

UNDERSTANDING MEDIATION AS AN ALTERNATIVE TO LITIGATION

The most common form of alternative dispute resolution (ADR) is mediation. During a mediation, a neutral third party (often a retired judge or experienced attorney) works with the parties to try to reach a settlement of their dispute. The mediator does so by focusing on the disputed issues and exploring possible options for settlement. Mediation generally is considered “informal,” unlike litigation or arbitration. It is a non-binding, private process, in which the mediator acts as a neutral intermediary or “deal broker.”

Unlike arbitration or trial, the mediator has no power to require the parties to settle their dispute, insist on a particular result or issue a decision. The parties must come to any agreement themselves. If a settlement cannot be reached, the parties are free to try another form of ADR or go to trial.

Mediation offers a number of advantages. Most mediations take no more than a day or two to complete. Since the mediation process moves quickly and requires significantly less preparation than does litigation or arbitration, mediation generally is cost-effective.

A settlement reached at mediation is final and binding. Unlike a court judgment, the details of a mediated settlement can be kept private, allowing the parties to resolve their dispute while keeping the details of that resolution out of the public eye.

The advantages of mediation, however, do conceal certain weaknesses. Since mediation is non-binding, a mediation that ends with no agreement can feel like “wasted time.” And unless both parties are motivated to settle the dispute and demonstrate a willingness to work together to reach a compromise, mediation is unlikely to succeed.

If you have any question, please contact [Grant Killoran](mailto:grant.killoran@wilaw.com) at grant.killoran@wilaw.com or 414-276-5000.

WHAT DOES IT MEAN TO LITIGATE A CIVIL CASE?

Alternative dispute resolution (ADR) is so named because it provides an “alternative” to litigating a civil dispute before a court in a bench or jury trial. The most popular forms of ADR are mediation and arbitration, although other options exist.

Litigation is when a lawsuit is filed in a court of law. A lawsuit typically involves a dispute over a particular state of affairs: a contract breach, an injury suffered in an accident, or some other dispute situation.

Litigation offers certain advantages. Access to the decision-maker, whether judge or jury, is free of charge, except for minimal filing fees. Discovery is part of the litigation process, and can be wide-ranging, allowing the parties to gather a great deal of information. Third parties can be added to a law suit, if appropriate. The rules of evidence and procedure are well-defined. The final decision can be enforced by the court. If a party loses, that party has the right to appeal. And, litigation does not prevent the parties from attempting ADR or negotiating a settlement before, during or even after trial.

Despite these benefits, litigation also has certain disadvantages. The large case load faced by judges, as well as the demands of discovery and procedural issues, can make litigation both slow and expensive. The broad discovery allowed in litigation and the inherently public nature of litigation can expose damaging or embarrassing details, creating brand or reputation management concerns. Highly technical or complex disputes can be difficult to present to a judge or jury in an efficient and accessible manner, as judges and juries may lack the specialized knowledge needed to fully grasp the issues involved in the dispute. Litigation decisions can be appealed, adding additional expense and extending the duration of the dispute.

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Since it was first published in 1983, *Best Lawyers* has become universally regarded as the definitive guide to legal excellence. *Best Lawyers* is based on an exhaustive peer-review survey. Over 54,000 leading attorneys cast more than 7.3 million votes on the legal abilities of other lawyers in their practice areas. Lawyers are not required or allowed to pay a fee to be listed; therefore inclusion in *Best Lawyers* is considered a singular honor. *Corporate Counsel* magazine has called *Best Lawyers* "the most respected referral list of attorneys in practice."

UNDERSTANDING ALTERNATIVE DISPUTE RESOLUTION IN WISCONSIN: AN OVERVIEW

Alternative dispute resolution (ADR) offers a way for parties to resolve business disputes without going through a civil trial. ADR may take place before or after a lawsuit is filed. Many

contracts, including construction, securities and Internet terms-of-service contracts, increasingly require ADR before or instead of trial. Generally speaking, courts have found these provisions enforceable.

The phrase “alternative dispute resolution” is an umbrella term covering several different types of proceedings. Direct negotiation, mediation and arbitration are the most popular forms of ADR. Although the rules differ for each, all three are intended to try to resolve a civil legal dispute without going to trial.

In Wisconsin, courts can order parties to participate in ADR. Wisconsin Statute Section 802.12(2) empowers Wisconsin Circuit Court judges to require ADR prior to trial. The parties generally are free to choose the type of ADR they wish to utilize and the ADR service provider, although the judge may make these decisions for the parties if they cannot agree.

