



LITIGATION

Effective Methods for Dispute Resolution

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At some point in your personal or professional life, you are likely to experience a major dispute, whether it involves a personal injury, a large debt, a broken agreement, or other damage to your business or property. Such disputes do not typically resolve themselves quietly, and it is often necessary to get legal counsel.

But do not despair! Most dispute resolution is not accomplished in a formal courtroom setting or with an expensive (and time-consuming) trial. Alternative, faster, and more cost-effective types of dispute resolution are available and popular. This is the first in a series of articles that are designed to help professionals and business owners understand the multiple mechanisms for resolving disputes. This article will identify some of the mechanisms that can help a dispute resolve without the need for extensive litigation or trial. Future articles will go into more depth regarding each mechanism, and provide examples from real cases, the issues involved, and how they were resolved...or not.

Court

If a dispute goes to court, it is likely to be heard at the New York State Supreme Court. Don't be thrown by the name – in New York, the Supreme Court is the lowest trial court in the state and has jurisdiction over most cases, from divorces to contract disputes to personal injuries.

Court is the forum with which most people are most familiar. However, it is often a less efficient method of dispute resolution. A court case that runs all the way through trial can take several years and may be prohibitively expensive. For most individuals and small businesses, it is important to avoid extensive litigation or trial when possible because of simple economics. Bringing a case to trial can realistically cost around \$150,000 to \$200,000 in legal fees, and if the trial is unsuccessful, you may then have to pay your opponent even more as a judgment.

Court and trials do have a place, and it may be worth the time and expense if a large amount of money is in dispute. Nevertheless, most dispute resolution involves a cost-benefit analysis where the client needs to determine how much is at stake in the dispute versus how much they are willing to spend on legal fees to resolve the dispute.



It is important to have a trusted counsel that will steer a case toward resolution before the legal fees overtake the value of the case. While all forms of dispute resolution begin with the filing of initial papers in court, from there, attorneys (often with the help of judges) can steer a case toward resolution outside of typical litigation. It is important to have a trusted counsel that will steer a case toward resolution before the legal fees overtake the value of the case.

Mediation

An alternate path toward resolution is mediation. In a mediation, both sides agree on a neutral mediator who will help resolve their case out of court. The mediator is typically an attorney with extensive experience in your type of dispute. Mediation typically occurs after each side has had a chance to gather evidence and build its case and to understand the opposing side's arguments.

Before mediation, each side submits a written statement of their case (with evidence) to the mediator so that the mediator can better understand both sides of the dispute. At mediation, the mediator talks with each side, identifies the strengths and weaknesses in their case, and encourages a resolution. The mediator does not have the authority to decide the case, but they can be effective in helping each side understand the repercussions of proceeding to trial. The parties may agree to hold multiple mediation sessions to resolve their case. By the same token, if mediation is not productive, the parties are free to end the session.

Arbitration

Arbitration is another helpful dispute resolution forum. Unlike mediation, the outcome of arbitration is generally binding on the parties, meaning that the decision at arbitration cannot be appealed (and shortening the potential length of the case). Arbitration, therefore, typically occurs instead of a trial and after all of the evidence in a case is obtained. Arbitration has the benefit of being shorter than trial and more flexible because a jury is not involved. Instead, the parties agree on an arbitrator, usually a retired judge or experienced neutral attorney. The arbitrator presides over a proceeding that resembles trial – witness testimony is given and evidence is presented. However, the arbitrator, and not a jury, makes the ultimate decision in the case. This forum has a few advantages. One, it is faster than trial. Arbitration is also useful for cases that concern esoteric topics that may not capture a jury's attention. It may be more productive to explain the minutiae of your business's operating agreement or sales contracts to a retired judge as opposed to a jury of individuals who are unfamiliar with contract disputes.



Alternative Forums

Attorneys can also steer a case toward a cost-effective resolution by recommending a less expensive forum for the case. If your dispute is for a low dollar value, it may be eligible to be heard in Town or City Court, which has an expedited process. The expedited process results in faster decisions and lower legal fees. Knowing when to use these forums can be critical in resolving your case efficiently.

When such a dispute arises in your life, it may be necessary to find legal counsel. Finding an attorney whose goal and desire is to resolve a case before it consumes time and money is critical to getting through your dispute with minimum damage.



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