

Traditional and nontraditional litigation

Law



Traditional and Nontraditional Litigation Paper Traditional and Nontraditional Litigation Paper Compare and contrast Traditional litigation procedure is the process of carrying, sustaining and shielding a lawsuit. Apparently, litigation is always expensive, time consuming and a difficult undertaking that requires abided by stringent rules. It is applied in the court systems for the resolution of disputes that occurs between different parties. The trial attorneys who represent clients are the litigators. Conversely, the plaintiff is the person who has been debilitated by the defendant's actions (Carle, 2005). The other litigation option is the alternative dispute resolution otherwise known as nontraditional litigation. Traditional litigation makes use of the court system during dispute resolution. The accessible laws normally bind the attorneys in this system in their representation of the client. The nature of the detailed laws used in this system makes it costly and formal. On its part, the alternative dispute resolution happens when the disputing parties reach an agreement to resolve their cases outside court. This makes it less expensive and time-consuming (Carle, 2005).

Nontraditional litigation uses such forms of dispute resolution as mediation, arbitration, conciliation and negotiation. The attorneys and their clients must permit a third party to help during the resolution. This can be either a conciliator or a mediator (Carle, 2005). Apparently, a conciliator will actively take part in the litigation process until the time when the parties will arrive at a decision. Meanwhile, a mediator will be the go between two disputing parties. When arbitration is used for dispute resolution, the arbitrator, who acts as the third party is the one who makes the final judgment. The decisions resulting from nontraditional litigation process legally bind all parties, and need to be entered with the courts (Carle, 2005).

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The nontraditional litigation process does not generate publicity and can be favorable to many attorneys and clients who are afraid of publicity. While the traditional litigation process would accord publicity to some cases based on their nature, the nontraditional litigation process can happen and go unnoticed. In traditional litigation process cases, power is based on the strength of the evidence that is represented in court and the party representing the evidence while in alternative dispute resolution, both the disputing parties enjoy equal rights (Carle, 2005). A case in point involves the personal disputes such as insurance claims and divorce. In traditional litigation, one party may dominate the process based on the strength of its evidence. In traditional litigation processes, cases are guided by stringent rules upon which all the parties must abide by while in the nontraditional litigation process, the rules are more relaxed to suit the interests of all the parties (Carle, 2005).

The filing of cases of both the traditional and nontraditional litigation processes assume different approaches. In the traditional litigation process, once the plaintiff files a case the court must first establish if the evidence given in the case is sufficient enough to warrant the proceed the case to the trial stage (Carle, 2005). On its part, the nontraditional litigation process assumes that all cases presented before it actually warrants a trial. It will then proceed with the process of litigation without having to subject its cases to the process of confirmation. Additionally, the traditional litigation process can lead to exposure of confidential information about the parties to the public. For a business organization, its competitors can use this information against the business. Nontraditional litigation process ensures that the parties hold confidential information (Carle, 2005).

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References

Carle, S. D. (2005). *Lawyers Ethics And The Pursuit Of Social Justice: A Critical Reader*. New York: NYU Press.