

Mediate or litigate...why not both?



The Information Commissioner's Office recently announced that the process of mediation proves invaluable to any FIO disputes and the 2009 residential tenancies bill stipulates the appointment of a commissioner to mediate disputes between landlord and tenants.

As mediation still is a new concept in Cayman, we have in this column discussed the difference between mediation and counseling. This time we would like to touch on some differences between mediating and litigating. Most will know that mediation is an alternative form of dispute resolution to litigation; however, some may not know that there is much common ground between attorneys and mediators.

Attorneys counsel clients on managing their conflicts. Not only do they resolve disputes through litigation, but they often explore with their clients possible resolution and settlement options. When settlement is likely the best option, mediation can be employed at different times in the process of resolving the dispute in order to ensure that the best negotiated settlement is reached.

Mediation is a voluntary process in which an impartial third party assists two or more parties involved in a dispute to create and agree upon their own terms of settlement. During the mediation process, the mediator does not represent one side or render a decision, but rather assists all parties involved in coming to a mutually agreeable settlement by helping them to identify their interests and needs and aiding the negotiation process. Thus, mediation provides another way for attorneys to counsel their clients on managing conflict.

As mediation is significantly less expensive than going to court, during these economically chal-

lenging times, attorneys can help their clients achieve cost-effective dispute resolution through mediation when appropriate. For example, with clients filing for divorce, if a mediator can assist parties to identify acceptable settlement options on such issues as custody and visitation rights, though they will invariably need legal counsel regarding their rights and in writing up the ensuing contracts, the client's costs can be reduced. At the very least, parties enter mediation voluntarily and cannot be compelled to compromise.

As mediations are conducted on a without prejudice basis, small risk to clients exists if mediations break down and the case goes to court.

We believe that personal and professional disputes are best managed when those involved explore all resolution options; and, if necessary, chose a path that involves any number of complimentary service providers.

The mediator does not represent one side or render a decision, but rather assists all parties involved in coming to a mutually agreeable settlement by helping them to identify their interests, needs.