and Mr. McCoy said he had some questions about the settlement terms.

### **Settlement Terms**

On April 25, Mr. McCoy wrote to say he had signed the documents, had them notarized and would be forwarding them shortly. The letter included the phrases in settling this matter; I doubted signing but my religion teaches me to honor all contracts; and we saved the city a little money by disposing of this matter.

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The City claimed those phrases indicated Mr. McCoy thought the settlement was binding.

But Judge Patterson, in **McCoy v. New York City Police Department**, 95 Civ. 4508, pointed out that the settlement agreement's own terms say that no oral agreement will be binding. If an oral agreement had been binding, the City would have paid the settlement amount, he noted.

Judge Patterson also noted that at the time Mr. McCoy was considering the settlement offer he was incarcerated and not represented by counsel. He may not have made an informed decision as to whether he should waive his rights, the judge said.

Mr. McCoy is represented by solo practitioner Gregory Antollino. Mr. Kirkpatrick represented the City.

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