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Lawsuit Mediation: Trying to Compromise Before Starting a Lawsuit

Lawsuits are integral to our system of law, but they're also a messy business. They take time out of your life, money from your wallet, and add stress to lives already full of enough anxiety. People tend to avoid taking matters to court, leaving that lawsuits as a last resort when negotiation or settlement isn't possible.

Next time you find yourself in a legal quandary that leaves you contemplating bringing a lawsuit, consider your options in lawsuit mediation. Lawsuit mediation--involving direct negotiation or assisted mediation--is a pre-trial method to get the parties to agree to a mutually acceptable resolution, but before you even get to this stage, it's often helpful, and effective, to seek compromise directly from the other party.

When the person with whom you're having a dispute is a friend, neighbor, relative, or anyone with whom you have regular contact, lawsuit mediation offers ways to resolve disputes in a more amicable way. Direct mediation, one type of lawsuit mediation, is a term meaning face-to-face negotiation regarding a dispute. Assisted mediation is another type of lawsuit mediation in which a third party acts as a mediator to help the parties come to a mutually-agreeable resolution.

Because lawsuit mediation is often ordered by the court during the preliminary stages of a lawsuit anyway, one method of avoiding the cost of filing a lawsuit in the first place is to enlist the help of a mediator before filing a lawsuit.

This article will discuss both types of lawsuit mediation--direct negotiation and assisted mediation---with an emphasis on the process of direct mediation, as most everyday disputes are typically resolved without the need for third party intervention.

Lawsuit Mediation: What is Direct Negotiation?

When confronted with a dispute, particularly with someone with whom you wish to maintain good relations, a direct offer to compromise is very effective. Perhaps that person isn't willing to admit complete fault, but is willing to consider options that will satisfy you.

Talk to the other party freely, and do so with the knowledge that any offers to compromise do not affect your ability to sue for a greater amount later. For example, if you feel your dentist did a subpar job in filling a cavity, you can offer to settle with him for a refund of half the cost. If he refuses, you can still sue for the full amount and will not be limited in any way by your offer to settle for half.

Negotiation Techniques

Before speaking with the other party, you should consider several factors. Just as you wouldn't walk into a car dealership without considering your bottom line, your needs, and financial situation, you shouldn't begin talking about compromise without a clear idea of what you want to get out of it.

You should consider:

- the odds of winning a lawsuit. This factors into how much you should be willing to settle for.
- your bottom line (what is the least you'd be willing to accept?)
- different types of remedies. If money isn't the only remedy that would satisfy you, think about other things to put on the table the other party might be amenable to.
- how much time you're willing to spend negotiating before you will go through with the other options considered. This could be a simple calculation of how much the time will cost you in money and energy.

For most disputes, the factors above will be the most relevant to consider. Although most people naturally focus on the bottom line, doing so can be counterproductive. By focusing your mind on a number, you may close yourself off from other remedies available to you. Instead, think of the bottom line as a backstop for yourself rather than being at the front of your

mind.

In considering the odds of winning a lawsuit, you should be objective in your reasoning. Don't let anger or frustration cloud your judgment and really consider the strengths and weaknesses of your case. Not all judges or juries will share your assessment. Keep in mind that about 1/3 of small claims cases result in a full judgment for the plaintiff, and about 1/4 of them result in zero damages awarded to the plaintiff. That should give plaintiffs pause to seriously consider compromise as an alternative to a costly and acrimonious lawsuit.

Consider Different Remedies

If you believe you've got a strong case, you will of course feel more comfortable asking for more compensation than if you had a weaker case. But what you should always have going in the back of your mind is how much is money really worth to you in this dispute? If the dispute is with someone with whom you wish to keep good relations, the amount you receive may not be as big a consideration.

For example, your unemployed brother in law borrows your car and returns it with a dent on the door, apologetically admitting that he dinged a light pole. You could make him pay for the damages in full and even get a judgment against him if you took it to small claims court. But perhaps family relations are worth more than making him pay for something he can't afford and you instead agree to a barter situation, where he agrees to pay for half the damages and additionally paint your living room for free.

Lawsuit Mediation: What is Assisted Mediation?

If direct negotiation with the other party breaks down, you could also enlist the assistance of a third party to act as a neutral mediator for the dispute. Typically such parties are trained mediators or attorneys who are accustomed to performing the role.

While the positive side is that it may avert the cost of a lawsuit, the downside is that mediators are not free (although there are legal services that offer mediation services at low cost), and if an agreement cannot be reached, a lawsuit will likely have to follow. If you do choose to attempt mediation, before filing a lawsuit, a court may not require the parties to partake in court ordered mediation before the trial.

Get It In Writing If Possible

No matter how the dispute is resolved, it's always a good idea to get it in writing (any assisted mediation will do this as policy). It need not be formalized with a notary and witnesses, but you can use a downloaded law form from the internet or simply write it down and have both parties sign. Writing it yourself and signing has questionable legal weight, but it does give the parties a chance to look at what they're agreeing to and lend the process a weight that it may otherwise lack. Oral promises in these situations are basically worthless, but the act of signing one's name to a written agreement is considered a serious act by most people and will give the agreement some credence.

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