



How Does Dispute Resolution Differ from the Practice of Law, Attorneys, and the Courts?



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Question:

In the simplest terms, what is meant by the practice of law, and where do attorneys and courts fit into that?

Answer:

Everyone has rights, but it's a choice whether or not to exercise and enforce them. When you want to exercise your rights, you are choosing to litigate. Although attorneys are optional in litigation, most people choose to hire an attorney to provide them with a legal strategy and represent them in court. They help you answer important legal questions, help you understand laws, warn you against making decisions not in your best interests, and position you to make the best legal decisions you can make. The practice of law includes all of the above, and only an attorney can practice law.

Question:

How does litigation (and the pursuit of litigation) fit into dispute resolution?

Answer:

There are many processes and methods to resolve disputes. The most famous is litigation: it includes two or more disputing parties, each hiring an attorney, spending months or years preparing for a trial by gathering evidence and so forth, then actually conducting the trial under oath in a court of law, and finally concluding with a judgment by either a judge or a jury, which is of course legally binding.

The vast majority of civil disputes do not go to trial because most start the litigation process and end up settling out of court with other dispute resolution processes, while other disputes emerge and resolve without ever starting the litigation process in the first place.

Cont'd:

It's important to understand that litigation can be done with or without an attorney, but a dispute resolution professional can never have a hand in a trial (e.g. providing legal counsel or legal representation). And, an attorney acting as a dispute resolution professional cannot also practice law for the same client and case. To put a finer point on it, professionals either show up in disputes as an advocate *or* as a neutral, never both. Attorneys are the first and not the second; dispute resolution professionals are the second and not the first.

It can be confusing because sometimes a single issue weaves in and out of the legal realm several times. Knowing where the line is between dispute resolution and law is crucial.

Here's an example from housing: a landlord and tenant are bickering over the living conditions of a unit and the tenant begins withholding rent to protest, beginning the dispute. The landlord hires a Dispute Resolution Professional (DRP) to evaluate their case and help them consider whether the matter can be resolved early and out of court, or if court is the only way. The landlord decides to try mediation, but the tenant refuses, citing that they believe the landlord will act in bad faith.

Up to this point, there is no practice of law.

After discussing other options with the DRP, the landlord decides to hire an attorney and sue. **This begins the legal process**, so the DRP does not participate in this effort. A few weeks later, the tenant is informed they are being sued. Feeling the financial pressure, the tenant immediately requests mediation, as they cannot afford legal defense. The landlord accepts the request for mediation and books a mediation with the DRP but keeps the lawsuit active in order to maintain the pressure on the tenant to act. **Now there is both a legal and non-legal process underway in parallel** (litigation is legal, mediation is not). The two show up for mediation and resolve in 4 hours. The drafted agreement is submitted to the court, enabling the pending lawsuit to be closed and the dispute to be resolved.



Fact:

Litigation requires intensive investigation and discovery, often revealing much more than intended... and all court proceedings are public – yikes!



Question:

What services and actions are included and excluded for Mosaic's dispute resolution services?

Answer:

- We can meet with clients to learn about their situation, help determine their goals and needs, and finally help them generate and consider potential strategies for resolution. One potential strategy is choosing to exercise your rights in the court of law (a.k.a. litigation), and if clients want that and want to hire an attorney, Mosaic will refer them to one. Other strategies include negotiation, mediation, conflict coaching, and arbitration.
- We can help them identify and secure appropriate resources that may help with their resolution efforts, whether directly (e.g. legal aid) or indirectly (e.g. rental assistance for a tenant in a landlord-tenant dispute).
- We can help them execute that resolution strategy, whether we work only with one side of the dispute or multiple sides of a dispute (as long as the professional remains impartial).
- We can discuss the potential for litigation and the effects it may have on a dispute resolution strategy (e.g. is the other party more or less likely to want to negotiate after filing a lawsuit?). We cannot discuss which claims should be made, what legal strategy should be used, the worth of cases, the likelihood of certain outcomes, and similar matters.

Exclusion: here are examples of what a dispute resolution professional cannot do.

- Prepare a pleading or other document on behalf of a client before a judge in court.
- Giving legal advice or counsel.
- Representing a client in a court of law.
- Representing a client in a personal injury or property damage case, even if that case is not being held in trial.

Notice: None of Mosaic's conflict resolution services constitute, or are intended to constitute legal counsel, nor are any of Mosaic's conflict resolution services a substitute for legal counsel.