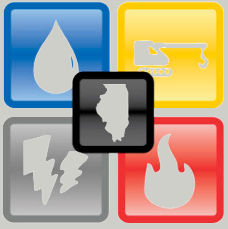


WINTER 2020



Substance

Illinois Mechanical & Specialty Contractors Association



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*Legislative
Representation
for over 2,000
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An Alternative to Litigation

Judge Curcio is a senior mediator and arbitrator with almost 30 years of legal and judicial experience. She focuses her arbitration and mediation practice on all aspects of construction claims. Judge Curcio joined ADR Systems in April, 2018, after more than 15 years as a judge in the Circuit Court of Cook County, and spent the last eight years on the bench hearing construction cases, especially Mechanics Lien claims. She is a member of the ISBA Construction Law Section Council and of the Society of Illinois Construction Attorneys.

Construction projects unavoidably breed disputes; resolving those disputes timely and efficiently is crucial to your bottom line. Non-payment when work is complete, claims of defective work, costly delays, claims for extra work with unsigned change orders, design issues — these are just some of the issues in construction projects that lead to lawsuits. The subcontractor who has not been paid or who is dragged into a lawsuit is sure to be frustrated and angered by the amount of money and time drained from business in the course of making or defending claims.

Litigation seems to feed on itself and, it can be a black hole that sucks money and energy from you and your business. The usual plodding pace of litigation is now slower still because courts have been crippled by Covid 19. Trial dates for cases decided by judges are extended well into 2021 and beyond. In most areas, jury trials are not being scheduled at all. What is the subcontractor who has not been paid or has just been sued supposed to do? Call your attorney to make sure your rights are preserved. Then consider mediation.

Perhaps you can work things out with the other parties on your own. When you cannot, hire a mediator—a neutral third party whose job is to help the parties communicate and negotiate. Odds are that you are better off working with a neutral 3rd party mediator than finding yourself mired in prolonged litigation over a dispute.

One of the most important differences between litigation and mediation is that a judge or a jury decides the outcome of

litigation; the parties control the outcome of mediation. Mediation allows the parties to craft creative solutions to disputes rather than having a decision imposed upon them. The outcome of a lawsuit is public. An agreement reached through mediation can be kept private and confidential. The cost of mediation pales in comparison to the time, money and emotion expended in litigation.

Construction law attorneys recognize the value to clients of mediation, and your attorney is the best resource to help you through the process. The first thing he or she can do is work with other attorneys to reach an agreement to mediate.

The next crucial step is choosing a mediator. Your attorney understands construction and construction law. The mediator in a construction dispute should, too. In preparing for the mediation, you and your attorney will have to educate the mediator about the facts and circumstances of the case. It will be a far more efficient process if you do not have to start by explaining to the mediator what a 2 by 4 is. And your attorney should not have to educate the mediator about the Illinois Mechanics Lien Act or explain what “substantial completion” means.

The mediation session is likely to be scheduled for an entire day. In complex disputes, it can be more than one day. Take this time away from business with the goal of saving hours and days (and attorneys’ fees) that would be spent in a lawsuit.

One of the most difficult things about mediation is setting aside the natural anger that arises in any dispute. Few claims—especially construction claims—are one-sided or black and white. The mediator is there to help the parties get past the anger and frustration, and to help to honestly assess the risks and costs of not compromising. The mediator will not take sides or decide the case, but he or she can help all participants understand the benefits of reaching a settlement.

Construction claims can be resolved through mediation. Use mediation to save a business relationship, save time and money, to reach a final agreement and to keep your agreement confidential. Get out of the courtroom and back to work through mediation. ■