

Mediation Lets Parties Avoid Uncertain Trials of Going to Court

LEGAL: Crowded Courts, Jury Risks and Big Costs Are Bypassed

■ By EMMET PIERCE

With budget cuts straining the state judicial system, judges frequently steer disputes between businesses toward mediation in attempts to find resolutions outside the courtroom.

"Typically a judicial conference proceeds trial," explained **Jack B. Hamlin**, an associate professor in the School of Professional Studies at **National University**. "Judges set dates for discovery, filing of motions, pretrial conference. They will make orders of mediation as well. There is a panel of mediators through the court."

Only a small percentage of cases filed make it to trial, he said. "The courts are looking for early resolution. That unclogs the courts and gets things to move forward."

Dave Carothers, a trial lawyer at **Carothers DiSante & Freudenberger LLP**, said mediations are happening more frequently in **San Diego County Superior Court** because state budget cuts have impaired the ability of litigants to get through the legal process in a timely manner.



Dave Carothers

In Superior Court, parties often stipulate to mediation at a case management conference, held approximately 150 days after the filing of the complaint. The court maintains a panel of approved mediators, but litigants often choose to hire their own.

Federal court officials in San Diego County also encourage litigants to go through mediation.

"At the federal level they have their own internal system of mediation where they will have a magistrate at an early neutral evaluation conference conduct a mediation to try to see if the parties can informally resolve the case," Carothers said.

Disrupting to a Business

Attorney **Adriana Cara** of **Cara & Garland, APLC**, said resolving disputes between businesses usually is preferable to proceeding to trial.

"The court acknowledges that every party and plaintiff is entitled to their day in court, but to the extent that they can resolve the matter without expense



Photo by Melissa Jacobs
Jack B. Hamlin of National University says with the state judicial system under continuing pressures and budget constraints, only a small percentage of business litigation ever makes it to trial. Judges frequently steer parties toward mediation, he said.

to themselves and the court, most people agree that settlement is the preferred option," she said.

Taking a case to trial can interfere with the day-to-day operation of businesses, Carothers said.

"If you have a business and high-level executives are on the witness list, they will be pulled out of the business routine," he said. "They are going to have to be prepared by lawyers to sit through this procedure. It can be very disruptive for a business."

Dismissing the Jury

Many attorneys prefer mediation because juries are less predictable than mediators, who are schooled in legal issues.

"Both parties take a chance going into a jury," Cara said. "They don't want to face that uncertainty."

Raul Cadena, a mediator with **West Coast Resolution Group**, a division of the **National Conflict Resolution Center**, said he has seen more businesses interested in mediating at an earlier state "as an alternative to what has become more lengthy

and expensive litigation in our impacted courtrooms."

Giving a 'Dose of Reality'

Sometimes opposing parties and their attorneys are too close to their cases to see that there is room for compromise, said **Jan Stiglitz**, a professor at **California Western School of Law**.

"Parties come to mediator in the hope that he will help them come to a settlement," Stiglitz said. "The mediator will facilitate settlement discussions. They have influence. But primarily what a mediator does is give each side a dose of reality."



Jan Stiglitz

If you don't like the mediator's decision, you're still free to go to court, since no one can force you to settle your case.

Binding Arbitration

Mediation isn't binding but arbitration

rulings are. Stiglitz says arbitration typically occurs between businesses that have agreed in advance to settle legal disputes in this manner.

"Arbitration is like a trial but in an informal setting," said Cara. "It is binding. That is completely different than mediation. The mediator is not required to issue a ruling, nor does he or she have the authority to do so."

Like mediation, arbitration often is looked upon as a favorable alternative to sending your case to a jury, said Stiglitz, who is a labor arbitrator as well as a law professor.

"In general there are benefits to arbitration, which include more streamlined procedures, with much lower costs, faster resolution, and sometimes decision making by more knowledgeable people," he said.

"I already know the law," he added. "I know how labor relations work. There is not the education process that sometimes is required when you are dealing with the court, and certainly when you are dealing with jurors."

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