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Mediation, arbitration alternatives to court fight

By Ed Duggan

Mediation, the use of an independent third party to help two or more parties resolve their differences, is as old a technique as parents busting up their kids' squabbles.

"I'm a big believer in mediation – just call me an eternal optimist," said attorney David B. Mankuta, partner at Fort Lauderdale-based Atkinson, Diner, Stone, Mankuta & Ploucha, P.A.

He calls it a reality check for both lawyer and client.

"As frustrating as mediation might be at times – and even if it doesn't work – as an attorney, you come away with a better understanding of your case, as well as the opposing case," Mankuta said.

Mediation sounds simple. Both sides meet with the mediator, usually an attorney, and present their facts, complaints and demands.

Then, the parties and their attorneys retire to separate rooms and the mediator works with one, then the other – sort of a shuttle diplomacy – suggesting possible solutions and trying to take the hard edge off the participants' demands until a settlement is reached.



MARK FREERKS

David B. Mankuta



Jesse Diner

"Sometimes it works, sometimes it doesn't," Mankuta said. "The important thing is that all parties come in good faith."

South Florida is alive and well with mediators, and the field seems to be booming as courts search for ways to handle the volume of cases and control costs.

mediators expert in a wide range of fields, is the Florida Mediation Group, which has offices in Miami and Fort Lauderdale.

The group's president and mediation director, Allene D. Nicholson, personally handles mediation including incidents concerning the Americans with Disability Act; disputes in admiralty law; employment discrimination; eminent domain; civil rights; the Employee Retirement Income Security Act; health care and insurance disputes; and legal medical and professional malpractice.

In business and in law, mediation has become a popular method of alternative dispute resolution. Virtually every Florida court demands the litigating parties submit to mediation before a trial date can be set.

Mankuta has seen mediation both work and fail.

"It's a way to stop the bleeding, reducing the costs of depositions, discovery, evidence gathering and court time," he said.

Why would an attorney recommend mediation when he is trained as a litigator?

Mankuta explained that he is not going to retire on one case, and that the practice of law is one of building relationships.

"I want to both achieve a satisfactory result and save my client money so that he can come back to me in the future," he said.

Mediation is a close cousin to arbitration, another alternative dispute resolution process but one with more teeth. In arbitration, a third party imposes a settlement that the disputing parties agree to be bound by and accept.

Mankuta's partner, Jesse Diner, president of the Florida Bar, is also active with the New York-based American Arbitration Association as an arbitrator.

"I work with the AAA Atlanta office and serve on both three-arbitrator and single-arbitrator panels," Diner said. "There are always a number of international arbitration cases under way."

The rise in international arbitration cases is by design.

Attorney Michelle Visiedo-Hidalgo is partner in charge of Coral Gables-based Zumpano, Patri-cios & Winker's 17 international offices. She said the growth of international binding arbitration is virtually guaranteed because it is written into most contracts.

Typically, the firm's clients request binding arbitration, she said, but if they don't, her firm suggests it.

Benefits include a level of predictability based on the country's law that will prevail in the arbitration.



Michelle Visiedo-Hidalgo

"Arbitrators have specialized knowledge and there is absolute confidentiality of the dispute, the parties involved and any awards," Visiedo-Hidalgo said.

Savings and speed can be questionable.

"Generally, there should be time and cost savings, but because of the informal nature of the proceedings, they can sometimes get off track and end up costing more than court-centered litigation," she said.

One local mediator is breaking new ground. Cindy Niad Hannah is a certified circuit court mediator and a qualified court arbitrator with Fort Lauderdale-based ATD Mediation.

Settlements are reached in about 85 percent of her cases, she said.

Hannah recently mediated a case that took her to Bucharest, Romania.

"We had started the mediation case in South Florida two years ago, and got close [to a settlement]," Hannah said. "The parties decided to move the mediation to Romania, where the plaintiff would feel comfortable and have the support of family and local counsel."

Two days later, a settlement was reached.

"I'm betting this was the first mediation case in that country," she said. "Don't be surprised to see it grow around the world, as it has boomed here. Truly, this is a recession-proof business."

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