Stipulated "Mediation Stay" Does Not Toll the Five-Year Mandatory Dismissal Period

California litigators know that cases must be brought to trial within five years or face mandatory dismissal. (C.C.P. Section 583.310). Time periods when "prosecution or trial of the action was stayed" or when bringing the action to trial was "impossible, impracticable, or futile" are excluded from the five-year calculation under C.C.P. Section 583.340.

In another decision throwing parties' efforts to mediate under the wheels of the five-year rule, the California Supreme Court decided that a trial court order striking a trial date and

Power Play in Mediation and Negotiation - Expect the Unexpected

The ICC International Commercial Mediation Competition in Paris showcased many different approaches to business mediation and negotiation. Even when cultural differences were insignificant, the mediations often turned in unpredictable directions depending on different personalities and negotiation techniques. This was an excellent demonstration of the many permutations of power play.

The ICC Competition Final at the Maison du Barreau was the perfect example of power play at work. The auditorium was huge, the stage bathed in spotlight. Hundreds of spectators anxiously awaited the final match between the University of New South Wales (Australia) and the University of Auckland (New Zealand). There were no significant cultural differences between the teams.
staying the action following the plaintiff's agreement to the defendants' request to engage in mediation and complete outstanding discovery did not operate to toll the running of the five-year period. According to the majority, the "mediation stay" did not amount to a sufficiently complete stay or render the prosecution of the case impossible, impracticable, or futile to effect tolling. Gaines v. Fidelity National Title Insurance Company, et al., S215990 (filed 2/25/16)

Don't find fault. Find a remedy. - Henry Ford

All of the spectators had access to the details of the conflict - a dispute between a celebrity baker and party planner-to-the-stars over a wedding cake disaster that occurred when the industry-changing icing jointly developed by the two slid off of the cake at the party planner's daughter's wedding. Both parties' reputations, businesses, and cash flow were in trouble. Each sought money damages from the other.

Looking for a Great Mediator?

There are many factors that go into the selection of a mediator. In addition to objective qualifications such as track record and experience, there are personal qualities that can make a crucial difference between an effective mediation and a disappointing one.

I've spent a lot of time with other mediators lately. There have been conferences, social events, study groups, the ICC International Commercial Mediation Competition in Paris, partner presentations, and so forth. I've discovered a lot about the qualities of great mediators.

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