



Autumn 2016

the SideBar

Arbitration and Mediation: Alternatives to Traditional Lawsuits

By Andrew A. Kimler, Esq.

It is not unusual for an attorney to meet a client who has been wronged and who seeks the attorney's assistance in the filing of a lawsuit. This can arise in a variety of situations, including business and employment disputes. What many clients do not realize is that a typical lawsuit is not the only way to resolve a dispute. Lawyers are all too familiar with how time consuming and costly the courtroom process can be, along with crowded court calendars and procedures that may be extremely stressful for clients.

Viable alternatives to conventional litigation are mediation or arbitration. Generally speaking, mediation is a voluntary process which permits the informal resolution of the parties' disputes. As opposed to focusing on who is right and who is wrong, mediation aims at reaching a mutually acceptable resolution with the assistance of an attorney mediator who has been trained to assist the parties in developing their own solutions, as opposed to having one imposed on them by a judge. Arbitration involves the use of a neutral third party to decide the outcome of a dispute. As a rule, the parties must agree to submit their dispute to binding arbitration and the arbitrator's decision usually is not reviewable on appeal.

MEDIATION

There are a number of advantages to a mediated resolution of a dispute over a traditional lawsuit.

- Mediations are usually much quicker and less expensive than lawsuits.
- Mediation (which is usually done in a less formal setting than a courtroom), allows for the parties to openly discuss their concerns in a confidential setting. Because of the informal setting, there also is a greater likelihood that the parties can possibly work towards preserving their relationship which could be destroyed by a heated lawsuit.

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Estate and Tax Planning: Five Mistakes to Avoid

By Morris Sabbagh, Esq.

There have been many changes to estate tax laws in recent years. Keeping up with the changes can be confusing. Below are some mistakes which should be avoided.

Completely Tax Driven Estates: With a federal estate tax exemption of \$5,450,000 and new rules designed to allow spouses to share their exemptions, fewer people today need estate tax driven wills and estate plans. Even for wealthier people, it's easy to become overly focused on estate taxes, resulting in the proverbial tax tail wagging the dog. Always evaluate your non-tax goals before focusing on taxes.

Rushing to Give Away Assets: Years of conditioning have trained us that transferring assets is always a good thing. In many situations, a knee jerk reaction to transfer assets will result in added taxes rather than tax savings. Under the new rules, estate tax planning has taken a second seat to income and capital gains tax planning. A rush to give away assets can result in the loss of important tax benefits, such as the so called "step up in basis," which occurs when an asset is inherited rather than gifted. Income tax consequences should always be considered before assets are transferred.

Failure to Elect Portability: Since 2011, a surviving spouse may be able to retain the benefit of a deceased spouse's unused federal estate tax exemption. In order to secure

this benefit, however, an election to do so must be made on a timely filed estate tax return. In the few years since this provision has been around, we have come across many people who failed to make this election. As a result, millions of dollars in potential tax savings have been wasted. With a tax deadline occurring nine months after a spouse's death, it is crucial that this provision be considered soon after the death of a spouse.

Failure to Consider Incapacity: A complete estate plan should always include a power of attorney and health care proxy. These documents are necessary to ensure a smooth transition of financial and health care decision making in the event of incapacity. In addition, it is important to consider how the costs of long term care will be paid.

Not Doing Anything: Estate planning is something that people tend to avoid thinking about; but any plan is better than no plan at all. An estate plan should not be left to chance. All it takes is a call to your attorney, accountant or financial planner to start the ball rolling and avoid complacency. **M**

Morris Sabbagh, Esq., is partner in VMM's Trust and Estate Planning, Trust and Estate Administration, Elder Law and Exit Planning for Business Owners Practice Groups. He can be reached at msabbagh@vmmlegal.com or 516.437.4385, ext. 120.



MEET Mary Lucatorto

Trust and Estate Paralegal

According to the website Paralegal.edu, a paralegal “performs substantive and procedural legal work as authorized by law ... Paralegals adhere to recognized ethical standards and rules of professional responsibility.” If you were to ask Bernie McGovern the definition a paralegal, he would answer “Mary Lucatorto.”

