



Alternative Dispute Resolution PRMCLE Program Webinar October 19, 2020

12:00 PM – 1:00 PM

Welcome/Announcements

Hon. Ronald D. Sutter, (Ret.), ADR Section Chair

Introductions and Moderator

Nikita Brown, ADR Systems

Program

Best Practices for Remote Mediation

Hon. Daniel J. Kelley, (Ret.), Hon. Brigid M. McGrath, (Ret.) and
Hon. Ronald D. Sutter, (Ret.), ADR Systems

Speakers' Bios – see attached

Program Summary

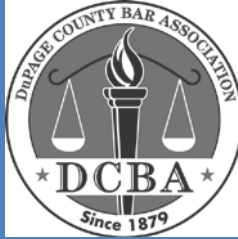
Learn everything you need to know about participating in a remote mediation. Discussion will include the technology involved, procedure (both before and during a virtual mediation), remote courtesy and conclude with a summary of the most important tips for success. Presented by three former judges who are senior mediators and arbitrators at ADR Systems (each has conducted multiple remote mediations).

Link to Evaluation

Evaluation must be completed in order to receive CLE credit.
<https://www.surveymonkey.com/r/ADR10192020>

Next Meeting:

TBD



COVID Relief Fund

The DCBA and the DuPage Bar Foundation have established an assistance fund for lawyers facing personal hardship due to the downturn in work caused by the COVID-19 pandemic. Please help us promote the availability of this fund, and, if you are in need, please submit a confidential application at www.dcba.org/reliefapply. Donations to the fund are also welcome at www.dcba.org/reliefdonate."

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View & Print CLE Certificates through the DCBA Website:

Manage Profile -> Professional Development (under content & features) and choose the icon to the left of each meeting to print your certificate directly or choose to have them emailed to you to save to your computer (you MUST be logged in to view this feature)



Continuing
Legal Education

Best Practices for Remote Mediation

Agenda

- I. Opening Remarks
 - II. Introduction of ADR Systems Neutrals
 - III. Remote Mediation Topics for Discussion
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Technology

- Software
 - o Videoconferencing - Zoom, WebEx, GoToMeeting, BlueJeans, CourtCall
 - o Test before mediation – check with your IT department first for connectivity issues and make sure everything is correctly installed
 - o If necessary, schedule a demonstration with participants the week before the session
 - o Know how to mute yourself and turn off video
- Hardware
 - o Videoconferencing needs a fast connection and a powerful computer: 2mb upload speed and at least 8mb for download speed
 - o Computer needs to have enough memory to process the data: 4gb of RAM
- Connection Problems
 - o When the connection degrades, it is a good idea to pause the mediation and restart the connection
 - o If only video is lagging, turn off video temporarily to reduce the amount of bandwidth used
 - o Session support personnel can be contacted to assist and help work through issues, but everyone needs to have patience
 - o Give it a minute, often the issue will self-correct

October 19, 2020
12:00 - 1:00 pm

DuPage County Bar Association
126 S County Farm Rd
Wheaton, IL 60187

Presenters:

Hon. Daniel J. Kelley, (Ret.)
Hon. Brigid M. McGrath, (Ret.)
Hon. Ronald D. Sutter, (Ret.)

Moderator:

Nikkita Brown

Best Practices for Remote Mediation

- Lag
 - o Let participants know there is potential for lag
 - o Lag makes it difficult to politely interject when someone is speaking
 - o When addressing a particular participant, it is best to address them by name
 - o A participant should take notes so that when it is their turn to speak, they can make their point
- Sharing a Document, Video or PowerPoint on Zoom
 - o Test the screen sharing tool before the session
 - o Meeting host should ensure screen sharing option is turned on for all participants beforehand if multiple people will be sharing
 - o Let the parties and mediator know ahead of time if a document, video or PowerPoint will be shared so they can adjust account settings to allow parties to share screens
 - o Have the document, video or PowerPoint open and ready on your computer to decrease delays
 - o Open document, video or PowerPoint, click 'share' to share your screen, click on the window you want to share, follow other prompts such as granting permission to share
 - o Make sure when sharing a screen the 'share computer audio' button is checked
 - o Click 'optimize screen share' for a video clip

