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It is obvious to most rational people that litigation should be resorted to only when all reasonable alternatives for resolving a dispute have been exhausted. It is also clear that litigation is a stressful, expensive and cumbersome means of resolving issues. Even the prevailing party may not realize all of the benefits it desires.

For these reasons (and others), it is preferable for the parties to fashion their own form of resolution when possible. The method for achieving this objective may be as easy as having the parties and their attorneys sit around a conference table and work out their differences. Often this informal process is not possible since either the parties or their attorneys feel that it is necessary to posture in order to obtain a more favorable resolution.

When the parties truly desire to work out their differences but are unable to do so on their own, enlisting the aid of an impartial third party to facilitate the dispute resolution process is quite common. In fact, several jurisdictions require that the parties conduct some form of alternative dispute resolution before trying a case in federal court. Many mediators report settlement in more than three-quarters of the matters they mediate.

The impartial party can be a settlement judge who agrees to serve in that role, though it is often difficult to schedule time with a particular judge, and few, if any, judges will be able to carve out enough time to deal with a complex matter. The advantage of working with a settlement judge is that the judge’s salary is paid by the municipality, and, therefore, there is little or no additional cost. If this option is available, it should certainly be used.

The more common method of alternative dispute resolution is to have the parties select a mediator. Most courts have lists of skilled mediators, and there are numerous private mediation services.

A mediator should have some familiarity with the area of law involved, a reputation for effectively dealing with cases similar to yours, and the ability to use advanced mediation skills when
attempting to broker a resolution.

Many mediators will give references, such as attorneys who have used the mediator in the past and were pleased with the service, independent of the ultimate outcome of the matter. It often takes a good deal of time to identify an appropriate mediator and arrange for the mediation session since a host of schedules need to be coordinated.

It is important to prepare for a mediation by providing the mediator with all relevant information so that s/he will be able to effectively assist with an appropriate resolution. Typically, a mediation statement is prepared setting forth a brief summary of the facts of the case, the legal issues raised (citing relevant statutes and cases), and the strengths and weaknesses of your party’s position. All relevant documents, including statutes and cases, should be attached.

It is important that this statement provide the mediator an explanation of what you desire and what you will actually accept by way of resolution. You should consider both the likely verdict if the case is litigated to a resolution as well as the cost of getting to that resolution when determining what you are willing to settle for. Remember that the cost is not only attorney fees, but also your time to assist with discovery, be deposed, attend hearings and the like, as well as the disruption to your business and your life.

Unless otherwise expressly agreed by the parties, the mediation statement, as well as all disclosures to the mediator, are confidential and may not be disclosed to the opposition without express permission to do so. Occasionally, the parties will feel that it is in their best interests to provide the opposition with their versions of the case. In these situations, the parties may agree to exchanged redacted versions of the mediation statements so that the initial education of the parties can be expedited. If this form of mediation is to be used, then each party must decide what is to be contained in the mediation statement that will be provided to the opposition, since care must be taken not to disclose confidential information or information that may provide a strategic advantage if the case does not settle.

Typically, a mediation begins by having all parties meet in the same room with the mediator so that the rules of the mediation, such as confidentiality and the like, can be explained. It is also common for the mediator to request that each party make some initial statement in the presence of the other party.

Once the opening session is completed, the parties will usually go to their own caucus rooms where they will each have an opportunity to meet with the mediator in private session. Typically, the mediator will shuttle back and forth from caucus room to caucus room, first learning the facts and evaluating the case and then attempting to broker a resolution.

A skilled mediator will point out the weak spots in a party’s own case in order to assist the party in realizing the benefit of settling and provide the parties with statistical information and evaluations of the likelihood of succeeding on trial, as well as provide some additional insights that
can help smooth things along.

In cases where money damages may be only a portion of the relief sought, the mediator can suggest some noneconomic forms of resolution, which may ultimately be more beneficial than a money judgment. In a case that I handled, an apology letter was considered more important than the actual monetary settlement ultimately obtained.

Advanced mediation techniques may be required when the parties are at loggerheads. For instance, a mediator may be in a position to determine what a fair resolution would be and provide that resolution to both parties in a sealed envelope.

When a dispute arises and the parties have been unable to resolve it between themselves, resorting to an alternative dispute resolution method is appropriate. If an acceptable settlement judge is available and willing to invest the time necessary to resolve the dispute, then that is an excellent method for working out the case. If this is not possible, then working with a skilled, experienced mediator may be quite advantageous. Working out a solution is almost universally more advantageous than taking your chances in a courtroom.

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on January 30, 2014 at 7:11 AM said:

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naija
on January 30, 2014 at 11:34 AM said:

It's like you read my mind! You seem to know much about this, like you wrote the book in it or something. I believe that you can do with some pics to drive the message household a bit, but instead of that, this really is excellent blog. A excellent read. I will truly be back.
I also, want a followup to this repair. It really is fascinating. I as soon as had a repair created on the cast iron exhaust manifold for just a 1932 Packard.

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Most definitly time (if not a little late) to rock and roll this years resolution plans!!