Spring/Summer 2016

 **Binary Justice**

Not long ago I received a nice note from a lawyer in Washington, D.C. who thanked me for providing a process that afforded more choices than the usual “binary” litigation/trial format.  Like binary math or numbers which work on a foundation of either “1” or “0”, the "justice" system usually only provides two choices....winning or losing, which in my view is clearly bad for the loser, but also not that great for the winner, given the risk, time, uncertainty, expense, waste of resource and good will lost in any drawn out, adjudicated process.  One of the reasons my mediation practice remains robust is that somewhere in the collective thinking, whether acknowledged or not, disputants recognize that mediation provides choices in addition to those of the usual process and in a more creative, dispute specific manner.

The Washington lawyer’s case involved a complex insurance coverage issue in which both sides were relying on conflicting decisional law from several jurisdictions, with a case of first impression pending in the Supreme Court of the jurisdiction of the dispute.  The parties came to mediation with the right attitude: they were there to resolve the dispute.  They did not come to win or make someone lose.

The dispute settled and shortly thereafter, the case of first impression was decided in a way that surprised everyone.  The decision convinced the parties that the third choice they created in mediation through hard work and concession was something that they could be proud of; something that took the risk and uncertainty away from the limitations of binary justice.