Procedure

Before the Mediation

- o The provider sends out the videoconference link about two business days in advance and adds 'read request' on emails to know who read them
- o The provider may also send a reminder email before the session
- o Generally, anyone who will be involved in the session and is not on the link email string can be forwarded the email by counsel – may not work for some videoconference software
- o To prevent a delay on the day of mediation, participants connecting in a different location than usual should check for new downloads or pending updates on their laptop and assess the strength of their WiFi signal to prevent a delay on the day of mediation

Best Practices for Remote Mediation

- o The mediator will be the host of the videoconference, giving them control over the technical operation of the mediation
- o The mediator and parties should exchange phone numbers prior to the session because it is invaluable if a participant has an issue during the session
- o Submissions are typically exchanged via email and parties agree on the specifics of this process
- o Participants should log on about 10 minutes before the start time
- o The mediator will see who is in the waiting room as they arrive
- o The mediator can start to admit people once the principal attorneys are in the waiting room and will ask counsel if everyone who should be attending is present
- o If some parties are late, they will wait in the waiting room until the mediator admits them
- o Some software allows for the mediator to message those in the waiting room and this is useful for communication
- o If the message feature is not available, parties can use a phone to communicate when necessary
- o Prepare your client for a remote session by setting expectations about how the session will be conducted
- o Encourage them to test their equipment or get a demonstration if they are concerned about the technical aspects
- o Preview how the videoconference session will go by conducting a trial run with your client

During the Mediation

- o Once all have arrived for the mediation, the mediator introduces himself or herself and facilitates introductions by having participants introduce themselves
- o The mediator then discusses confidentiality, reviews ground rules and provides an overview of the process
- o The mediator gives a summary of the case, asks parties if they want to make any opening statements and clarifies the demand, if there is one
- o The session support person or mediator sorts participants into rooms

Best Practices for Remote Mediation

- o Participants should understand that they will have private time with their counsel, and they can request private time with the mediator either with or without their counsel
- o Let the mediator know well ahead of time if additional rooms are needed for participants
- o When an agreement is reached between the parties, use video to record the agreement

Remote Courtesy

- When taking a break from the mediation to speak on the phone, mute yourself so as not to disturb others
- When using the washroom or doing other things that could create noise, mute yourself
- Try to eat when the mediator is not in your room and turn off your video and audio
- Do not yell or argue with other people in your office or in your home office during the session
- If a problem arises, ask to speak to the mediator privately
- Before the mediation, decide with the mediator and the other parties the appropriate dress for the session – formal, business casual or casual – to ensure all participants are on the same page
- If you decide to wear business professional only for what is in the camera frame, make sure you will not be seen if you decide to get up or move your camera

Privacy

- The mediator must be aware of privacy issues and, if using the private caucus method, it is the mediator's responsibility to ensure that privacy of both parties is guaranteed
- The mediation agreement should cover privacy and confidentiality parameters for the mediation
- The mediator should say something like the language below at the start of the mediation and ask each participant individually to agree:
“Do you all agree that no third parties can overhear or see this session – no eavesdropping – and there will be no recording of the session?”

Best Practices for Remote Mediation

Conclusion

- Frequent use of videoconferencing will help – you can adapt your communication skills to become more natural over a video link
- Disciplined preparation is necessary – the same as for any mediation
- Professional appearance – practice a neutral facial expression
- Speak clearly – talking one at a time and loud enough
- To address a particular participant – use their name
- Patience – there may be technical issues or lag, although these often self-correct
- Listening – need to absorb what others are saying
- Take notes – use the notes to allow for comments later
- The mute button is your friend – learn to use it
- If some participants cannot connect via videoconference, the mediation can still go forward – use a blended approach and bring in others via phone
- Get comfortable with the power of the pause – silence is an important negotiating tool



MEDIATION & ARBITRATION



Hon. Daniel J. Kelley, (Ret.)

