



Why Now Is a Good Time to Engage in Mediation or Other Streamlined Dispute Resolution

Parties should consider pre-lawsuit dispute resolution and look for opportunities to resolve cases outside the courtroom

June 4, 2020As a recently retired federal judge who served for more than two decades on the U.S. District Court for the Northern District of California, I know firsthand how daunting managing a caseload can be even in normal times. Now, with civil jury trials suspended, courts' caseloads are rising. The Northern District of California has issued General Order No. 72-3 on May 21, 2020, postponing all civil jury trials through September 30, 2020, although individual judges may offer bench trials by videoconference and all civil matters will be decided on the papers, unless the presiding judge chooses to conduct a hearing by telephone or videoconference. Because criminal trials generally take precedence, civil matters will likely be delayed even further. Meanwhile, litigation costs of existing cases have not stopped, as discovery and motions continue, albeit with less opportunity for oral argument. However, many businesses and individuals are spending their cash on remaining viable and adapting to the new circumstances rather than pursuing litigation. Therefore, parties and their attorneys should consider pre-lawsuit dispute resolution and look for opportunities to begin or resume efforts to resolve cases outside the courtroom.



Indeed, parties may find themselves required to do just that by the judges presiding over their cases. For example, Judge Richard Seeborg of my former court issued a general order for all his pending civil cases on May 18 requiring the parties to meet and confer and jointly report to the court on the prospect of settlement, and then report back within 30 days as to whether the case settled or the parties were able to make any progress. Judge Seeborg explained, “As a result of the current pandemic, the scheduling of civil matters in this court going forward remains highly uncertain. At this juncture, no assurances can be given as to when civil trials can be resumed and, if so, whether a further suspension due to public health developments will be necessary. Accordingly, it would seem to be an optimal time for the parties to initiate or renew an exploration of possible settlement or some other form of alternative dispute resolution.”

Virtual mediations conducted via videoconference and/or telephone offer many advantages even in normal times, such as savings in time and travel costs. Currently, the advantages are magnified, as many attorneys, clients and claims adjusters are unable to travel due to government, employer and/or medical restrictions, and clients may not have the funds to pursue litigation. Therefore, the benefits of virtual mediations likely outweigh the costs associated with waiting until in-person mediations can resume. JAMS can demonstrate the videoconferencing tools it offers and explain the stringent security steps it is taking. I have already had success mediating complex matters on Zoom.

Other forms of alternative dispute resolution should also be considered if settlement is not possible. For example, parties can stipulate to streamlined proceedings in front of a special master. Now is the time to try to expeditiously and economically resolve cases.

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