

Judge Judy, Mediate This!

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As a small claims advisor at the Mediation Center I receive phone calls from potential litigants seeking justice or maybe just to settle a score. The cases have a low dollar value and usually someone has informed them that it's not likely that anyone will represent them. After years of Judge Judy, the choice seems clear: the People's Court!

Unbeknownst to them, the prospective litigants often face months and months of completing legal documents, difficult service of the summons to wary defendants, court appearances, and more challenges later in trying to collect the judgment. To those who are inclined to listen I present to them another option --mediation.

The mediations which are held at the Mediation Center of San Joaquin are low cost affairs with a sliding scale for those who are economically challenged. At the mediation the participants exchange their perspectives with one another and the mediators encourage them to see the other's point of view. After working through all of the issues and finding the ground that unites them, the majority of cases result in an agreement which avoids the courtroom altogether. In the event of an unsuccessful mediation, the parties may still seek a litigated solution.

Some detractors accuse mediations of presenting less likelihood of securing compensation from those promising to pay a settlement than if they had gone to court. Although it is true that in some cases parties that have promised to make payments later default on their agreements, in most cases agreements are honored. Even more to the point, at least when parties agree to make payments at that point in time they are making a conscious and deliberate choice to pay and settle the conflict.

Litigants in search of compensation from a defendant should not labor under the illusion that a judge's decision will compel the party to pay. Often the plaintiff has to go a step further, after obtaining a decision in his favor, to see any of the money awarded in the case. The strategies for collection include bank levies, wage garnishment, property liens and, sometimes a "till tap" or a "keeper" (don't ask). If, on the other hand, the party promises to pay in the mediated agreement, this is a risk definitely worth the investment.

Not all cases may be mediated, true, such as when one of the parties has a restraining order, agreements between the two have been broken in the past or one of the parties appears to be hiding from the other. However, certain cases seem to cry out for mediation and the prospect of going to court conjures up a Sisyphean task for all those involved. These conflicts hopefully will end up at the door of the Mediation Center.

Litigators should keep this solution in mind when clients come asking for representation in certain types of cases. The following checklist comes to mind:

- the conflict seems to be negotiable
- parties are well known to each other
- there is no special reason to doubt the other's integrity
- the parties hope for a quick solution
- there is low dollar value to the case

- the potential defendant would like to protect his credit rating

Pessimists may not be persuaded that the idea of settling issues peacefully by simply talking with one's adversaries is enough to make them try mediation. Still, this is not an idea that is going away. As anyone can see, there is no shortage of conflicts going around for us to worry about a lack of demand for mediation.