SUMMARY OF DISPUTE

RESOLUTION METHODS

March 27, 2020

IEEE–CNSV CPP
Addressing Disputes

In analyzing how to address issues, it is important to recognize that, in many circumstances, you can walk away from dispute without investing time and energy in seeking remedy.

Although this choice may not seem desirable or possible, it may be worth considering carefully.

The financial and emotional toll of engaging in dispute resolution is a diversion from other areas of your life.

Many parties realize at the long end of engaging in arbitration or litigation, that walking away from the dispute would have been a better choice.

Your attorney should fully advise you of these ramifications.

I often advise people to walk away to avoid these consequences.
Examples

Bad car mechanic
Bad business partnership
Difficult or nonpaying client
Estate or family money dispute
Divorce
If a problem arises with another party, and the parties themselves cannot resolve that dispute, a process involving third parties may need to be initiated to resolve the dispute.

Many contracts contain clauses specifying alternative dispute resolution process such as:

Arbitration

Mediation

Administrative hearings or investigations
Arbitration

A private evidentiary hearing with evidence presented in the form of documents and witnesses, with a binding result which can usually be reduced to a judgment.

The most common organization which administers arbitrations is the American Arbitration Association (AAA).

AAA’s website is adr.org.

If you review their website, you will see rules, fees, and procedures identified.

Major disadvantages of binding arbitration:

Administrative Fees

Hourly fees for Arbitrators, split between the parties.

Lack of appealability of an arbitration decision, lacking undisclosed bias of the arbitrator.
Typical hourly rates for arbitrators range between $275 per hour, and $1200 per hour.

Even if the arbitrator has the power to award attorneys’ fees to the prevailing party, either based on the organization rules, or based on the contract language, each party will have to advance money for fees, with the award possibly shifting the burden for the cost of attorneys’ fees from a party to another.

JAMS is another alternative dispute resolution organization. If a contract calls for arbitration, it is binding, even if the relevant clause does not state it is binding.
Arbitration

You should not attempt to participate in a binding arbitration without using an attorney because:

(1) The arbitration process is not simple

(2) You are likely to be emotionally involved in the dispute
Mediation is different from arbitration

Mediation is process where the parties or an organization such as AAA or JAMS selects a third party neutral to conduct a mediation

At a mediation session, the parties may make partisan presentations, but the mediator has no power to impose a solution to the dispute on the parties

The mediator typically has a brief introductory meeting, then splits the parties up and meets separately with each side
The mediator often will not express an opinion about the merits of each sides’ position.

The mediator usually stresses the cost of litigation or arbitration as compared to the parties reaching a voluntary compromise.

In trying to convince the parties to compromise, the mediator stresses that all or nothing result of arbitration or trial.

Another important aspect stressed by mediators is the difficulty of winning a case because of the uncertainty of the court and arbitration process, the difficulty of collecting on a money judgment, the high cost of legal services, and the possibility of the defendant filing bankruptcy and the plaintiff obtaining zero recovery.

If a settlement is reached, it is best that the parties sign a settlement agreement before the parties leave the mediation.
Filing an Administrative Complaint

An administrative complaint process may exist if the other party to your dispute is a licensed professional:

- Attorneys
- Doctors
- Construction Contractors
- Car Mechanic

Usually, the board which licenses that professional will have a website, and you can download a form to register a complaint against the licensee.
Administrative Claims

The relevant board will usually respond to the complaint by seeking a response from the licensee.

An investigation will be opened which may result in a mediation.

If mediation is unsuccessful, then an evidentiary hearing is likely the next step.
If the administrative hearing goes against the licensee, the relevant board may discipline or fine the licensee, or possibly suspend or revoke that person’s license.

In some circumstances, the State of California may refer the action to the State Attorney General, which may have the power to seek civil fines or penalties, or even criminal penalties such as imprisonment.
If you are a licensed professional, and receive notice from the board which licenses you that a complaint has been registered against you, you should timely follow the steps identified by the board carefully, and retain legal counsel experienced in defending your type of administrative proceeding.

Do not ignore the notification, and hope that it will go away without you responding.
Prelitigation Considerations

Review applicable contract
Attorneys’ fees clause, explain relevance
Assets available for litigation cost
Relationship between the parties prior to dispute, ongoing relationship?
Party’s available time to devote to litigation
Licensing actions available, licensing status of relevant
Prelitigation Considerations

Venue of dispute, distant?

Applicable law

Business fallout from instituting litigation

Time frame for litigation, statutes of limitation applicable

Value of walking away

Moral dilemma, preventing future bad behavior by defendant

Possible fallout from litigation if business not maintained properly

Likely cross-complaint, licensing action if plaintiff licensed

Effect on your insurance cost if cross-complaint
Litigation

Which Court System?

State of Federal?

If both or all parties are residents or citizens of the State of California, then State Court will be the forum for the dispute.

If the dispute involves a federal statute or law, or the parties are of diverse citizenship, then the action may need to be brought in Federal Court.
Formal Litigation

Lacking a contract clause or administrative action, the process for formal dispute resolution is called litigation, or the filing of a lawsuit

Retaining an attorney to review your case

Having the attorney prepare, file and serve a lawsuit

Typical state court lawsuit process is 12 to 18 months from start to finish

During the lawsuit, each party has the right to serve discovery on the other party or parties
Discovery Processes in State Court

Discovery consists of:
- Interrogatories
- Requests for Documents
- Requests for Admission
- Depositions
Site inspections, or examination of physical objects

Most court systems require that parties to a dispute use an alternative dispute resolution process, before the court will assign a date for trial

After 120 days, most state courts have a status conference called a Case Management Conference, where the court checks on status of the progress of the case, and usually refers the case to alternative dispute resolution which is most often mediation

Sometimes the court may refer a case to early settlement conference

The window of time for conclusion of ADR is usually about 6 months

Once the ADR process is concluded, the court will set the matter for a trial setting conference to choose a date for the trial, and determine if the trial will be a judge trial or a jury trial
If the parties agree to settle the matter, then the plaintiff will file a dismissal of the action.

With prejudice or without prejudice

Dismissal of Cross-Complaints

Payment of court costs or waiver of court costs
Judge or Jury Trial

Parties must request a jury trial in advance in a civil case and post an advance jury fee deposit.

Certain cases do not give rise to entitlement to a jury trial, such as where a non-monetary remedy is sought such as an injunction, or a quiet title action.

Trial consist of:

- Motions in Limine, pretrial motions to exclude evidence or witnesses
- Opening statements
- Presentation of Evidence
- Closing Arguments
- Jury Instruction (if jury trial)
- Juror deliberation (if jury trial)
Trial Procedure

Reading of verdict

Post-trial processes:

Motion for New Trial

Appeal (to Appellate Court, State Supreme Court, U.S. Supreme Court)
Case Example

Review facts, documents issue of expert witness who was not paid
Conclusion

ADR is usually more efficient and the more common method for resolving disputes

Relationships between parties to dispute are more likely to survive a settlement than litigation and/or trial

Net financial benefit to parties is more likely with mediation, settlement, because of high transaction costs of arbitration and litigation

Litigation is last resort if no other way to resolve issues
Post-Trial Process

Enforcement of judgment

Examination of judgment debtor, locating debtor assets

Writ of Execution on assets such as bank accounts, debtors of debtor

Upon satisfaction of judgment, plaintiff files and records acknowledgment of satisfaction of judgment
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