Hon. Daniel J. Kelley, (Ret.) is well known for his calm, intelligent approach to mediation and arbitration. For more than 26 years, Judge Kelley has applied his legal knowledge and ability to settle hundreds of cases. He is an approved mediator for the Circuit Court of Cook County Court-Annexed Major Case Civil Mediation Program. Additionally, Judge Kelley has extensive experience in arbitrations, both as a sole arbitrator and as the third arbitrator in tri-panel arbitrations.

ADR Experience and Qualifications

- Since joining ADR Systems in 2008, Judge Kelley has served as a full-time mediator, arbitrator, XXX
- More than 30 years of ADR and litigation experience, including the successful resolution of highly contentious, multi-million dollar disputes
- 23-year judicial career as a Judge in the Circuit Court of Cook County, focused on commercial, civil, criminal and municipal litigation and case resolution
- While in the Law Division's Jury and Commercial Litigation sections, Judge Kelley conducted numerous settlement conferences with a 90% settlement rate

Since retiring from the bench in 2008, Judge Kelley has been a senior mediator and arbitrator at ADR Systems where he has achieved a notably high settlement rate in complex, multi-party disputes. He has recorded more than \$47 million in settlements in his last 100 settled mediations. Judge Kelley maintains a limited law practice at the Law Offices of Daniel J. Kelley. In 2011, 2012 and 2013, Judge Kelley was recognized by his peers for his skills as a mediator and arbitrator in Commercial and Personal Injury cases and was named to the Leading Lawyers Network. Judge Kelley is also a certified judicial mentor.

Types of Cases Resolved

- Accounting Malpractice
- Auto Liability
- Bad Faith
- Condominium Board Dispute
- Construction
- Construction Defect
- Contract
- Employment
- Fiduciary Duty
- Fraud
- Insurance Coverage
- Legal Malpractice
- Mechanics Lien
- Medical Malpractice
- Non-Compete
- Nursing Home
- Partnership Dispute
- Personal Injury
- Product Liability
- Professional Malpractice
- Property Damage
- Real Estate
- Re-Insurance
- Securities
- Subrogation
- Toxic Tort
- Trusts
- Wrongful Termination

For more information please contact
ADR Systems at 312.960.2260
or email info@adrsystems.com
www.adrsystems.com

Hon. Daniel J. Kelley, (Ret.)

Representative Cases

- \$4.6 million case involving complex insurance issues
- \$3 million personal injury case
- Multi-million dollar settlements in industrial accident cases
- \$3.5 million medical malpractice case
- \$4 million admiralty law matter

Professional Activities and Awards

- Leading Lawyers Network
- Advanced Science and Technology Resource Judge Program (ASTAR) “Language of Life Sciences Boot Camp”, The Ohio State University, ASTAR
- Member, American College of Business Court Judges
- Member, Illinois Judges Association
- American Enterprise Institute (AEI)-Brookings Joint Center for Regulatory Studies, Continuing Judicial Education Programs: “Economic Institute for Judges,” “Critical Issues in Toxic Tort Litigation,” “Second Annual Symposium on Critical Issues in Construction Defects Litigation,” “Insurance and Risk Allocation in America – Law and Regulation”
- Advanced Science and Technology Resource Judge Program (ASTAR) “Neuroscience and Bio-Behavior Technologies,” Johns Hopkins University School of Medicine, ASTAR

Presentations and Publications

- Presenter, numerous Continuing Legal Education (CLE) programs for ADR Systems on various topics, including, mediation and arbitration
- Presenter, Pincus Professional Education, 6th Annual Circuit Court Boot Camp Seminar

Education

- J.D., John Marshall Law School
- M.A., University of Akron
- B.A., John Carroll University

Admissions

- United States Court of Appeals for the Seventh Circuit
- United States District Court for the Northern District of Illinois
- Illinois Supreme Court
- Illinois State Bar

Hon. Brigid M. McGrath, (Ret.)



Judge McGrath has served the legal community with passion and dignity for 34 years. She spent more than 20 years as a Cook County Circuit Court Judge, serving 17 years in Law Jury and on a Commercial Calendar. She has handled complex commercial cases, including legal, architectural and accountants' negligence, construction defect, employment, insurance coverage, partnership and intellectual property cases. Judge McGrath is also experienced in personal injury cases such as medical malpractice, toxic tort and product liability. As a mediator and arbitrator, she has the demonstrated ability to diffuse conflict and get to the root causes of disputes. Counsel know Judge McGrath will prepare thoroughly and stay the course, working diligently toward resolution.

