



MICHAEL R. DILIBERTO, ESQ.



Med-Arb: The Best of Both Worlds?

While mediation and arbitration are widely accepted dispute resolution processes, the hybrid combined approach called “med-arb” is less familiar to many. However, med-arb can be an efficient cost-saving device in appropriate cases.

In med-arb, the parties first attempt to reach a collaborative agreement with a mediator, or “med-arbiter,” who works with all parties jointly and/or in private caucuses. Most times, the med-arb process results in a successful mediation with no need for arbitration. But if the dispute remains unresolved, the med-arbiter will impose a binding decision based on the merits of the case. If some issues are resolved during the mediation portion, he/she would rule only on the unresolved issues.

Giving a third-party authority to render a decision can inspire people to work harder in mediation to reach an agreement. The process is particularly effective when time is critical and the parties expect to work together in the future. Hiring one person to serve as mediator and arbitrator saves time and money because the arbitrator is already up to speed on the case if it does not settle at mediation.

One caveat is that parties may be less inclined to share confidential information with a mediator who could become their decision-maker as an arbitrator. Alternatively, a different arbitrator could take over the remaining dispute from the mediator. Another variation could put the arbitration first, with the arbitrator’s decision placed in a sealed envelope. The mediation would follow to see if settlement can be reached without imposing the arbitrator’s decision.

The med-arb process has many potential variations that can be designed to suit the needs of the parties. A creative approach will ensure the best results for your case.