

Alternative Dispute Resolution

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Mediation: A Solution For Resolving Interpersonal Conflict

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Group hugs; group photos; tissue boxes on the table; the sharing of photos of children and relatives; hugs and kisses of gratitude for a successful settlement. In my many years of mediating cases in a vast variety of subject areas, mediation focused on resolving interpersonal conflict is the only subject area where I have regularly experienced the aforementioned personal acts.

The dynamics and tensions underlying cases involving interpersonal conflict are generally different in nature than other types of disputes. These conflicts require a solution that will address the psychological and emotional needs of the parties. Because the parties are frequently related, or live or work together, they share a fractured relationship which results in a heightened personal connection to the conflict. Often, these matters are both time and economically sensitive. The problem is ongoing and will continue to escalate if not addressed. The dollar amount at issue, if any, may not justify

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the cost of litigation. A means must frequently be created for the parties to continue to function in some type of relationship after the immediate dispute is resolved. Many parties desire a confidential forum in which to resolve their dispute. Additionally, these are often difficult cases for counsel, who are expected by their clients to function as nonjudgmental, unfailing advocates for emotionally driven positions.

An adversarial litigation process is not designed to meet the needs that must be met to optimally resolve interpersonal conflict. Litigation is a

long, public, emotionally and financially burdensome experience that regularly leaves its participants and their families scarred. Conversely, mediation is a particularly well-suited conflict resolution process for interpersonal disputes. With its efficiency, cost saving, and less stressful confidential environment, parties and counsel alike find mediation a far better option. After determining that a dispute is ripe for resolution, counsel should then thoroughly consider with the client the best forum for its resolution.

Interpersonal disputes are typically seen in the following areas: co-op/condo, employment, family-held real estate, matrimonial, estate planning and distribution and choice of health care for long-term and the dying, among others.

Co-ops and Condominiums

Co-op and condo boards are plagued by shareholder disputes involving noise, renovation and sublet approval. Some of these conflicts are between shareholders and others are with the board. Rarely do the disputes involve large sums of money. They are, however, costly to litigate, time consuming (often running over multiple board terms) and disruptive of a tranquil home environment. If they are significant enough, before or after litigation, boards and management companies should consider a neutral mediator to resolve these frequently emotionally charged situations.

Employment

While many employment terminations for cause may involve sudden, unanticipated conduct, most terminations that result in litigation involve long-standing dissatisfaction and complaints between the employer and the employee. A structured environment in which to work out these grievances, or even negotiate the terms of an employment severance, is surely preferable to litigation, the filing of an EEOC complaint, mandatory arbitration (if mandated by the employment agreement) and office disruption for these clients.

Family Matters

Confidential, quick, amicable resolutions are paramount in most cases

involving family-held real estate, estate planning and distribution, and choice of health care for long-term and the dying. For real estate matters, public litigation filings allow the market to know that there is family discord and will decrease the value of the asset in dispute. Litigation may also prohibit the sale or transfer of the asset for a long period until there is a resolution.

Once, in the course of an estate mediation, an older wealthy client threw up his hands and said that he was prepared to have a jury decide the distribution of his estate among a second wife, his children (some of whom resided internationally) and grandchildren. I suggested that his counsel take him, over the lunch break, down to visit the jury pool room. I told the client that if he could identify six people whom he felt comfortable giving the authority to distribute assets that he had worked a lifetime to earn, among the people he loved most in this world, he need not return to the mediation. He did return and the case was successfully resolved.

Families, hospitals and nursing facilities are regularly drawn into conflicts concerning the choice of health care for long-term and dying patients. These are particularly emotionally driven conflicts with family members and others each insistent that they know the wishes and best interests of the patient. Decisions must often be made within a short period of time. Caregivers and parties fear liability. Many of the participants in the conflict will remain in relationships with one another long after this dispute. Frequently, they will shortly face other potential disputes such as the distribution of the decedent's assets.

Mediation is, again, a well-suited resolution process for these clients.

Matrimonial disputes are obviously personal in nature and most would benefit from mediation. With knowledgeable counsel and a mediator to both guide the process and ensure the proper application of legal guidelines, participants and their families can avoid the emotional and financial burdens that, unfortunately, otherwise loom large in these litigations. Where it is appropriate, and in the best interest of clients, counsel should encourage mediation as the forum choice.

Benefits of Mediation

Mediation creates a space for the parties to resolve their disputes in a quicker, less stressful, more cost effective and confidential manner. With many of the subject areas discussed above, the parties likely do not have time or resources for a lengthy litigation. The confidential nature of mediation can result in emotional, as well as fiscal benefits to all parties. As often parties need to maintain relationships after the immediate conflict is resolved, mediation can provide the parties a framework for resolving future conflicts that may arise. Mediation should be seriously considered as the optimal forum choice for resolving interpersonal disputes.

