

The logo for ADR systems is centered in the upper half of the page. It features the letters "ADR" in a large, white, sans-serif font. Below "ADR", the word "systems" is written in a smaller, white, lowercase sans-serif font. The entire text is enclosed within a large, thin white circle that is partially cut off by the right edge of the frame.

ADR systems

Mediation: What to Expect

A proven and effective alternative
to litigation, presented by ADR Systems.



The role of the mediator.

The mediator's overarching role is to keep the lines of communication open between parties so that they may settle their dispute. The mediator will help parties work through difficult issues and points of conflict, and point out the strengths and weaknesses of each side's position, as needed. However, the mediator will not share information with the other side without the parties' permission.

Though the mediator is in charge of facilitating negotiation, it is important to remember that they are completely neutral. This means that the mediator will not take sides, or decide the outcome of the dispute.



The basics of mediation.

Defining mediation

Mediation is another means of resolving a legal dispute outside of the court system. It is a non-binding process in which a mediator facilitates negotiation between parties to help them settle their dispute. Mediation can occur before a lawsuit or arbitration is filed, during litigation or arbitration, or even after a judgment.

To give parties more control over their dispute, they collectively choose the mediator and agree on the ground rules to be used in the mediation.

Before the mediation begins, the mediator will explain confidentiality to the parties and the parties will review and sign a confidentiality agreement. Generally, nothing said during the mediation can be deemed an admission or used against any party in future proceedings.

Understanding the benefits

When compared to litigation, mediation can save time and money by settling disputes more quickly. In addition, parties have more control over the outcome of their dispute than they would in court. Parties can choose the location and timing of the mediation, as well as their mediator, based on that mediator's expertise. Mediation also allows for confidentiality and privacy that is not granted in litigation.

Mediation can preserve important professional and personal relationships by enabling parties to craft flexible and creative agreements, as well as explore legal and non-legal issues affecting settlement. It provides a practical and efficient framework for moving through layers of complicated issues, which is beneficial in complex cases.



The mediation process explained.

Before the mediation process

Preparing to Negotiate

- Counsel should set realistic expectations for their client by discussing what is “needed” versus what is “wanted” to settle
- Parties should enter the process willing to consider all options and seek a creative settlement
- Parties should understand the importance of civility and restraint in moving negotiations forward

Selecting a Mediator

- Look for a mediator whose expertise and style are appropriate for the dispute
- Consult with an ADR Systems case manager for mediator recommendations
- Ask colleagues for recommendations
- Review qualifications, references, and if needed, interview potential mediators

Contacting the Mediator

- All counsel should have a pre-mediation conference call or meeting with the mediator
- A mediator may contact counsel directly, following the pre-mediation conference call
- Pre-mediation contact with the mediator gives counsel an introduction to the process, an opportunity to discuss the background and scheduling of the mediation, raise any initial concerns or issues, and decide who should attend the mediation

Submitting Case Materials for Mediator Review

- Prior to the mediation, counsel will send submissions for the mediator to review that outline their clients’ positions
- The parties can agree to share their pre-mediation submissions, or agree to have the mediator keep them confidential

During the mediation process

Joint Session

- The mediation may or may not begin in a joint session with the mediator and all parties present
- The mediator will explain his or her role, the mediation process, and confidentiality
- Parties may make non-adversarial opening comments

Caucusing

- Following the joint session, parties often move into separate rooms while the mediator shuttles between them in a process called caucusing
- During the caucusing process, the mediator facilitates communication between the parties, helping each explore its interests and options for settlement
- The mediator assists parties in understanding the issues, brainstorms options, and if requested, evaluates the likely outcome if the parties were to litigate

Overcoming Impasse

- If negotiation reaches a standstill, the mediator may prompt a “reality” check to assist parties in re-evaluating the strengths and weaknesses of their positions
- The mediator may introduce creative settlement ideas to keep the negotiations moving
- The mediator may suggest a short break so that the parties can come back refreshed

After the mediation process

Going to Settlement

- If a settlement is not reached, the mediator may follow up with the parties to continue negotiations
- If needed, an ADR Systems case manager will schedule additional sessions to facilitate a settlement
- Even without settlement, the parties will have benefited from hearing the mediator’s assessment of their positions if the case were to go to court

Finalizing the Settlement

- When a settlement is reached, counsel will memorialize the settlement agreement in writing
- The settlement agreement becomes binding once it is signed by all parties

ADR Systems is the Midwest’s largest alternative dispute resolution service provider. Since 1994, we have provided mediation, arbitration, and other dispute resolution services to law firms and businesses.

For more information, visit us at www.adrsystems.com or call 312.960.2260.

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