

WhatIsTheLaw.com

Negotiate Mediate Litigate Arbitrate

There is more than one way to resolve a dispute.

Choose the RIGHT way for YOU.

Sometimes you have only one option: Litigate. It's the only option in your total control. You can't negotiate with someone who refuses to talk. You can't have a third party mediate the dispute between you and your opponent if your adversary won't participate. Unless you already have a signed agreement to Arbitrate, that's not a forceable option either.

Your Lawyer should advise you of ALL options.

What is your Objective?

Do you want money? Do you want to avoid paying money to the other party? How much money is at issue? For the most part, Civil Litigation, a lawsuit in Court, is about getting the other side to pay you money. “Justice” is important, but the civil litigation process is most effective when there is a clear path to getting the Client MONEY.

The four big considerations:

LIABILITY + DAMAGES + COLLECTIBILITY versus COST / RISK OF LOSS

1. Is the other side liable under the law? Did they breach the contract? Did they unlawfully injure you?
2. How much are your damages? How much is at stake if you win?
3. Can the other side PAY that Judgment? Are they on the verge of bankruptcy? Will a “victory” in Court, be worth the time and money you spent to get it?
4. What is YOUR RISK? If you lose? How much will it cost you in attorney’s fees? How much can the other side get from YOU if you lose?

Litigation = \$

Ordinary Court litigation to a Jury trial is time consuming and expensive. You NEED an attorney to navigate the procedural complexities and rules of evidence. A Jury trial is a GREAT way to get JUSTICE, but its expensive to get there. Plus, with appeals, it can take years to resolve.

1. Complaint is filed and Served
2. Legal challenges are made to the complaint
3. Discovery, Depositions, Requests for Documents and Formal Questions answered under penalty of perjury are time intensive with lots of potential for mistakes that REQUIRE diligent legal representation to protect your interests. This phase of litigation is what generates A LOT of attorney fees because it is so time intensive
4. Motions for Summary Judgment are procedurally complex and require knowledge of the rules of evidence. If you lose one of these motions you NEVER get to a trial.
5. Finally, trial prep and trial are time intensive and require following detailed procedural rules.

Negotiation & Mediation

These are best viewed as being **IN ADDITION** to **LITIGATION**, as they rarely work **WITHOUT** a **PENDING LAWSUIT AS A HAMMER**

Negotiation

You talk to the other side. At least your lawyer does. No decent attorney will refuse to consider this. Its part of the process. **WHILE** you litigate and get close to trial (and **BOTH** of you incur ever greater **COSTS** and **ATTORNEY FEES**) the incentives to punch out and reach a deal increase. Smart attorneys will focus on **PREDICTING** likely outcomes and seeking resolution along those lines.

Mediation

This is just **NEGOTIATION** with a **NEUTRAL** third party, maybe a retired Judge, to help bring the parties to agreement. There are a lot of types of mediation. The mediator can **EVALUATE** both sides' cases and give an opinion on the result at trial. Most of the time, the mediator will avoid evaluating the parties' cases and look for areas of mutual interest to assist the parties in **AGREEING** on their **OWN DEAL**. Mediation can be valuable because parties get to tell their **STORY** to a **NEUTRAL** Former Judge and sometimes it suffices for their "**DAY IN COURT**".

ADR

(Alternate Dispute Resolution)

Arbitration Can be an ALTERNATIVE WAY TO FIGHT WITH YOUR OPPONENT

The parties can, if they AGREE, take their fight to private ARBITRATION. There are two major private arbitration organizations, JAMS and the American Arbitration Association that employ private Arbitrators, Retired Judges and Private Attorneys that act as a PRIVATE JUDGE to decide your case. They rule for ONE party OR the OTHER. This is just like in Court.

But you have to PAY them. A PUBLICLY appointed Superior Court or Federal Court Judge is FREE for the most part (aside from a small filing fee). But a PRIVATE JUDGE gets paid by the HOUR, and can charge up to \$12,000 for a one day trial!

- But Arbitration is MUCH LESS FORMAL than LITIGATION
- The formal RULES OF EVIDENCE (sometimes COMPLICATED) don't apply
- Complicated PROCEDURES are not necessary. Time to decision is MUCH FASTER.
- You gather your documents and witnesses, disclose them to the other side, and SHOW UP to the hearing to present your case to the Arbitrator in a conference room somewhere.
- The Arbitrator WILL take into account the LAW and FACTS, but since there IS NO APPEAL, his or her decision is FINAL, even if WRONG.
- If you have an Attorney, there is A LOT less time required and so your FEES will be A LOT less, MOST of the time, way less than the amount you have to pay the PRIVATE Judges. On balance, it's cheaper. Plus, it's POSSIBLE to "Do it YOURSELF", though NOT recommended.

**Law Office of James Swiderski
Results**



Law@WhatsTheLaw.com 8587758769

Aggressive and Affordable Litigation



Unique and Atypical cases are not a problem. I have a history of taking difficult cases and turning them into victories.

Workable litigation budgets, tiered contingent fees (sometimes less than a third) and flat rate / capped hourly rate approaches possible in some cases.