

SETTLEMENT: ALTERNATIVE DISPUTE RESOLUTION

By John Mrosek

Settlement – why? If you are in a dispute or in a lawsuit, why would you want to settle? Because an average settlement is usually better than a great lawsuit.

Jury trials are common in criminal cases, but uncommon in civil cases. Criminal cases involve numerous Constitutional protections which have to be followed before we take away someone's liberty. Civil disputes, however, are entirely different. Society, Judges, and yes, even the Bible, demand that we do everything we can to settle our disputes. Courts are covered up with cases, and many should be settled.

How do you settle a case?

It is surprising that many people that come

into a lawyer's office have not even written a letter to the other party to formally complain. But that is the first step in settling a dispute. Reach out (or have someone else reach out) to the party with whom you have the problem. Try to narrow the issues. Try to strip away the emotions.

The first thing you need to do in order to settle a case is to strip away the emotion and to humble yourself. Your only goal is to put this dispute or this lawsuit behind you. You should focus on resolution rather than victory. Some of the best settlements are those where you get what you want but you have convinced the other side that they won!

The next step (if you haven't already done so) is to hire a lawyer. Lawyer demand letters are not a bad idea, but not often successful. Society frequently disregards lawyer letters because society generally disregards lawyers. Sometimes, though, a formal,

well-stated, well-reasoned demand letter from an attorney will have an impact. At a minimum, it may set the stage in litigation to improve your position because it proves you tried to resolve the case before litigation erupts.

Forms of Alternative Dispute Resolution

The basic forms of dispute resolution include (but are not limited to) statements of position, demand letters, mediation, arbitration and settlement conferences. Mediation is the most common form of settlement. It involves joining the parties together in a meeting with a neutral third party, with everyone agreeing to hold everything in confidence (with a small number of rare exceptions). In mediation there is a meeting (or "caucus") of all the parties at which time each of the parties states their position, the mediator explains the process and presents questions to the parties. The mediator

then rotates meeting privately with each of the parties and conveys settlement offers back and forth.

The most important aspects in preparing for a mediation involve (1) getting all of the facts completely straight and (2) making the effort to determine the lowest possible form of settlement that you would agree to. You have to know your bottom line before you can settle a case.

Arbitration

Arbitration is a process whereby the dispute is heard and decided by a single or multi-member arbitration panel. Many contracts specify that arbitration is the *only* means of resolving the dispute. It involves a waiver of the Constitutional right to trial by jury. It can be faster and less expensive than standard litigation. However, the arbitration is usually binding and not generally subject to appeal.

Conclusion

Settlement is commonly a better route than a jury trial. The only people that benefit from the jury trial are the lawyers. Work hard to identify the lowest possible method of settlement and try to achieve that. Then, you can move on with your life.