In recent years alternative dispute resolution (ADR) has emerged as a viable adjunct to the trial process. In most instances, ADR remains a choice, not a mandate; thus, in choosing the appropriate forum for resolving the conflict, parties should consider the benefits of the various forms of ADR as it relates to their particular case.

The pilot program currently being conducted by the United States District Court for the Western District of Pennsylvania does mandate ADR for cases assigned to one of four judges. Although bemoaned at its outset as being too early in the process and not allowing the parties to have significant input into the choices has proven to be quite successful. The recent reports show approximately fifty percent of all cases that go to ADR are being resolved.

To be clear about what is meant by ADR, it includes, for the purposes of this article, all of the processes available to assist the parties in achieving a reasonable resolution short of trial. This can be mediation, early neutral evaluation, arbitration, mediation/arbitration or other variants. Ultimately, it is the parties that have significant input into the type of process they wish to mold to their particular case. One of the true benefits of the ADR process.

That being said it is still mediation which is the most popular choice. Whether this is because of the familiarity with the process or if there is a comfort level associated with a time-worn alternative to litigation the fact remains that mediation is the focus of most parties when discussing ADR. As further proof, more than half of all cases select mediation in the Federal Court’s pilot program.

Counsel for the injured parties should not hesitate to suggest mediation (or other ADR processes) to aid in the resolution of their cases. In most instances it is defendants who make the initial offer of ADR in the hopes of avoiding protracted litigation; but, plaintiffs benefit equally from the process. The most obvious benefit is the decreased cost. This economic aspect may be particularly attractive to an injured party pursuing a claim against a wealthy corporate defendant or an insurer. Mediation affords an opportunity to avoid a prolonged, expensive trial that the adversary can afford, but that the injured party cannot. An otherwise reluctant plaintiff is now able to seek relief through the more economical mediation alternative.

Unlike a jury trial, in mediation, the parties are able to participate in an increased capacity, because discussion takes place among all parties, not just the attorneys. This gives the injured party an opportunity to freely discuss his or her position outside the constraints of black letter law, without seeming weak or vulnerable. Many injured parties are rightfully attracted to this opportunity to control their own fate.

In some instances mediation can significantly change the role of the defendant in the eyes of the injured party. Because the parties are able to have open discussions with one another, the plaintiff is able to see the defendant on a more human level. When the two are not polarized, as they are in trial, the plaintiff is able to see the defendant not as his nemesis, but as a person who made a mistake and is working with him to remedy that mistake.
Unlike in trial, defendants (and plaintiffs) are able to concede points without forfeiting their position or seeming weak. In this way, the mediation process encourages honesty and understanding; this ideally leads to the restoration and continuation of relationships otherwise destroyed at trial. Lots of mediations even start with an apology from the representative of the defendant to show a humane side. Even among the most cynical this cannot be overlooked as bringing a human element to the table.

The attorneys for the parties can also benefit from mediation. Counsel are also able to present their case in a straightforward manner. A combination presentation of both opening statement with input from the client is not unheard of in mediation sessions. Technology also seems to be popular element of mediation presentations that might not make it to the courtroom. The point is that the mediation can be as freewheeling as the parties desire.

As a result of the opening presentations, the submissions of the parties as well as the individual discussions with the parties the issues can be narrowed and potential settlement options become the focus. Sometimes these options are new or innovative and bring a fresh perspective to the litigation. The mediator can help identify reasons for settlement to both sides, saving the client time and money. Because the mediated discussion is focused on settlement, posturing and hard bargaining is not necessary, this allows the attorney to approach more amicable settlements without appearing to be weak. As a result of these mutually beneficial settlements, mediation allows both attorneys to achieve victory in some capacity, unlike the winner/loser result of trial.

In choosing whether to exercise the mediation option, attorneys and clients must consider all of the benefits; but, they must also consider reasons to pursue trial. Certain cases are better suited to the courtroom, because the precedent needs to be set or a client wishes for his story to be heard by the public. It is important to remember that trial is always an option. However, where it is the choice, mediation has proven an effective and mutually beneficial alternative to trial with the capacity to benefit everyone involved.

About the Author:

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A member of the firm’s Litigation Group, Howard has represented both self-insured and insured entities in medically-related claims, as well as representing injured parties in medical malpractice and other personal injury lawsuits. His current focus is on the broad range of claims brought against nursing homes, as well as other personal injury matters, civil rights, municipal law and alternative dispute resolution. Over the course of his almost 40-year career, he has distinguished himself in the courtroom and is recognized not only for his skills as an advocate, but also for his high ethical standards. In addition, Howard previously worked at a plaintiff’s personal injury firm where he represented injured parties in medical malpractice and other personal injury claims.

With that combination of skills, a trial lawyer representing both plaintiffs and defendants, Howard has offered his services as an arbitrator and mediator in the civil litigation field for more than 20 years. He is often chosen by his peers as a mediator in all areas involving claims for personal injuries, including product liability cases, medical malpractice suits, slip and falls or automobile accidents. He has also served as a Special Master in the Court of Common Pleas of Allegheny County, presiding over both jury and non-jury trials.