

your day in court

Historically, “having your day in court” meant if you were involved in litigation, you had the opportunity to have your case heard by a jury of your peers. Today, it may mean a case is heard, and possibly settled, through a form of alternative dispute resolution or “ADR.” Arbitration and non-binding mediation—both forms of ADR—are on the rise in our judicial system.

Statistics from the Administrative Office of the U.S. Courts indicate that the federal judicial court workload has increased 146% since 1970. Interestingly, the percentage of cases resolved after a bench (judge only) or jury trial declined from 10% in 1970 to 2.2% in 2001. Recent concerns over court workload and tort reform have led parties to increasingly participate in some form of mediation.



ADR has its advantages

In mediation, a neutral third person helps parties reach agreement by focusing on key issues in the case, exchanging information between parties, and exploring options for settlement. Successful mediation has two underlying assumptions: all parties can benefit from a creative solution to which they agree; and, their situation is unique and governed by principles they accept. One of the biggest advantages is that it can achieve a certain result, rather than exposing both sides to the risk of a disastrous result at trial.

Wisconsin statutes involving medical malpractice have required mediation since 1986. In the last 10 years, ADR has expanded into small claims, family law, personal injury and business litigation.

Understanding the process

If you're involved in a legal dispute, it's in your best interest to understand how ADR works. When preparing for mediation, talk with your attorney about what your bottom line goal is and thoroughly discuss expectations.

(Sometimes, the amount of money is less important than other objectives.) Your attorney should discuss the strong and weak aspects of your case with you, as well as strategies to convince the opponent it is in his best interest to resolve the case. It's also important to realistically assess your possible settlement options. You should also consider how you feel about having your deposition taken or proceeding to trial, should the mediation fail.

Many mediations start in a joint session with the mediator making introductions and reviewing ground rules. Some cases benefit from an initial discussion of issues with all parties present. Parties frequently use separate

meeting rooms for the remainder of the process. The mediator will grasp the dispute's dynamics as quickly as possible by participating in the joint session followed by independent conferences with the parties.

Next, issues will be framed in neutral terms. All sides will share their views of the dispute, as well as goals and expectations for a settlement. Each side should be prepared to critically evaluate its own, as well as the opponent's, position. The mediator will decide which issues to tackle first, and may offer suggestions for settlement at various points. Your attorney should be prepared to offer creative suggestions for resolution.

The future of litigation

ADR has legal professionals debating how these processes will affect the future of litigation. Because ADR occurs outside of public courtrooms, there are concerns about the potential loss of public accountability that occurs in jury trials, and the historical record of decisions that attorneys and judges rely on to guide decisions in future cases.

Still, as we note a decline in judge or jury trial resolutions, ADR may be a better option for you and your case. Deciding to initiate an ADR process involves balancing the need for adequate investigation with the advice of experienced trial attorneys who can effectively evaluate your case based upon their experience, public policy, and the facts and law as applied to your case.

ADR can be effective in obtaining a desirable outcome more quickly and cost-effectively, while wisely utilizing judicial resources.

Information provided by: Attorneys from Moen Sheehan Meyer, Ltd. For more information, call (608) 784-8310.



“I’ll see you in court!” In the past, resolving legal disputes through the court system was often considered the only road to justice. Today, alternative dispute resolution (ADR) is on the rise. Mediation, a form of ADR, has become more common, yet its roots date back more than a century.

In 1902, a Wisconsin granary company used mediation to resolve a disagreement about the alleged improper selling of grain between two chamber of commerce members. They resolved their dispute and remained members in good standing—a *valuable outcome for both parties*.

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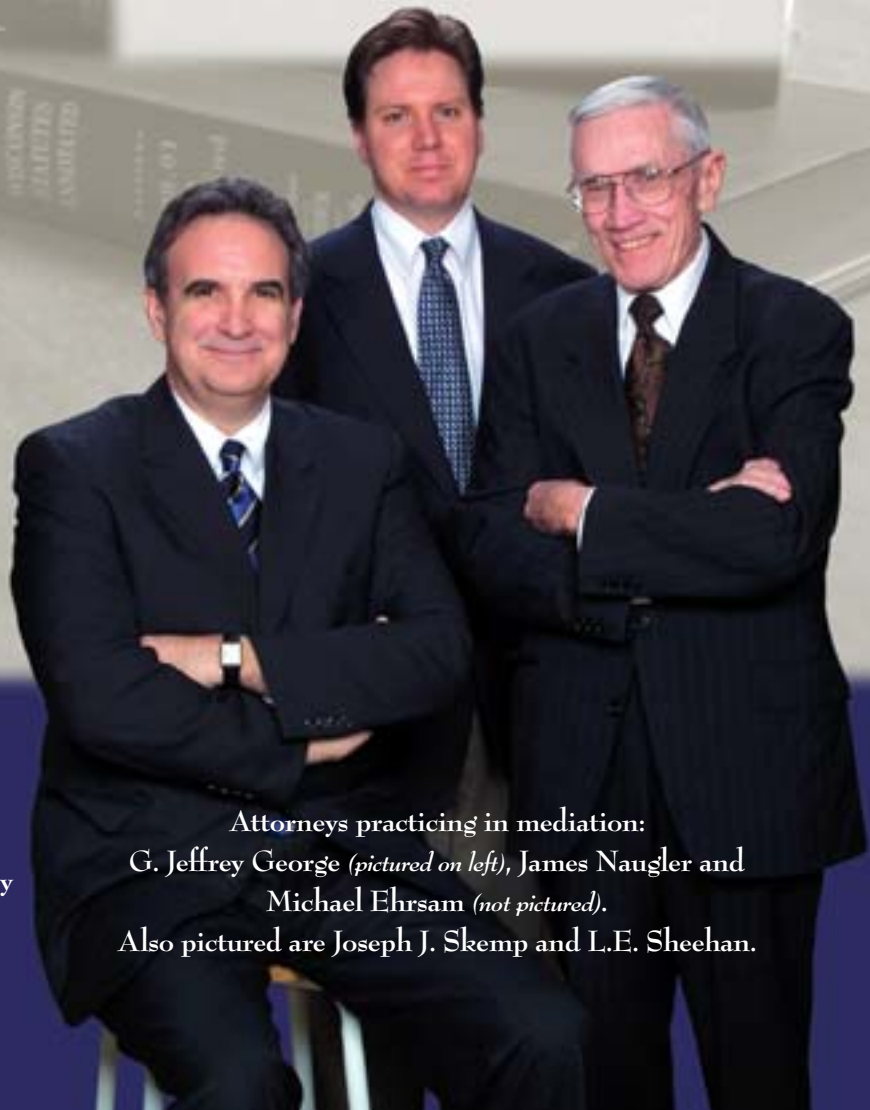
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Also pictured are Joseph J. Skemp and L.E. Sheehan.