

CHICAGO SUN-TIMES

April 5, 2004

Big-money cases in Cook may go to mediation first

BY ABDON M. PALLASCH

Starting today, some big-money court cases in Cook County may have to try mediation before trial.

In an effort to force compromises instead of costly and time-consuming trials where one side can lose big and jurors can be trapped for weeks, court officials want warring parties to take a stab at mediation, where a non-judge or retired judge listens to both sides and proposes a settlement.

If it doesn't work, they go back to court.

Some lawyers and judges are skeptical. They ask why the two parties that could not agree in the first place -- prompting a lawsuit -- would want to divert their energy to persuading a non-binding mediator, whose salary of \$250 an hour or more they'll have to pay themselves.

"There is no downside," Chicago Bar Association President Michael Demetrio said. "Any tool available to litigants and lawyers to seek a resolution is a good thing."

"One of the functions of the mediator is to try to help people see things as they really are," said Daniel Hefter, an attorney who co-chaired the panel that drafted the new rules. "If a case is just a slam-dunk for the one side and not settling because one side is about to lose but doesn't see it that way, you can spend a lot of money and lose at trial or settle now without spending a lot of money."

The new rules apply to Cook County Circuit Court's Law Division, which handles cases seeking more than \$50,000. Smaller cases already are subject to mandatory arbitration.

The new rules ask judges to push mediation for the mega-cases.

"It's generally the case that you know if it doesn't get disposed of, is the six-week trial," said Presiding Judge William Maddux. "Society can't hold that. You wind up with jurors who are unemployed or never have been employed. It's not a good cross-section of the public that ought to be on a jury. Those are the ones that become the landmark case because of dollar numbers, disaster to people involved, complexity, number of witnesses."

Judges use their discretion in deciding which cases to recommend for mediation. If both sides strongly object, the judge does not have to send them.

This is just one of the tools that Maddux is using to try to move the 26,000 pending Law Division cases through the system.

Another is the "black line" rule that holds a minor case should be ready for trial after a year and the more complex cases after 28 months, as has been the standard.

That rule was implemented last year, and lawyers began lining up in the Daley Center every morning around 7 a.m. in the last few weeks to get continuances for their cases as the first one-year "black line" deadline came up on them.

Copyright © The Sun-Times Company

All rights reserved. This material may not be published, broadcast, rewritten, or redistributed.