We asked Mary a few questions about her work and her life beyond the office.

SideBar: Word has it that you have worked at VMM longer than anyone else, with the exception of Bernie Vishnick. How many years have you been with the firm and how many attorneys have you supported over the years?

ML: *October 2016 marks my 29th year with the firm. I've assisted Bernie McGovern the entire time, as well as four or so other attorneys over the years.*

SideBar: How did you begin your career as a paralegal?

ML: *I became a paralegal totally by accident. I earned a degree in Journalism from Baruch College. My career began as a secretary at two prominent New York City companies before becoming a stay-at-home mother to my two children. When they went off to school, I scoured the want ads, printed in newspapers in those days, until I came upon a job at the firm. It was located then within walking distance of my home and was a good fit for me and my family.*



SideBar: What has kept you at one law firm all these years?

ML: *My working relationship with Bernie McGovern is an overriding factor. He creates challenges for me to undertake and entrusts me with decision-making and handling projects. When a boss encourages an employee to develop his or her independence, it makes all the difference. The other big reason why I'm a VMM 'lifer' is the friendships I have with the women in the office. We are a longstanding crew who work together, have raised our children together and have developed a strong camaraderie.*

SideBar: As a paralegal who handles estate administration and guardianships, you deal with clients and their families under stressful circumstances. How do you maintain your positive attitude when dealing with people in crisis?

ML: *Being compassionate has to take a precedent over everything else. I continually remind myself that anything the clients and their families are going through is worse than any job I have to do.*

SideBar: You have accumulated a vast amount of knowledge of legal procedures throughout your career. What do you find to be the most challenging part of your job?

ML: *Technology has changed the way of doing work that I never could have imagined. Going from typewriters with carbon paper to computer programs and systems wasn't an easy transition. Also, it seems that legislative changes are never ending; they have a significant impact on the work I do. Just think: Thirty years ago a \$3 million estate was highly taxed in New York. Now, that same estate is tax free. Keeping up with new tax laws is essential to getting the job done correctly.*

SideBar: What steps have you taken to manage work/life balance?

ML: *When my children were younger, it was important for the whole family to sit down to a nice dinner. We even did that by candlelight. Mealtime had to be relaxing and pleasurable. Weekends were all about sports. The firm has always made it possible for its working parents to juggle both responsibilities.*

SideBar: When not at work, how do you spend time unwinding?

MF: *Now, my husband Jack, who is retired from a management position with United Parcel Service, and I like to go out to dinner, enjoy some good wine and watch movies at home with a bowl of popcorn.*

news & Events



Andrew A. Kimler

Partner **Andrew A. Kimler** has been appointed to the United States District Court, Eastern District of New York Mediation Panel. In this role, he assists in improving communication across party lines, identifies areas of agreement and helps parties to generate a mutually agreeable resolution to the dispute.

In other news, Andy participated in a

Nassau County Bar Association Open House, addressing employment law questions from the public in June. Coming up on November 18, 2016, he will partner again with Irv Miljoner, U.S. Department of Labor District Director for Long Island at the Long Island Tax Professionals Symposium. Their topic is “New Overtime Rules and Federal Wage and Hour Requirements for Employers and Their Representatives.”

Associate **Eun Chong (EJ) Thorsen** served as a co-chair of the National Asian Pacific American Bar Association (NAPABA) 2016 Northeast Regional Conference hosted by the Korean American Lawyers Association of Greater New York (KALAGNY) this past August.



Pictured are co-chairs Judy Kim and EJ with keynote honoree, Honorable Randall T. Eng, Presiding Justice of the Appellate Division, Second Department.

Mindy Wolfe, VMM chief marketing officer, has been selected by the Association of Fundraising Professionals, Long Island Chapter, to present a seminar entitled “No Marketing Budget? No Problem” at the organization’s 29th Annual Philanthropy Day on Long Island this November. In addition, in September she presented a seminar entitled, “Become a Confident Business Writer” for the staff of the Tourette Association of America.

