

COIN WORLD

Alternatives to litigation

By **Armen R. Vartian** | 03-24-11

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Periodically I stop and wonder why Americans tolerate our dysfunctional legal system. Anyone can sue anyone else. Costs for filing fees, depositions and attorneys are high. The winners almost never get reimbursed by the losers, and everything takes years to resolve one way or the other.

And it's only getting worse with cutbacks to federal and state judicial systems.

There are alternatives. One is, of course, resolving disputes between the parties, with or without lawyers involved, so no legal claims go forward at all. Quaint as that may sound, it is often the best approach, particularly between persons or companies who do business regularly.

Mediation

Next there is mediation. Whether done by a professional mediator or simply someone respected by the parties and willing to undertake the task, mediation can be a quick and relatively inexpensive way of settling a dispute.

I'm talking about the parties meeting together, again with or without lawyers present, and discussing both their views of the dispute and their objectives for a resolution, with the mediator moderating the discussions.

Often a mediator takes one party aside separately to review its position as well as those of the other party, and will offer his or her experience in comparable matters where that helps the parties understand the situation or predict outcomes were the case to proceed in court. Mediation is nonbinding, and in most court proceedings today the judge will order the parties to attempt mediation before taking a case to trial.

Arbitration

On a more formal level there's arbitration. Arbitration involves one or more arbitrators who hear evidence and arguments from the parties and issue a ruling called an "award." Arbitration can be everything from a short meeting to something looking much like a court trial, with witnesses testifying under oath and lawyers presenting written briefs on legal issues.

Several major national organizations administer commercial arbitrations, including the American Arbitration Association and JAMS. Arbitrations are binding on the parties, and awards can be confirmed as judgments in any court having proper jurisdiction. For better or worse, awards cannot be appealed in all but the most extreme circumstances.

When entering into commercial agreements, it is useful to consider placing a clause in the agreement requiring any disputes to be mediated or arbitrated rather than taken to court.

Such pre-dispute arbitration clauses are routinely enforced by courts if one party attempts to avoid them, and the law also allows parties considerable leeway in defining the parameters of how disputes will be handled. For example, some arbitration clauses provide for AAA commercial arbitration rules to be applied, or that arbitrators must have certain relevant qualifications.

Coin collectors, investors and dealers are fortunate to have several dispute resolution options involving knowledgeable and respected industry participants.

The Professional Numismatists Guild offers binding arbitration where its members are involved, and the American Numismatic Association's Mediation Service is also useful where an ANA member is accused of wrongdoing.

In addition, I've known of several dealers and others (myself included) who have agreed to mediate or arbitrate disputes when asked.

Armen R. Vartian is an attorney and author of *A Legal Guide to Buying and Selling Art and Collectibles*.