



XLP

Chronicles

LITIGATION TIPS WITH JILL HELWIG

Arbitration vs. Mediation

Arbitration is, in essence, an informal trial conducted by an individual or a panel. The general rules of evidence do not necessarily apply, nor do the usual rules of court. The arbitrator has significant leeway in how he conducts the proceeding and the decision of the arbitrator is final. This means there is no opportunity to seek a second opinion or appeal to a court. Avoid a binding arbitration clause in a contract if at all possible. Mediation is a less formal and relatively inexpensive, if not free, means to reach a mutually agreeable settlement of the issues between the parties. Mediation, at any time before trial preparation has started, will save significant legal fees. The mediator will meet with each side, familiarize themselves generally with the issues at hand and then facilitate a negotiation of settlement. Unlike arbitration or trial, there is no formal testimony and no witnesses will be called. Most important, mediation is not binding. If you do not like where the settlement discussions are going or if the parties simply can't reach an agreement, the parties walk away and resume the litigation process. If you have the opportunity, give serious consideration to mediating your dispute.



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PAUL'S CORNER

Litigation Over a Historic Property

Attorney Prados had the rare occurrence to argue a Motion for Apportionment regarding historic property in the middle peninsula. Over the course of three hours of testimony and argument, the parties explained to the court why, as heirs, they were entitled to be the sole owner, with rights to buy out the other party.

Due to a change to Virginia law in 2020, this uncommon procedure will likely be one of just a handful conducted under the new law this year in Virginia.

After post-hearing briefs from the parties a written decision is expected from the Judge toward the end of 2022.

Tips regarding joint representation from attorney Prados:

Within trust and estate litigation, real estate litigation, and commercial litigation (joint owners for example) the issue of joint representation often arises.

Normally there are significant restrictions on representing multiple parties regarding the same matter as there is often the likelihood of a conflict of interest arising. When going into an initial consultation, or bringing a new party to speak to your new counsel, keep in mind that the discussion of who the client will be, should occur before the end of the conversation. Joint representation often increases flexibility and affordability for the clients, but should only occur when the attorney, after consultation, determines it is appropriate to do so.



LAKITA'S TAX TIME

Tax Evasion v. Tax Avoidance

Tax avoidance and tax evasion are two very different things with different definitions and different consequences. Tax evasion is the use of illegal methods of concealing income or information from the IRS or other tax authority. Tax evasion can result in fines, penalties and/or prison time. Tax avoidance is the use of legal methods of reducing taxable income or tax owed. Claiming allowed tax deductions and tax credits are common tactics, as is investing in tax-advantaged accounts such as IRAs and 401(k)s.

The difference between tax evasion and tax avoidance largely boils down to two elements: lying and hiding. Tax avoidance is structuring your affairs so that you pay the least amount of tax due. Tax evasion is lying on your income tax forms.

For example:

- Putting money in a 401(k) or taking advantage of a tax-deductible donation are perfectly legal methods of lowering a tax bill (tax avoidance), as long as you follow the rules.
- Concealing assets, income or information to dodge liability typically constitutes tax evasion.

An innocent mistake on your tax return doesn't automatically turn you into a tax evader — intent is a factor. If you did intend to evade taxes, here's a taste of the penalties you could face, according to the IRS

- A felony on your record.
- Five years in jail, and/or
- A fine of up to \$250,000 (\$500,000 for corporations).
- A bill for the cost of prosecuting you.

Prison time is a real possibility for willful tax evasion, but civil penalties are more likely.

