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Mediation: What Lies Ahead?

As the year draws to a close, I would like to thank all of the attorneys and clients who have entrusted me to mediate their cases. There were dozens of lawyers, clients and insurance carriers that resolved millions of dollars of disputed claims. Consider the collective impact of the mediations conducted by all mediators and the aggregate benefit to clients who are relieved of the burden and uncertainty of litigation and to the court system. I often write and speak about the benefit of being "done." Mediation also affords individuals and companies the opportunity to reap emotional, competitive and psychological benefits very quickly in a way that transcends the economics of the deal.

The landscape for litigators is changing. Less than 2% of civil cases in Florida reach trial. That statistic is consistent with percentages outside of Florida, and no one is predicting a meaningful increase. With mediation now court-ordered prior to trial in virtually every civil case, it is incumbent upon litigators to master the art of mediation. That is, in large measure, the impetus behind *Mediation Notes*. We need to be as skilled at mediation as we are in trial practice. We also need to view mediation not as a perfunctory court-ordered diversion from litigation, but as between the two, the more preferred, cost-efficient and effective tool for resolving disputes.

In terms of economic efficiency, mediation is far superior. When mediation became mandatory in Florida in the mid-1980s, I believe the internal dialogue for many litigators was, "Okay, we will give mediation a try, but if it doesn't work, we can get back to the real task at hand – litigating the case."

Brought to you by
David W. Henry, Esq.



Should you have additional inquiries, please contact:

David W. Henry, Esq.
Shareholder
Professional Liability
Department

Florida Supreme Court
Certified Civil & Appellate
Mediator

Member, National Association
of Distinguished Neutrals

Landmark Center One
315 E. Robinson Street, Suite
550
Orlando, FL 32801
407.420.4418
dwhenry@mdwcg.com

That mindset has, in my view, started to dissipate, and will continue to disappear, and be replaced by a new normal. In the new normal, the case will be mediated much earlier and, only after exhaustive efforts to settle are undertaken, will the parties instruct their attorneys to engage in plan B—litigation. Some insurance carriers and large institutional clients are aggressively moving toward early mediation, including presuit mediation. If that model works, word will spread. Claims personnel and in-house counsel look increasingly to ADR to save the bottom line.

In the months ahead, we will provide practice tips and educate our readers about the evolving use of mediation, the tools and styles employed by mediators, and how one can become a more effective mediation advocate.

On behalf of Marshall Dennehey, have a wonderful holiday, and best wishes for 2017.

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**MARSHALL DENNEHEY
WARNER COLEMAN & GOGGIN**

ATTORNEYS-AT-LAW

PA NJ DE OH FL NY

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