



Alternative Dispute Resolution

by John D. Whitaker

They say that necessity is the mother of invention. We filed a lawsuit recently and the earliest trial date we could get was 2010. That is a long time to wait for a day in court. Litigation takes time. Due primarily to our courtroom scarcity here in Natrona County, getting a civil lawsuit before a jury can take several years. If you have been injured and have significant medical bills, two years is a long time to wait for justice. The delay associated with getting to court has caused several interesting strategies for getting disputes resolved without having a formal trial. Mediation and arbitration are the two most frequently used methods for getting a case settled without a trial.

Mediation is a process where the parties to a dispute can use a neutral third party to get a case settled. Either party can request mediation and when one is requested, the court will order the parties to participate. The process begins by the court selecting a mediator. In most cases, judges from different judicial districts in the state are used, but the parties can select their own mediator if they can find someone agreeable to both sides. There are a number of good lawyers around the state who specialize in mediation, and most have special training in conflict resolution. After the mediator is selected, a date is set to conduct the mediation. Both parties submit a confidential summary of their case including both the strengths and weaknesses of the case to the mediator. The mediation statement also addresses an estimate of the value of the case from each side. The mediation statements are submitted to the mediator a week or so before the mediation so that the mediator can do any research that might be necessary to get an idea about any special legal issues and the value of the case. The mediation is generally conducted in a law office where both sides sit across a table from each other with the mediator in the middle. Each side gives an opening presentation and then the parties are separated. The



mediator then discusses the case with each side individually and works to get each side to compromise. Mediation is non-binding, and if it does not get the case settled, the case can proceed to trial. All settlement negotiations are confidential and a jury is never told that the case went to mediation. Frankly, most cases we have are settled in or shortly after a mediation. Mediation can be a very informative process and a good mediator can introduce reality into the situation. Litigation is very expensive and very risky. Settling a case is a way to limit the potential for a bad result at trial. Mediation can be a very useful tool, but both sides must be ready to compromise to conduct a successful mediation. The process can be abused, and it is vital that the decision makers on both sides attend the mediation.

Another form of alternative dispute resolution is arbitration. This is a more formal process and is conducted more like a trial. Generally, each side picks a mediator and the two arbitrators then select a third arbitrator. The process is just like a mini-trial where the parties give opening and closing statements, and important witnesses are called and cross-examined. The arbitrators listen to the evidence, and then issue a decision. The decision is binding between the parties. Arbitrations are authorized by contract, and many contracts people sign have arbitration provisions. Courts generally favor arbitration agreements and unless there is some overreaching by the party seeking arbitration, the courts usually find that these agreements are fully enforceable.

The cost and time requirements necessary to resolve a dispute in court are forcing litigants to seek some type of alternative dispute resolution. This is not necessarily a bad thing. Most cases should be settled, and settled in a way that the process does not cost more than the case is worth. If you are involved in litigation I would strongly suggest that you consider one of these methods to resolve your case. You will get your questions answered in court; you just might not like the answer.

The Wyoming State Bar does not certify any lawyer as a specialist or expert. Anyone considering a lawyer should independently investigate the lawyer's credentials and ability, and not rely upon advertisements or self-proclaimed expertise. This informative column is brought to you by John Whitaker who practices personal injury and criminal law throughout Wyoming. He can be reached at jw@wyoinjury.com or by calling his office in Casper at 265-6204.