

Alternative Dispute Resolution Is Having a Moment, Thanks to Florida's Court Backlog and the Rise of Remote

by Alexander Lugo

What You Need to Know

- As Florida court backlogs continue, parties involved in disputes may be looking at alternative resolution services more often.
- Beyond the clog in the courts, the normalization of virtual trials is also having its own effect on the resolution practice.
- Looking ahead, a rise in bankruptcy cases may be the next effect on the trend.

As Florida's population continues booming and virtual meetings make it easier for outsiders to handle their disputes in the state, increasingly clogged courts have made me-



diation and arbitration more attractive.

Although settling cases out of court has always been alluring, Florida is experiencing an apparent rise in demand for alternative dispute services as the state's courts experience backlogs. And with Florida already being a hotspot for the practice, Zoom has added

an extra layer of convenience that's making it even easier for cases to land in the state.

"Those cases have to go somewhere. Some are certainly dismissed, some parties amicably just work out the case. But there's a large percentage that are resolved through mediation," said Miami-based JAMS mediator Scott Silverman.

JAMS, which has been helping to resolve disputes since 1979, has seen a steady increase in both mediation and arbitration filings in Miami by 16% over the last five years, according to a spokesperson.

Meanwhile, court case filings in Miami-Dade County are actually slightly down since a 2018 high of over 824,000 cases, according to state data. The same is true for overall filings in Florida.

“People are still trying to figure out ways to advance the process of concluding their cases, and I have noticed far more pre-suit mediations and early mediations,” said Abbey Kaplan, a shareholder at Kluger, Kaplan, Silverman, Katzen & Levine. “I’ve also seen the judges, particularly in the complex division of Miami-Dade County ... suggesting that there be early mediation.”

The apparent uptick in resolution services can be pinned on a variety of reasons, one of which stems from the huge amount of cases showing up on the already tight dockets of Florida judges. A lot of the

cases typically don’t go to trial regardless, and as the amount of filings keeps rising while the amount of Florida judges mostly remains unchanged, the need for more mediation increases.

Against the backdrop of a population increase, a slew of other reasons are making alternative dispute resolution more popular. With virtual trials becoming the norm, it’s significantly easier for cross-border mediation to take place in U.S. court systems, which can benefit international hotspots like Miami.

“People that are in different countries now have access to a really good legal justice system, and they don’t have to leave their own country to gain access to it,” Silverman said. “We’ve been thrust probably 50 years into the future as a result of this pandemic, because our profession is very slow to change.”

Because of the jurisdictional complexities of international cases, parties involved in those cases may view arbitration as a great alternative to complicated cross-border court cases, said Miami-based Carlton

Fields shareholder Charles Throckmorton.

“Miami is such an international hub, and that’s more so the case every month,” said Throckmorton, who focuses on complex commercial litigation.

And while the virtual meeting effect is already playing out in arbitration, several practitioners also mentioned the possibility of Miami’s arbitration scene being positively affected by economic headwinds.

Beyond individual businesses, a lot of investment deals have also flooded the state in recent years, and if they go south, it could impact the amount of litigation seen in Florida courts, according to Jerry Markowitz, who focuses on bankruptcy mediation at Markowitz Ringel Trusty + Hartog.

“In good times, there’s less litigation, and if there’s an economic downturn, conflict follows and litigation follows,” Throckmorton said. “The more business that is done down here will eventually lead to more business disputes, especially if there’s an economic downturn.”