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THREE WAYS TO RESOLVE YOUR BUSINESS DISPUTE



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ABOUT PILIEROMAZZA

PilieroMazza PLLC is a full-service law firm located in Washington, D.C. We are most well known as a government contracting firm and for 25 years we have helped our clients navigate the complexities of doing business with the federal government. We also provide a full range of legal services, including advice on corporate, labor and employment, SBA procurement programs, and litigation matters. Our clients value the diverse array of legal guidance they receive from us and our responsiveness as we guide their growth and secure their success.

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TOPICS TO BE DISCUSSED

- Basics of Alternative Dispute Resolution (ADR)
- Arbitration
- Mediation
- Pros and cons of litigation v. ADR
- Determining whether your dispute is right for ADR



FIRST WAY TO RESOLVE A DISPUTE: TRADITIONAL LITIGATION

- Initiation of litigation by filing of Complaint by plaintiff
- Responsive pleading by defendant
- Discovery process
 - Depositions
 - Written discovery (document requests, interrogatories, requests for admission)
 - Associated motion practice
- Dispositive motions and/or trial
- Decision made by judge or jury



LITIGATION (CON'T)

Pros

- Clear procedure and rules
- Definitive decision
- Appealable

Cons

- Lengthy
 - Average length of federal district court civil case for 2016: 8.7 months*
 - If no court action: 5.2 months
 - If case proceeds to trial: 24.9 months
- Expensive
- Pleadings are public
- Appealable

* Based on U.S. District Courts–Civil Federal Judicial Caseload Statistics (March 31, 2016)



SECOND WAY TO RESOLVE A DISPUTE: MEDIATION

- Voluntary
- Third-party neutral helps parties resolve dispute
- Parties can select their mediator based on area of expertise and experience
- Mediator does not make a decision; instead, helps the parties reach an agreement
- Can be non-binding
- Timing can be flexible
- Parties can abandon process if they cannot reach a resolution



MEDIATION (CON'T)

- Paths to mediation
 - Contractual
 - Court-ordered
 - Agreement of the conflicting parties



MEDIATION (CON'T)

- **Process**
 - Selection of mediator
 - Scheduling conference
 - Submission of position papers prior to mediation
 - Mediation session
 - Joint session; optional opening statements
 - Individual sessions with mediator: exchange of settlement offers; confidential assessment of parties' arguments
 - Drafting of settlement documents



PROS AND CONS OF MEDIATION

Pros

- Informal
- Confidential
- Potential to save money if dispute is resolved without having to litigate
- Potential to save time; more expeditious than litigation
- Avoidance of stress and delay of litigation
- Can arrive at creative resolutions that may not be available in litigation or arbitration
- Federal courts provide mediators at no expense to the parties

Cons

- Potential for a waste of time and money if no resolution is reached and other dispute resolution methods must be used
- Private mediation can be expensive



CONSIDERATIONS IN DETERMINING WHETHER YOUR CASE IS SUITABLE FOR MEDIATION

- Whether the parties have unrealistic views of their case
- Whether the parties intend to have an ongoing relationship
- Whether the parties have sufficient information to resolve the dispute



THIRD WAY TO RESOLVE A DISPUTE: ARBITRATION

- Third-party neutral(s) resolves dispute between the parties
- Arbitrator's decision is binding
 - Arbitrator resolves issues of law and fact
- Appealable only in very limited circumstances



ARBITRATION (CON'T)

- Paths to arbitration
 - Contractual
 - 9 U.S.C. § 2 (Federal Arbitration Act): Agreements to arbitrate are “valid, irrevocable, and enforceable”
 - 9 U.S.C. § 3: Litigation brought in federal court on any issue that is referable to arbitration is stayed until arbitration has been had
 - 9 U.S.C. § 4: If party refuses to arbitrate pursuant to an agreement to arbitrate, a court can order the arbitration to proceed
 - Agreement of the conflicting parties



ARBITRATION PROCESS

- Initiation of arbitration
- Selection of arbitrator(s)
- Scheduling conference
- Discovery process
- Submission of briefs prior to arbitration hearing
- Arbitration hearing
 - Opening Statements
 - Presentation of evidence
 - Examination of witnesses
 - Cross-examination of witnesses
 - Rulings on evidentiary matters
 - Closing Statements
- Submission of briefs after arbitration hearing
- Arbitral decision



PROS OF ARBITRATION

- Confidential
- Potential to save time
 - AAA median length of time from filing to final award: 297 days
 - Availability of expedited procedures
- Potential to save money
 - Sliding fee schedules
 - Limited discovery
- Ability to select arbitrator with background in subject matter
- Decisions issued soon after arbitral hearing
- Relaxed evidentiary rules



CONS OF ARBITRATION

- Can be costly
 - Administrative fees
 - Arbitrators' hourly fees and travel expenses
- Enforcing arbitration award could be an extra step
- Limited discovery
- Ability to file dispositive motions is not a matter of right
- Very limited right to vacate, modify, or correct an award (9 U.S.C. §§ 10 and 11)
- No jury trial



CONSIDERATIONS IN DETERMINING WHETHER YOUR CASE IS SUITABLE FOR ARBITRATION

- Whether the dispute involves a specialized area of knowledge or industry
- Whether the parties already have sufficient information to resolve the dispute or will need extensive discovery
- Whether the parties believe they have viable dispositive motions



MEDIATION AND ARBITRATION RESOURCES

- American Arbitration Association
- McCammon Group
- JAMS



TYPES OF MEDIATORS AND ARBITRATORS

- Former judges
- Practicing and retired law firm attorneys
- Industry experts and business leaders



COMPARISON CHART

	Litigation	Mediation	Arbitration
Finality	Definitive decision that can be appealed	No definitive decision required	Definitive decision that it very difficult to appeal
Who decides the outcome	Judge or jury	The parties	The arbitrator(s)
Formality	Formal with clear procedural rules	Informal	Formal, but parties have more input into procedures and timing
Confidentiality	Public	Confidential	Potentially confidential
Length	Average of 24.9 months if case proceeds to trial	Typically shorter than litigation or arbitration	Median of 297 days from hearing to award (AAA)



Questions?

Thank you for joining us today.

If you would like to speak with Paul and Ambi about resolving your business dispute, please contact them at:

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