ADR Experience and Qualifications

- Since joining ADR Systems in 2019, Judge McGrath has served as a full-time mediator and arbitrator
- 20-year judicial career in the Circuit Court of Cook County, serving 17 years in Law Jury and on a Commercial Calendar, 2003-2019; and 3 years in the Child Protection, Domestic Relations and Traffic Divisions, 1999-2002
- 15-year legal career, including equity partner at Bell, Boyd & Lloyd (nka K&L Gates), 1989-1999; associate at Lord, Bissell & Brook (nka Locke Lord), 1985-1989; law clerk to US Bankruptcy Judge Robert Martin, Western District of Wisconsin, 1984-1985
- Mediation Certificate, Northwestern University

Types of Cases Resolved

- Accounting Malpractice
- Bad Faith
- Bankruptcy
- Business Dissolution
- Civil Rights
- Condominium Board Disputes
- Construction
- Construction Defect
- Contract
- Defamation
- Directors & Officers (D&O)
- Discrimination
- Employment
- Engineering
- Estates
- Family Business
- Fee Dispute
- Fiduciary Duty
- Finance
- Franchise
- Fraud
- Harassment
- Insurance Coverage
- Intellectual Property
- Landlord-Tenant
- Legal Malpractice
- Lender Liability
- Medical Malpractice
- Non-Compete
- Partnership Dispute
- Personal Injury
- Product Liability
- Professional Malpractice
- Property Damage
- Real Estate
- Restrictive Covenants
- Retaliatory Discharge
- Securities
- Sexual Harassment

For more information please contact
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www.adrsystems.com

Hon. Brigid M. McGrath, (Ret.)

Types of Cases Resolved (cont.)

- Sexual Abuse
- Shareholder's Disputes
- Stockholder Derivative Actions
- Storm Damage
- Toxic Tort
- Trade Secrets
- Unfair Competition
- Whistleblower
- Wrongful Death
- Wrongful Termination

Representative Cases

- Construction Defect and Contract: extensive experience interpreting AIA contracts and ascertaining duties among general contractors, sub-contractors and sub-sub-contractors
- Construction and Architectural Malpractice: settled suit between defendant developer, architect and various contractors and neighboring property owner who alleged that defendants' negligent construction of a townhome complex caused the collapse of property owner's eight-story commercial building
- Construction: suit between condominium association and developer alleging improper construction resulted in water intrusion into condominiums and common areas of a 26-floor building; settled case after lengthy negotiations
- Contract: experience with written, oral and quasi-contract cases in a variety of contexts, including asset purchase agreements, operating agreements, entertainment performance contracts, promissory notes, guarantees, private loans, partnership agreements, insurance policies and employment agreements
- Contract: settled case involving defendant hospital and plaintiff medical practice group that alleged improper termination of medical services contract and tortious interference with its contracts and business expectancies with patients and other hospitals
- Contract: settled case alleging fraudulent inducement to enter into an asset purchase agreement by inflating past sales figures
- Estates: handled interference with contract, business expectancies or testamentary bequests in the employment, banking, creditor and trust and estate contexts
- Employment, Sexual Harassment and Discrimination: settled case filed by woman against her former law firm employer for alleged sexual harassment and racial discrimination
- Employment: settled case filed by former college professor claiming university fired him in retaliation for criticizing administration
- Fiduciary Duty: settled case brought by beneficiaries against trustee alleging she converted trust assets for personal use
- Fiduciary Duty and Legal Malpractice: suit against successor trustees, with plaintiff claiming breach of fiduciary duty in administering five related trusts and malpractice by attorney for trusts in drafting improper in terrorem clause
- Fraud: presided over case involving fraudulent life insurance premium financing scheme between bank executive and client that resulted in loss of millions by investors
- Fraud and Defamation: settled case involving computer software designer who created highly profitable arbitrage program but alleged he was fraudulently squeezed out of his business by former partner
- Insurance Coverage: numerous cases involving claims under various types of policies, such as commercial general liability, property and title insurance

Representative Cases (cont.)

