

Mediating circumstances

How to select a mediator with the right expertise **Interviewed by Steve Trusty**

Disagreements happen and misunderstandings take place. Occasionally unethical or even illegal transactions occur. While percentages are low compared to all the transactions that take place every day, when disputes occur, they need to be resolved. Thus, mediation, arbitration and alternative dispute dissolution are spreading to all aspects of the business and government landscape.

“Mediation is an important tool in dispute resolution,” says Richard A. Cahlin, CPA, a partner in the Financial Services Practice at Berenfeld Spritzer Shechter & Sheer LLP. “It is imperative that the entire process be handled correctly, especially selecting the right mediator.”

Smart Business spoke with Cahlin about the mediation process, what’s involved with it and why it’s so important in today’s business climate.

What is the process to be followed in taking a dispute to mediation?

When it comes to disputes involving securities, the Financial Industry Regulatory Authority (FINRA) has developed a detailed course of action to follow. Full details can be found at FINRA’s Web site (www.finra.org). Mediation is usually the first step if the dispute can’t be settled between the individuals and companies involved.

What is mediation?

Mediation is the process of getting the parties involved together with a third party, the mediator, to work out a solution. The mediator does not represent either party but is merely a facilitator of the process. The parties are free to confer with their own attorneys and are encouraged to do so. The mediator does not make any decisions but guides the conversation to keep it on track and to remove the emotion. While the mediator defines the terms and rules, the decisions are made by the respective parties in the dispute.

What is the difference between mediation and arbitration?

In arbitration, the arbitrator makes the decision and that decision is final. The par-



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ties present their respective cases, and the arbitrator reviews all the information. Testimony can be in written form or may be given in person. Arbitration could be the next step if mediation is not successful.

What are some of the benefits of mediation?

It can be less time consuming and less expensive than going to court. While preparation should be as complete and concise as if you were going to court, the case is discussed more informally and, usually, with much less time needed for attorneys’ time and fees. According to FINRA, business disputes submitted to professional mediation services have had a settlement rate of about 80 percent. Even if mediation doesn’t resolve everything, it may narrow the scope of things to the extent that arbitration or litigation could be more focused and satisfactory results more easily obtained. It is important to keep in mind, though, that mediation isn’t always a quick and easy process. According to FINRA, the turnaround time for cases through April 2008 was 139 days.

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Why is it important for businesses to select the right mediator?

As this form of reconciliation grows, the issues being disputed are becoming more significant and complex. It is unwise to assume that because mediation is becoming more commonplace that all mediators are equally qualified to undertake a particular matter. Do not retain an individual to mediate sophisticated issues without first thoroughly checking to see if he or she definitely has the expertise to understand the issues being presented. Just as doctors and attorneys have specific areas of expertise, so should mediators.

How is the mediator selected?

If working through the FINRA process, a list of mediators, selected randomly, will be supplied with a complete dossier. To select a mediator with the expertise to be of value to your case and the mediation process, inquire into and study the following areas: education, work experience, areas of expertise, employment, additional degrees or certifications, compliance with continuing education requirements, and general mediation experience. The benefits of the process are best achieved if the mediation is conducted in an informed, balanced and timely fashion. Frequently, well-prepared advocates will develop a mediation summary for the mediator, clients and opposing counsel to review before the mediation. This is the wrong time to learn that the mediator does not have the background necessary to understand the issues presented.

What is the future of mediation?

In the future, mediation will become an even more attractive alternative for resolving disputes in our increasingly litigious society. It can only benefit us all if the attorneys involved in the process select certified mediators with credentials that are appropriate for the cases before them. <<

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