

**LITIGATION? MEDIATION? ARBITRATION?
HOW BEST TO NAVIGATE YOUR DISPUTE RESOLUTION OPTIONS
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One of the challenges faced by companies and individuals in drafting contracts or navigating litigation is figuring out the best, most effective and efficient way to settle disputes. My clients know that my approach is always a bottom-line analysis as in what is the best approach for your bottom line? How are you going to resolve the dispute in a way that either costs you the least amount of money or maximizes your return if you are on the receiving end? It's important to know the differences in approach that are available and how and when to use them.

Litigation is generally the most expensive and least efficient way to resolve any dispute. Only lawyers make money in litigation and lawyers are definitely the only ones who enjoy the process. If you are in litigation, you generally want to consider the best and most efficient time to get out.

It is because litigation is so inefficient however, that the threat of litigation can be very, very effective. The other side in a dispute doesn't want to pay attorney's fees any more than you do. So understanding the points of leverage and who has the advantage is critical. If you have deeper pockets than the other side, or the much stronger position relative to the dispute, that makes your threat of litigation much more effective.

When is arbitration a good choice? We've addressed this topic in previous articles but using arbitration instead of litigation is somewhat less costly and definitely quicker than a lawsuit. Arbitration is binding, meaning that you are stuck with whatever is decided by the arbitrator. The primary drawback with arbitration is that you still put your fate in the hands of a third party who makes a decision for you. The benefit is that since you can pick your arbitrator from a pool of experienced decision-makers, you are more likely to get a reasonably rational result.

What is mediation? Mediation is a non-binding process where a mediator shuttles between the parties to try to make a deal. It is much less costly than arbitration and it leaves you in control of deciding whether you like the deal or not. The mediator has no authority to impose a deal on the parties. Generally, in my opinion, mediation is the most effective and the most cost-effective process to use and I generally recommend it to my clients. The main challenge with mediation is knowing when to use it. If you try mediation before the parties are really ready to resolve the dispute, it may not be effective.

In any dispute you should spend time talking to your legal counsel about what is going to be the best approach to get the issue resolved and move on with your business. Each of the above options should be considered and the one that is most likely to enhance (or least likely to detract from) your bottom line is the one you normally should consider using.