Wisconsin judges cannot, however, require that the parties participate in the more expensive types of ADR, including non-binding arbitration, summary jury trials, or multiple facilitated ADR processes (such as both mediation and arbitration), without the parties consent.

Also, while a Wisconsin judge can require the parties to participate in ADR, he or she cannot require them to settle their dispute. In *Gary v. Eggert*, the Wisconsin Supreme Court held that while Section 801.12 allows a judge to require some form of ADR before trial in appropriate cases, it does not allow the judge to require that the parties resolve the dispute, abandon one or more legal positions or settle out of court. The right to trial must remain available to the parties even if they are sent to ADR prior to trial.

Federal courts, including those in Wisconsin, also can order parties to participate in ADR. 28 U.S.C. 651(b) allows federal district court judges to authorize the use of ADR in civil actions and bankruptcy adversary proceedings. In the United State District Court for the Eastern District of Wisconsin, [Local Rule 16\(d\)](#) governs ADR considerations. In the United State District Court for the Western District [Local Rule 3 \(LR 16.6CJ\)](#) governs ADR.

If you have any questions, please contact attorney [Grant C. Killoran](#) at grant.killoran@wilaw.com or 414-276-5000.

ATTORNEY GRANT C. KILLORAN RE-ELECTED TO

THE AMERICAN BAR ASSOCIATION HOUSE OF DELEGATES

The law firm of O'Neil, Cannon, Hollman, DeJong and Laing S.C. is pleased to announce that [Grant C. Killoran](#) has been re-elected by the State Bar of Wisconsin Board of Governors to serve another two-year term as one of the State Bar of Wisconsin's five Delegates to the American Bar Association House of Delegates.

Established in 1936, the House of Delegates has over 500 members and its actions become the official policy of the ABA, the nation's largest lawyer association. Control and administration of the ABA is vested in the House of Delegates, which serves as the ABA's policy making body.

Mr. Killoran has served as a Delegate to the ABA House of Delegates since 2014. He also served as a Delegate from 1997 to 1999 and from 2003 to 2009.

Mr. Killoran is a shareholder with O'Neil, Cannon, Hollman, DeJong and Laing S.C., where he is the Chair of the firm's Litigation Practice Group. He has diverse trial experience, focusing on complex business and health care disputes.

LOCAL COURT RULES IN WISCONSIN

While litigators most likely are familiar with the various state and federal local court rules impacting courtroom practice in their geographic areas, they may not be as familiar with the local rules for courts in other areas in which they do not usually practice but have a case.

Wisconsin's state courts have various different sets of local rules. To assist attorneys in complying with these differing local rules, the State Bar of Wisconsin maintains a page on its website—www.wisbar.org—with links to them.

Milwaukee County is the most populous county in Wisconsin, and its Circuit Court has its own local rules which can be found [here](#):

The Circuit Courts for the various counties outside Milwaukee comprising the greater Milwaukee metropolitan area also have their own local rules, including:

- The Kenosha County Circuit Court which can be found [here](#).
- The Ozaukee County Circuit Court which can be found [here](#).

- The Racine County Circuit Court which can be found [here](#).
- The Sheboygan County Circuit Court which can be found [here](#).
- The Washington County Circuit Court which can be found [here](#).
- The Waukesha County Circuit Court which can be found [here](#).

Wisconsin's federal courts also have their own local rules.

- The local rules for the United States District Court for the Eastern District of Wisconsin can be found [here](#).
- The local rules for the United States District Court for the Western District of Wisconsin can be found [here](#).
- The local rules for the Wisconsin Bankruptcy Courts can be found:
 - [Here](#) for the U.S. Bankruptcy Court for the Eastern District of Wisconsin;
 - [Here](#) for the U.S. Bankruptcy Court for the Western District of Wisconsin.

In addition, various Wisconsin federal court judges, particularly those in the Eastern District of Wisconsin, have their own practice preferences, some of which can be found:

- [Here](#) for the U.S. District Court for the Eastern District of Wisconsin; and
- [Here](#) for the U.S. Bankruptcy Court for the Eastern District of Wisconsin.

Local rules are subject to periodic modification, so it is advisable to review the local rules at the beginning of each case and thereafter as necessary.