Arbitration and Mediation *(Cont'd from Page 1)*

- Nothing that is stated in the mediation can be used for any purpose outside of the mediation setting.
- The mediation process is not concerned with winning or losing; rather, allowing the parties to collaborate, with the assistance of a mediator, in coming up with a solution that satisfies both sides.
- Since a mediated settlement results from the cooperative efforts of both sides, compliance with the resulting settlement agreement is more likely to occur.
- If the mediation process does not succeed, the parties still have the option of proceeding with litigation or arbitration. However, since most cases usually are settled prior to trial, the parties have nothing to lose by attempting to resolve their disputes early on without additional cost, aggravation and risk.

ARBITRATION

As is the case with mediation, arbitration is generally speaking a voluntary process which requires the parties to agree to use arbitration as a method to resolve a legal

dispute as opposed to choosing traditional litigation. Before either agreeing to submit a dispute to arbitration, or including a clause in a contract which requires all disputes to be submitted to arbitration, there are several factors that the parties should consider.

- Arbitration proceedings are usually much quicker than traditional lawsuits since the parties do not have to deal with congested court calendars.
- Once the case is assigned to an arbitrator, he or she can become quite familiar with the matter which will help expedite the outcome of the proceeding.
- Arbitration usually involves a more simplified and cost-effective procedure. The discovery process, which frequently involves the exchange of extensive demands for information and depositions, may be streamlined and frequently depositions are not even permitted.
- Arbitrations are usually confidential proceedings conducted in less formal settings, such as conference rooms.

- Unlike courtroom proceedings that may result in constant interruptions or a trial being broken up into several days over a few weeks, arbitrations are usually conducted without interruption on a day-to-day basis.
- The parties usually are permitted to select an arbitrator who possesses the skills and knowledge they believe are most appropriate for the particular dispute.
- Despite the various benefits of arbitration, the parties should also consider the possible expenses they may face during this process, which include filing and attorney-arbitrator fees; no right to a jury; and the arbitrator’s decision is final, except in very unusual circumstance.

Clearly, before making any decision, you should consult with your counsel as to what is right for you. **M**

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VMM ACADEMY

Fall 2016 and Interession 2017—Mark Your Calendar Now!

DATE	TOPIC	PRESENTERS
OCTOBER 26, 2016	AVOIDING THE PITFALLS OF BUYING INVESTMENT PROPERTY	JAMES F. BURDI, ESQ. & JOHN P. GORDON, ESQ.
NOVEMBER 30, 2016	EXIT PLANNING FOR BUSINESS OWNERS	JOSEPH G. MILIZIO, ESQ. & JOHN P. GORDON, ESQ.
JANUARY 25, 2017	SHOULD I HAVE A TRUST?	RETIRED SURROGATE HONORABLE EDWARD W. McCARTY III BERNARD VISHNICK, ESQ. BERNARD F. McGOVERN, ESQ.

All programs are held at
Vishnick McGovern Milizio LLP
3000 Marcus Avenue, Suite 1E9
Lake Success, NY

Last Wednesday of the Month
5:45 PM: Check in & refreshments
6:15 – 7:45 PM: Program, including
question & answer period

There is no charge to attend VMM Academy, but pre-registration is a must.
Contact Mindy Wolfle at mwolfle@vmmlegal.com, or 516.390.3027.

EXIT PLANNING FOR BUSINESS OWNERS

Sign up to receive our upcoming Exit Planning for Business Owners newsletter...it's never too early to start planning for the future of you and your business. Contact Mindy Wolfle at mwolfle@vmmlegal.com or call 516.390.3027 to receive this new and informative publication.

Speak to Joseph G. Milizio, Esq. (516.437.4385, x108) or John P. Gordon, Esq. (516.437.4385, x143) to discuss exit planning for your business.



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