

THE POWER OF MEDIATION: THE PATH TO HEALTHY RESOLUTION

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In many cases, clients (even the ones who win) wish that they had found an alternative to litigation. I have concluded that the best and most cost-effective way to avoid litigation is EARLY mediation. I implore you to seek a serious structured effort early to resolve the dispute through mediation before legal bills and emotional damage are so deep that settlement becomes more difficult, and sometimes impossible, to achieve.

In gauging whether to embark on this “first-ditch” method of dispute resolution, a cost-benefit analysis is essential. Such an analysis requires consideration of the chance of success and what it might take – monetarily and emotionally – to get there. In deciding whether or not to seek out a mediator to resolve conflict, I typically go through the following steps:

Step 1: Allow your Client to Vent (to YOU)

In my experience, when potential clients seek the service of a litigator, they are already angry and feel aggrieved. Initially, it is best to be a good listener and allow them to fully express their emotions and grievances. Once that occurs, it is appropriate to explore the potential of resolution without filing or defending a lawsuit.

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Step 2: Don't be Afraid to Reach out to Opposing Counsel

If possible, reach out to the other side. Relationships are often underestimated and overlooked in the context of dispute resolution. One of my first questions is whether the opposing side has "lawyered up." If it is someone who I know (after 50+ years, that's a long list!) the possibility of a phone call or a face-to-face meeting is first on my list. Even if I am not familiar with opposing counsel, I often reach out in an effort to "test the water" for a quick and reasonable approach.

Step 3: Seek out a Mediator

Work to identify a knowledgeable person who is creative and receptive to the concept of early mediation. On several occasions, I have been asked to mediate a dispute which has not reached the point of extensive pleading and discovery. In those cases, I often find the parties are more amenable to serious negotiation because they are aware of what happens if settlement is not reached and legal bills become an impediment to subsequent resolution. If counsel and the mediator get on the proverbial "same page", early mediation can and should work.

Conclusion:

The adage "life is too short" seems to apply to most legal disputes and their resolution. Take my word for it: the portrayal of trials on TV or in the movies doesn't begin to convey the hurt experienced by both litigants. Early mediation is the very best way to "nip that hurt in the bud."

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