

You Get What You Pay: Why Private Mediation Delivers Better Results

FEATURED ATTORNEY



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Recently, I have heard a fair amount of discussion regarding the effectiveness of courthouse mediators vs. private mediator. Not surprisingly the chatter deals with free public mediators vs. private cost mediators. I think they both serve a purpose; however, on balance a private mediator provides attorneys with greater value.

Here's why:

Courthouse mediators are a no cost method of attempting to settle a case. Usually, the presiding judge will recommend mediation and offer the courthouse mediator as a way to take the case off his desk and put it on the mediator's pile. The hook is that it's free and therefore worth a try. Attorneys, not wanting to offend the judge, will usually agree and a mediation date is then set up. The attorney will then attempt to

settle the matter under the strict time limits given during the day.

A **Private mediator** – usually a retired judge – on the other hand, has much more depth and well rounded experience in that they know both sides of the bench and have vast experience handling motions, trials and everything in between. They also may have had years of experience, handling sophisticated commercial or medical malpractice matters. Their depth and insight can be invaluable in working with the parties to settle their case.

More Time, More Flexibility, Better Outcomes

Courthouse mediators can only take you so far and have limited time as well. They go home at the end of the work day. Because of this, I've been told by some attorneys, that they feel pressured to take an offer because of time constraints. Meanwhile there is no end of the work day for a private mediator. For example, in December I plan on handling a matter that involves a party from California. Due to time differences, I will start the mediation at 1 and will go as late as necessary. I have no time constraints that require me to leave for the day. Further, when handling more complex cases, I realize the mediation may last more than one day and can offer the flexibility of adding on additional days or accommodate a private practitioner's availability.

Private mediators, and especially retired judges, have a whole separate and more complete toolbox for assisting parties in resolving or strategizing cases. I not only mediate and arbitrate cases, but I've been asked to review motions and give my assessment; asked to review legal issues and how I might rule on them, as well as reviewing expert testimony and evaluating their worth.

As Courts Backlog, Private Judges Step In

Recently, the *Wall Street Journal* published an article, "[Is the Judge Out? Hire your own.](#)" In 2024, an amendment to the New York Court Rules has encouraged the use of private judges in complicated commercial disputes. In nearly thirty other states, private judging is allowed and encouraged, due to courts being overwhelmed. While the practice isn't too common as of yet, there is an uptick in hiring retired judges to actually hear cases because of the heavy backlog in the courts. Rather than wait years to get to trial, states like New York allow parties to retain a retired judge to hear any aspect of a case (issuance of scheduling orders, motions and decisions, orders, trials, etc.). Failing a settlement, a private judge can revert to mediating or arbitrating the case.

As a commercial judge for nearly a decade, I moved the docket along and had great experience in handling all aspects of a commercial case. Additionally, I heard numerous other cases from a standard slip and fall matters to a sophisticated medical malpractice case.

The bottom line is you want to get your money's worth, and a retired judge has greater depth, time and resources to help attorneys dispose of their cases. You get what you pay for.

Over his career, [Matthew Rosenbaum](#) has resolved thousands of cases, both small and highly complex.