

ALERT

July 2020

Facing Backlog Using Dispute Resolution Post COVID-19

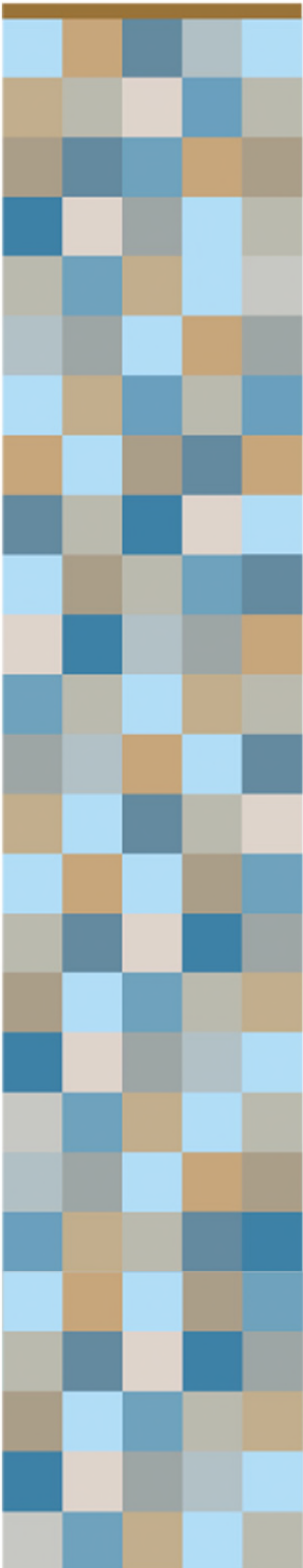
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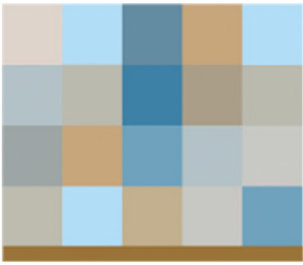
On March 17, 2020, in response to COVID-19, Chief Judge Janet DiFiore closed all New York State Courts for nonessential services, which effectively shut down the majority of cases pending before the courts and prevented the filing of any new cases. Recently, state courts have begun reopening for most matters. Judges are facing a tremendous number of new matters, in addition to all pre COVID-19 pending matters. Of particular significance, prior to COVID-19, in May 2019, the state courts announced implementation of a statewide initiative for presumptive mediation within the courts to address civil disputes. For parties seeking the ability to obtain a quicker resolution, as well as courts looking to address the backlog of matters, alternative dispute resolution moves to the forefront as the best available option.

Although the courts have reopened, it will take time for them to operate at full capacity and determine how matters will actually proceed going forward. Whether matters will be heard remotely via various virtual platforms, or whether courts will allow parties to appear in person, will be decided by each individual court potentially matter by matter. Given the presumptive mediation initiative, it is uncertain whether courts will first require parties to mediate before commencing litigation. In light of COVID-19, courts are wrestling with how to implement the mediation initiative to manage the current and continuing backlog. Due to ongoing uncertainty of the new processes and potential COVID-19 related delays, parties may want to consider alternative dispute resolution options to pursue their rights in addition to traditional litigation. In the event parties decide to use a neutral third party assist in resolving a particular conflict, there are a variety of options available. Here is a breakdown of advantages for available alternative dispute resolution:

MEDIATION

- Neutral third party to discuss possible solutions; third party will not issue a decision;
- Courts can provide panels of mediators for parties;
- Some mediators provide several hours of "free" time before the billing clock start; applicable reduced rates afterwards may apply;





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- Institutions such as AAA or JAMS can facilitate ad hoc mediation allowing parties to reduce rates and keep costs low;
- Nothing is binding unless the parties come to an agreement;
- Virtual mediations available.

ARBITRATION

- Neutral third party will issue a "judgment" and it will be enforceable;
- Parties can select an arbitrator with knowledge of the subject matter governing the dispute;
- Parties can opt into arbitration via contractual arbitration clauses, or agreeing to arbitrate post contract;
- Cost efficient alternative to litigation;
- Verify if your dispute can be arbitrated; certain disputes, as a matter of law, cannot be arbitrated;
- Best for disputes requiring finality and enforceability;
- Virtual arbitrations available.

As we adjust to a new normal, for now, keep in mind that the state courts are not the only places where parties can resolve a dispute. Parties should consider utilizing a mediator to facilitate the resolution of the dispute or an arbitrator who will issue a ruling. There are pros and cons to choosing mediation or arbitration, as well as choosing between court appointed panels, ad hoc or institutional panels. MHH's skilled professionals can help guide you through this decision to determine if alternative dispute resolution is the right fit for a specific dispute, and if so, assist you in developing a strategy for an effective mediation or arbitration.

Moritt Hock & Hamroff remains available during this unprecedented time to assist you and your business with your legal needs.

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