

# For business, minitrials save court costs

Corporations are increasingly avoiding courtrooms. They're using cheaper and faster ways to settle their disputes.

By using day-to-day experience in informal conflict resolution, managers often can play key roles in out-of-court settlements, according to two University of Michigan business law authorities.

Mediation — in which a third person helps disputing parties reach an agreement — is an especially effective means of dispute resolution for corporate executives, said George L. Siedel III, professor of business law in the U-M School of Business Administration.

"For example, the 'minitrial,' a form of mediation first used in 1979, offers them the opportunity to use creative problem-solving and negotiations in shaping a 'win-win' resolution of a dispute," he says. That's in contrast to "the 'all or nothing' solutions often rendered in litigation."

SIEDEL ESTIMATED the cost of a minitrial is about 10 percent of the cost of a civil lawsuit. It's also cheaper than arbitration, in which a third party issues a binding decision.

"To arbitrate a \$1 million international dispute costs about \$120,000, not counting legal fees," he said. Whitmore Gray, U-M professor of law and one of the country's leading experts in methods of alternative dispute resolution (ADR), notes that "in ADR, the parties benefit by remaining in control of both the proceedings and the quality of the settlement."

In a recent paper examining the topic, "The Intersection Between Business and Legal Approaches to Dispute Resolution," Siedel noted that executives, with a little assistance, can arrive at legal as well as business solutions.

"A study of the frequency of litigation revealed that only about 10 percent of all civil disputes reach an attorney," Siedel notes. "We could conclude then that the lawyer's role as the 'gatekeeper for disputes' is greatly overblown."

SIEDEL is a proponent of the "minitrial" method of dispute resolution. In it, lawyers act mainly as

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advisers. Managers themselves are the primary negotiators. Despite its name, the minitrial is not a trial, but an information exchange, Siedel said. It may involve a neutral adviser and may be held under court supervision, but requires neither.

"The key factor that distinguishes the minitrial from a real trial is that it allows face-to-face contact between executives, while the lawyers remain in the background," Siedel says.

THE ORIGINAL minitrial, described in Siedel's paper, was between Los Angeles-based Telerecord Inc. and TRW Inc.

In 1974, Telerecord sued TRW for patent infringement, seeking an injunction and \$6 million in damages. "After three years had passed and 100,000 documents had exchanged hands, no agreement had been reached," Siedel says.

At that point, the parties began to develop a procedure they called an "information exchange," now known as the minitrial. After each side had disclosed facts and documents relevant to the dispute, attorneys presented their best cases in a four-hour period.

A neutral party moderated a short reply and rebuttal session. The executives then met for 30 minutes and quickly reached an agreement, "thus saving an estimated \$1 million in lawyer's fees," according to Siedel.

SINCE THE TRW-Telerecord precedent, minitrials have been used in more than 100 cases, he said, and probably could have worked for many more, if executives had been aware of the advantages of the procedure.

Siedel predicted that minitrials will soon be used for other types of

cases such as those involving claims of wrongful discharge and product liability.

New versions of arbitration also

are growing in popularity. (Arbitration requires a third party to receive pertinent information and arguments from two contending parties and to render a binding decision.)

Some, such as the "rent-a-judge" system, also have gained some notoriety as a form of "rich man's justice," Siedel said.

To rent a judge, contending parties agree upon and hire a retired judge, usually with special expertise in the area of the dispute.

People, like television talk show host Johnny Carson, who rented a

judge to settle his contract dispute with NBC, have found that the procedure helps them keep cases low-key and relatively free of publicity, Siedel said. "Hiring a private judge also speeds up the process, as the parties don't have to wait months to get on the crowded court docket."

THE RENT-A-JUDGE system is different from some other forms of arbitration in that rules of evidence may apply to the proceeding and the judge's decision may be appealed on the basis of errors of law.

Unlike mediation, which is significantly cheaper than litigation, "private arbitration is not always a great deal cheaper than the court system," Gray notes. "The main advantages are not cost savings as much as speed and the ability to pick one's own judge."

The trend toward out-of-court settlements reflects "people's desire for certainty about the outcome of a case," Siedel says. "I equate litigation with roulette because the outcome often depends on the jury members."

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