

Private Court Of VirginiaTM: A Better ADR Process For The Resolution Of Commercial Disputes

It's one of life's more constant axioms - "*the best laid plans can go awry.*" A business venture starts out rosy but, in time, the dark clouds of litigation appear, replacing the blue sky and clear horizons that held so much promise. The truth is that virtually all successful business owners will find themselves involved in a contested dispute at some time.

The traditional dispute resolution process of litigation - with one winner and one loser - is stressful, time-consuming, and expensive. After working a case through trial, even the "winners" feel like losers.

As a result, more and more business people turn to the alternative dispute resolution process to resolve their suits apart from litigation. It is in the pursuit of an effective alternative to litigation that *Gammon & Grange, P.C.* is pleased to offer its novel and innovative *THE PRIVATE COURT OF VIRGINIATM* to the business community for the economical and effective resolution of commercial disputes. In The Private Court, parties save as much as 80% on legal fees and leave with an outcome that is satisfactory to both sides and can even preserve the business relationship that has gone south.

The Private Court process begins with *mediation* where the parties meet together with a Private Court Judge that helps them construct a process within which they can identify the disputed issues and develop solutions. Disputes are often resolved at this first phase of the process.

Should this first phase prove unfruitful, however, the parties move on to the second phase of *binding arbitration* where the Judge takes off the Mediator hat and puts on the Judicial hat. Here, the Judge conducts a hearing where s/he considers the evidence and arguments by the parties and decides the dispute as would any neutral and impartial judge. Similar to a court proceeding, the parties can call witnesses and experts and submit their arguments and proofs in writing. At the conclusion, the Judge enters a binding decision or award that fully resolves the controversy and is enforceable in a court of law.

At first blush, this second phase sounds a lot like litigation. The decisions issued by The Private Court are as enforceable as those of regular courts. The primary difference, however, is that the arbitration process is not tied down by the technical rules of the courtroom and this makes for *greater speed, more creative problem-solving, and ultimately less expense.*

The speed with which a final resolution is attained may be the single greatest advantage to The Private Court. In typical courts, the evidence the judge can consider is constrained by rules of evidence. Lawyers can only ask certain questions in certain ways and witnesses can talk about only certain topics under certain parameters. By contrast, The Private Court Judge has the flexibility to consider any evidence s/he deems relevant, including evidence that would be excluded in a trial. In litigation, the parties spend months and years conducting discovery and filing motions. The Private Court, by contrast, only allows restricted discovery, limited motions, and sets a quick date for trial. Over the course of normal litigation, multiple judges might rule on pre-trial disputes without any knowledge of what has gone before or will come after. In The Private Court,

one individual decides on all the pre-hearing disputes as well as the ultimate case. In the courtroom, the parties are not allowed to speak to one another - all testimony is governed by the rules of evidence and sifted by the questions and arguments of the lawyers. In The Private Court, the disputing parties can communicate directly and informally to each other, as well as to the Judge.

All these elements together allow the parties and the Judge to quickly zero in on the core issues of the case and gain a realistic appreciation of the strengths and weaknesses of their relative positions. By facilitating the parties' access to key information, The Private Court inspires more effective communication and the parties can spend less time litigating and more time advancing their business objectives.

In addition, because The Private Court allows the parties to focus on the issues important to them, it inspires *more creative problem solving*. In place of distracting procedural games and courtroom posturing, both sides exercise more control and participate in the process of resolving the issues. This participation increases the level of "stakeholder buy-in" when the Judge does make a final decision. And because the Judge is not limited to picking one winner, s/he can balance the results to settle on a fairer and more restorative outcome.

The speed of the process and the flexibility in arriving at a solution result in significant *cost savings*. Time is money and the built-in limitations on discovery, motions, and pre-trial gamesmanship save both. Moreover, The Private Court offers substantial cost savings over even traditional arbitration. A fully litigated case in regular courts can cost each party between \$10,000 and \$40,000 or more. In The Private Court, a party can pay as little as \$475 to have its case heard by the Private Judge.

As an important aside, it's worth noting that The Private Court is just that - *private*. The Private Court keeps the dispute and its resolution confidential and out of the public realm of the courtroom. This factor alone adds value to the business person who wants to avoid publicity in commercially sensitive matters.

Finally, The Private Court process is by design more *collegial* than traditional litigation. This factor may not be important to those who do not desire a future relationship with their adversary. But where the parties would like to preserve an ongoing business relationship, or merely leave the table without having exacerbated a contentious one, The Private Court process is more conducive to maintaining civility and rebuilding trust. In fact, moreso than traditional arbitration, The Private Court maintains values of promoting and restoring trust and respect between adversaries. Beyond merely resolving a dispute, the Private Court seeks to re-establish an appropriate level of relationship and, at the least, prevent further damage from occurring.

The type of conflict, the underlying facts, the character of the parties, and the urgency of the conflict all factor into choosing a dispute resolution process. When deciding whether to proceed with traditional litigation or alternative dispute resolution, it is important to consider the costs of time and treasure and one's ultimate business goals. For business disputes, the The Private Court stands as a worthy choice.



Stephen West, *Of Counsel* with Gammon & Grange, P.C., has more than 30 years of experience assisting companies, both as legal counsel and in a "C-level" executive capacity, in navigating their transaction-related claims through the various alternative dispute resolution adjudicative mechanisms.

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The Private Court of Virginia™ is a quasi-judicial entity that is located at 9300 Grant Avenue, Suite 101, Manassas, Virginia 20110. Dispute resolution by The Private Court is not limited to Virginia cases or parties. Further information may be found at www.privatecourtvirginia.com.

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