For more information about Wisconsin's state or federal local court rules, please contact Grant Killoran at 414.291.4733

GRANT KILLORAN AND PATRICK MCBRIDE SELECTED TO THE 2015 IRISH LEGAL 100

Grant Killoran and Patrick McBride, shareholders in the Litigation Practice Group at O'Neil, Cannon, Hollman, DeJong and Laing S.C., recently were selected by the *Irish Voice Newspaper* to the 2015 Irish Legal 100.

First introduced in 2009, the Irish Legal 100 is a listing of leading legal figures across the United States and honors accomplished and distinguished lawyers of Irish descent from law schools, law firms, the judiciary and industry around the country. Past honorees have included United States Supreme Court Chief Justice John Roberts and United States Supreme Court Associate Justice Anthony Kennedy, and honorees have been invited to meet with Ireland's Ambassador to the United States.

For information about the Irish Legal 100, visit www.irishlegal100.com.

For more information about O'Neil, Cannon, Hollman, DeJong and Laing S.C., including Attorneys Killoran and McBride, visit www.wilaw.com.

O'NEIL, CANNON, HOLLMAN, DEJONG AND LAING S.C. HOSTS CONTINUING LEGAL EDUCATION SEMINAR FOR SMALL FIRMS AND SOLO PRACTITIONERS

On October 7, 2015, O'Neil, Cannon, Hollman, DeJong and Laing S.C. hosted a Continuing Legal Education seminar entitled "Hot Legal Topics for Small Firms and Solo Practitioners" focusing on legal issues of interest to Wisconsin small firm and solo practice attorneys. Over 50 attorneys attended the event.

The firm's Managing Shareholder, Dean Laing, presided over the event.

Chad Baruch of Dallas, Texas was the keynote speaker for the seminar. Attorney Baruch spoke on effective legal writing. He also spoke on constitutional law issues.

A number of O'Neil, Cannon, Hollman, DeJong and Laing S.C. attorneys also spoke at the event:

- Patrick McBride, Joe Newbold, Melissa Blair, and Christa Wittenberg participated in a panel discussion on the role of judicial clerks and court staff in state and federal court proceedings.
- Tim Van de Kamp presented on commercial lease issues.
- Greg Mager presented on asset protection in divorce and family transfers.
- Seth Dizard presented on recent developments in receivership law.
- Grant Killoran and Greg Lyons presented on legal and practical issues related to commercial arbitration in the United States and abroad.

O'Neil, Cannon, Hollman, DeJong and Laing S.C. will hold this seminar again in the Fall of 2016.

If you would like any additional information regarding the seminar, including copies of the seminar materials, or if you would like to attend the 2016 seminar, please contact [Grant Killoran](mailto:grant.killoran@wilaw.com) at grant.killoran@wilaw.com or at 414.276.5000.

GRANT KILLORAN APPOINTED TO THE BOARD OF DIRECTORS OF NORTH POINT LIGHTHOUSE FRIENDS, INC

Grant Killoran, Chair of the Litigation Practice Group at O'Neil, Cannon, Hollman, DeJong and Laing S.C., recently was appointed to the Board of Directors of North Point Lighthouse Friends, Inc.

North Point Lighthouse Friends is a non-profit organization committed to increasing public awareness of the history of North Point Lighthouse Station in Lake Park in Milwaukee, Wisconsin.

North Point Lighthouse Station is located at 2650 North Wahl Avenue in Milwaukee. The North Point Lighthouse began operating in 1885 and presently is comprised of 74-foot tower made of cast iron structural steel. North Point Lighthouse Station includes the North Point Lighthouse and a two-story Queen Anne-style wood frame dwelling known as the Keeper's Quarters, which was occupied from 1888 through 1994 by lighthouse keepers and their families and U.S. Coast Guard employees. North Point Lighthouse Station was decommissioned in 1994.

North Point Lighthouse Friends manages North Point Lighthouse Station for Milwaukee County following its transfer to the County from the U.S. Coast Guard. North Point Lighthouse Friends provides opportunities to adults and children to tour North Point Lighthouse Station and participate in special programming related to it and maritime issues.

North Point Lighthouse Station was placed on the National Register of Historic Lighthouses in 1980 and the National Register of Historic Places in 1984. It was designated as a Milwaukee County Landmark in 2005.

North Point Lighthouse Station is open to the public for tours from 1:00 p.m. to 4:00 p.m. on Saturday afternoons year round, as well as tours upon request with advance reservations.

For more information regarding North Point Lighthouse Station, please go to www.northpointlighthouse.org.

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