- Insurance Coverage: settled policyholder's case for coverage of extensive damage to roof of manufacturing facility
- Legal Malpractice: successfully settled case in which client alleged malpractice relating to structuring of a complex joint venture for licensing and sale of medical products overseas
- Legal Malpractice: settled suit alleging malpractice in litigating enforcement of notes, confession of judgments and guarantees
- Medical Malpractice: "bad baby" suit alleging catastrophic injuries at birth due to HIE; case settled after lengthy settlement negotiations.
- Medical Malpractice: delay in diagnosing compartment syndrome, leading to full loss of function of affected extremity; successfully settled
- Partnership Dispute: partner accused long-time partners of self-dealing and misappropriation of partnership assets and opportunities; settled case
- Professional Malpractice: cases relating to accounting and architectural malpractice
- Trade Secrets: defendant manufacturer accused of misappropriating trade secrets relating to the design of a machine used for tooling sheet metal

Professional Activities and Awards

- Member, Illinois Supreme Court Committee on Civil Jury Instructions
- Member, Illinois Judges Association
- Member, Chicago Bar Association (CBA)
- Member, Women's Bar Association of Illinois
- Board Member, Women's Board of Lincoln Park Zoo
- Board Member, University of Minnesota Law School Board of Visitors
- Member, Parent's Council, Tulane University
- Awarded Leading Illinois Attorney in Commercial Litigation, American Research Corporation
- Judge of the Year, 2019, Construction Defects & Dispute Conference

Presentations and Publications

- Presenter, "Complex Construction Defect Litigation," Construction Defect & Dispute Conference
- Presenter, "The Illinois Human Rights Act," Employment Lawyers Association, Illinois Chapter
- Presenter, "Self-insurance and Liability," First Choice-Comfort Care Home Healthcare, Inc.
- Presenter, "Developments in Commercial Law," CBA Robert Clifford Series for Lawyers
- Presenter for various seminars on evidence, discovery and damage awards in wrongful death and survival actions, Illinois Judicial Education Conference
- Presenter, "Broker Liability in the Sale of Derivative Investments," Chicago Board Options Exchange
- Presenter, "Limitations Applying to Sales Disputes Under the UCC," CBA Robert Clifford Series for Lawyers

Hon. Brigid M. McGrath, (Ret.)

Presentations and Publications (cont.)

- Author, “Practical Guidelines for Determining Awards from Decisions under Section 12(a) (30) of the Uniform Arbitration Act,” CBA Seminar, “A Guide to Arbitrations”
- Author, “Recent Developments of Interest to Corporate Counsel: Attorney Client Privilege,” ABA Tort & Insurance Law Journal

Education

- JD, University of Minnesota Law School
 - Cum Laude
- BA, Creighton University
 - Cum Laude

Admissions

- Illinois State Bar
- Minnesota State Bar
- US District Court for the Northern District of Illinois
- Trial Bar for the Northern District of Illinois



MEDIATION & ARBITRATION



Hon. Ronald D. Sutter, (Ret.)

Judge Sutter has served the legal community as an attorney, prosecutor and jurist with passion and dignity for more than 38 years. A successful litigator, he focused his practice in personal injury and insurance matters. Judge Sutter served 15 years as a DuPage County Circuit Court Judge and was the Presiding Judge of the Law Division. As a mediator, Judge Sutter is praised for his integrity, legal ability and temperament. He is adept at creating productive relationships with the parties, listening carefully to their concerns and assisting them to resolve their disputes. Judge Sutter brings all of these skills to his practice as a senior mediator and arbitrator at ADR Systems.

