

DISPUTE RESOLUTION

What It Can Do For You
And Your Business

ADVANTAGES OF RESOLUTION OUT OF COURT

- Reduce Cost
- Reduce Risk
- Reduce Time

TYPES OF DISPUTE RESOLUTION

- Negotiation—one on one
- Mediation—third party neutral, parties make decision
- Arbitration—third party neutral, arbitrator makes decision

NEGOTIATION

Negotiation is an interactive communication process that takes place when two or more attempt to resolve their apparent concerns and their desires differ. It is figuring out when to give in order to get. It is also the foundation for other dispute resolution processes.

MEDIATION

- Mediation is facilitated negotiation involving a neutral party who does not make a decision for you.
- The neutral party should not have a stake in the outcome, but it may be helpful to have someone with experience in the substance of the dispute.

WHAT GOOD IS MEDIATION IF SOMEONE DOESN'T MAKE A DECISION FOR YOU?

- You can be creative in your resolution
- Resolution can be crafted to your particular situation and needs
- You are in charge of the solution
- You can walk away
- You can have real input in the solution
- Trained mediators know how to break many impasse situations

ADVANTAGES OF MEDIATION

- Parties can pick their mediator, who can be an expert in the field
- Parties can be as creative as they want
- Parties have the opportunity to give their perspective without rules of evidence or civil procedure interfering
- Any resolution is voluntary—the agreement is binding
- Takes away risk of judge or jury

WHAT DOES IT LOOK LIKE?

Most business mediations will have a structure in which:

- Parties meet together for a short time in order for the mediator to explain the process—sometimes each party (or attorney) give a brief summary of the dispute
- Parties usually have the opportunity to submit a confidential statement about their respective strengths and weaknesses to the mediator and give a settlement range and ideas
- Each party has the opportunity to meet with the mediator individually and in private (caucus)

MEDIATION VS ARBITRATION

- Parties decide the outcome
- Can be creative and personalized
- Can be done by one neutral person
- Facilitated negotiation and risk analysis
- If no resolution, other processes available
- Third person or panel decides
- Usually based upon strict interpretation of laws and standards
- Often done by a panel of three, which increases costs
- Decision usually can't be appealed

PREPARATION FOR ANY OF THE PROCESSES

- Identify your interests & the opposing side's interests
- Identify your goals
- Identify your leverage
- Identify what type of future relationship you want with the opposing party

SIMILARITIES

- Both are done by a neutral party who is not connected to the dispute or outcome
- Both are private and confidential
- Both may be quicker and more economical than litigation
- Both can pick a neutral who is an expert in the subject matter

CAUTIONS

- If a contract clause references a particular process or organization, make sure you know the underlying procedures
- Know the law of your jurisdiction
- Choose someone who has been trained and is experienced in the process you want
- Beware the costs of formal organizations