

# Self-representation leads to more mediation

By **Tonya Layman**  
CONTRIBUTING WRITER

**W**ith a new "pro se phenomenon" where parties are representing themselves in legal matters, more people are trying to resolve their workplace issues and business disputes through mediation.

"The numbers of parties representing themselves is exploding," said JoAnne Donner, founder and president of **Mediation Services of Georgia**.

Because of this movement toward self-representation along with tight legal budgets as a result of tough economic times, mediation is on the rise as parties want resolution without the legal fees that go along with litigation. But as more people who don't know the court process represent themselves, they create a

burden on the system, Donner said.

"That is one contributing factor in the courts getting bogged down," she said, adding as dockets are crammed these days judges will mandate that parties try pre-trial mediation.

"Mediation is a very dynamic field," Donner said. "When you look at the legal history, it is an emerging field. It is becoming more and more popular and more and more commonly used. It really has come into its own in the last 30 years."

"Mediation is facilitating the conversation between the two disputing parties," she added. "It is a process of give and take. It takes flexibility, compromise and cooperation. Not everyone is going to get everything they want. But hopefully both parties get enough of what they want they are both satisfied with the outcome."

Before parties go into mediation it is important to find a mediator who can neutrally serve and build consensus with the end goal being a mutually satisfying resolution.

"There are two common benchmarks

people use when finding a mediator—they are experience and expertise," Donner said. "You want to know how long they have been practicing in the mediation field and their area of expertise. For instance, if the dispute is about construction, the parties will want to go with someone who has expertise in construction matters."

Terrence Lee Croft, panelist at **JAMS, The Resolution Experts**, and executive committee member of the **National**



**Croft**  
Georgia Academy  
of Mediators  
& Arbitrators

**Academy of Distinguished Neutrals** and its subset, the **Georgia Academy of Mediators & Arbitrators**, agrees.

"Business issues and workplace matters, employment disputes, are legal issues with great dollar cost significance, so picking a mediator requires finding someone who is knowledgeable about the field so you don't have to teach it to them from square one," he said.

However, experience is not everything. "There is an intangible quality that separates some mediators from the others,"

Donner said. "It involves a sense of confidence and can be found in someone who can build rapport and trust. The ability to build consensus is an essential quality in a mediator."

Another important aspect may be to find a firm that offers mediation coaching.

"Mediation can be one of the most important days of your life so you must be prepared," Donner said. "The decision made in a mediation session can affect you and your family potentially forever. It is important to understand the process, your role and the role of the mediator."

Darren Lee is the executive director of the **National Academy of Distinguished Neutrals**, an invitation-only roster of mediators who have been handpicked because of their experience and qualifications.

"Most of our members are full time or at least two-thirds of their practice is dedicated

to mediation," he said. "It is the same idea as if you need your gall bladder removed, you wouldn't want a surgeon that hasn't been around the block a few hundred times."

Lee believes mediation is a great way to potentially save disputing parties thousands in legal expenses.

"If both parties are reasonable enough and emotionally stable enough to sit around the table and try to come to an agreement, a majority of our members would be happy to sit in the middle and bring the case to resolution," he said. "It is very smart to save the time and money by agreeing to go to mediation early on, even before the judge says to go to mediation. You are probably going to end up there anyway."

Mediation is usually successful. NADN members have at least an 80 percent success rate.

"Wouldn't you want to be part of a game where you have a 4 out of 5 chance of being a winner? ... Unless you have a really big case or legal precedent needs to be set, give mediation a try before you lawyer up," Lee said.

The most important quality of a mediator is the ability to build a bridge between the two parties, Croft said.

"You really want someone the other side will listen to," he said. "If you could have solved the case yourself, the case would probably have already settled."

In the case where parties are represented by counsel, typically the attorney will select the mediator.

"A lawyer should help you figure out when to mediate and with whom," Croft said. "One of the things really good lawyers do is ask the lawyer on the other side 'who do you think will do a good job mediating this case? Let me see if I can pick one off your short list.' Usually when people are picking they are looking for someone the other side will listen to—someone they like and respect."

To start a search for a good mediator, visit the Web.

Lee said there are numerous organizations with websites that house member searches. Through those, parties can read

## HOW TO

### MEDIATE

#### When looking for a mediator

▶ Visit the Web. The National Academy of Distinguished Neutrals offers a free search of its handpicked experienced mediators at [www.nadn.org](http://www.nadn.org). Also some mediators are registered with the Georgia Commission on Dispute Resolution, which has a search tool on their site at [www.godr.org](http://www.godr.org), as does the Dispute Resolution Section of the State Bar of Georgia at [www.gadisputeresolution.org](http://www.gadisputeresolution.org).

▶ Ask friends and colleagues for referrals.

▶ After narrowing down the list, research each mediator's experience and expertise. Interview them to get a sense of their style. Get a good understanding of their price per hour. Above all, go with your gut as to who you will work well with.

▶ Another option is to let the other side pick the mediator. Showing good faith that you trust their pick of mediators may open the door for productive discussions during mediation.

and learn about rates and availability.

"It is important that you call them and get a sense about their practice," he said. "If you get the sense it is not a good fit, move on. Since most of our members know each other, they often refer others. They may say 'I am not your guy. This is not my cup of tea but I know who should do this.' A phone interview is a jolly good first step."