ADR Experience and Qualifications

- Since joining ADR Systems in 2019, Judge Sutter has served as a full-time mediator and arbitrator
- 15-year judicial career in the 18th Judicial Circuit Court including serving as Presiding Judge of the Law Division, 2012-2018; Presiding Judge of the Misdemeanor and Traffic Divisions; Associate Judge in Chancery, Traffic and Misdemeanor, 2003-2010
- 23-year legal career as a litigator including Managing Partner, Querrey & Harrow, Ltd. Wheaton Office, 1995-2003 and Board of Directors, 1999-2000; William J. Wylie & Associates, 1988-1989; Office of the DuPage County State's Attorney, rising to Supervising Attorney in Felony Trial Division, 1981-1988; Judicial Law Clerk for the Circuit Court of DuPage County, 1980-1981

Types of Cases Resolved

- Auto Liability
- Construction Accidents
- Contract
- Defamation
- Estates
- Eminent Domain
- Family Business
- Insurance Coverage
- Landlord-Tenant
- Legal Malpractice
- Medical Malpractice
- Nursing Home
- Personal Injury
- Premises Liability
- Products Liability
- Property Damage
- Real Estate
- Sexual Abuse
- Uninsured & Underinsured Motorist (UM&UIM)
- Wrongful Death

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Hon. Ronald D. Sutter, (Ret.)

Representative Cases

- Contract: failure to deliver 97 million pieces of mail, primarily Black Friday advertising; complex case involved multiple parties including printers, logistics companies and subcontractors
- Contract: owner of float therapy business sued supplier for selling defective equipment
- Defamation: online review of resort hotel accusing a hotel manager of window peeping and other outrageous behavior
- Estates: wealthy 93-year-old man made provisions in estate plan for his 86-year-old female companion including cash and property; sons objected and obtained guardianship over their father; woman filed suit claiming tortious interference with inheritance expectancy
- Medical Malpractice and Products Liability: woman sued surgeon and manufacturer of mechanized cryotherapy device which surgeon had recommended for use following surgery; woman developed a cold injury requiring several skin grafts, therapy and pain medication
- Medical Malpractice: radiologist and hospital alleged failure to properly interpret CT scan of abdomen and pelvis leading to removal of a kidney
- Personal Injury: road rage incident on expressway and post-traumatic stress (PTSD) disorder; driver cut off in traffic; driver told his wife to roll down her window and adjust her seat back while he proceeded to shoot at car that had cut him off with a 9mm handgun
- Personal injury: delivery man for major soft drink company injured when grocery store employee pushing a pallet jack collided with plaintiff resulting in multiple injuries including complex regional pain syndrome
- Personal Injury: successfully settled hundreds of personal injury cases related to motor vehicle collisions; other matters include slip and fall, dog bites and cases involving municipalities
- Personal Injury: cab driver hit wall due to snowy road and injured passenger, a 58-year-old breast cancer survivor; alleged injuries included a ruptured breast implant leading to removal of both implants
- Personal Injury: junior college football player injured during alleged illegal summertime 'mandatory' practice in violation of NJCAA rules
- Property Damage: settled many significant fire damage and water damage cases
- Sexual Abuse and Insurance Coverage: karate instructor allegedly assaulted two minors resulting in extensive therapy and treatment for both minors; other issues included responsibility of franchisor and franchisee and possible third-party liability
- Wrongful Death: paramedic willful and wanton conduct for not having proper equipment available leading to choking death of elderly woman at family picnic

Professional Activities and Awards

- Former Member, Committee on Character and Fitness, Illinois Supreme Court
- Former Member, DuPage County Bar Association (DCBA) Judiciary Committee
- Member, DCBA
- Former Member, Kane County Bar Association
- Former Member, Illinois Judges Association
- Former Member, Defense Research Institute
- Former Member, Illinois Association of Defense Trial Counsel

Hon. Ronald D. Sutter, (Ret.)

Presentations and Publications

- Panelist, “Law Divisions of Illinois Circuit Courts,” Chicago Bar Foundation and the Illinois Judges Association
- Presenter, “The Art of Jury Selection,” DCBA
- Panelist, “Jury Trial Selection,” Lunchtime Seminar Series
- Panelist, “Trial Prep: Top Tips from Cook, DuPage and Will Counties,” Lunchtime Seminar Series

Education

- JD, University of Illinois College of Law
- Illinois State University
 - Honors

Admissions

- Illinois State Bar
- US District Court for the Northern District of Illinois
- Trial Bar for the Northern District of Illinois
- Arizona State Bar