



AAA Mediation.org™

**FN-5880509 MN-5880509 LN-5880509,
Esq.**

Janesville, Wisconsin



Current Employer-Title Fitzpatrick ADR LLC - Owner

Professional Summary Retired Court of Appeals Judge and Circuit Judge with 40 years of experience resolving complex disputes as an Arbitrator, Mediator, Judge and as an accomplished trial lawyer. Respected for impartial, thorough, and practical handling of cases. Conducted dozens of arbitrations and mediations in complex cases and conducted hundreds of jury trials and court trials. Presided over countless evidentiary hearings, summary judgment motions, and injunction hearings. Authored numerous opinions that resolved and clarified important areas of the law for civil practitioners. Had a distinguished career as an experienced advocate who tried many lengthy, multi-party cases for businesses and individuals in state and federal courts throughout the country.

Profession Arbitrator, Mediator, and Special Master in Discovery Disputes

Work History Owner, Fitzpatrick ADR LLC, 2023-Present; Reserve (part-time) Judge, 2023-Present; Judge, Wisconsin Court of Appeals, 2017-2023; Judge, Wisconsin Circuit Court, 2008-2017; Partner/Chair of Litigation Practice Group, Brennan Steil & Basting S.C., 1985-2008; Law Clerk to Hon. R. James Groh, United States Magistrate Judge - Western District of Wisconsin, 1984-1985.

Experience Substantial experience as an Arbitrator, Mediator, and Judge in a broad range of matters.

Commercial litigation including dealership disputes, stock option and stock valuations, breach of contract, breach of duty of good faith, intentional interference with a contractual relationship, enforceability of arbitration provisions, unjust enrichment, unconscionability, specific performance, promissory estoppel, and guarantees.

Shareholder, partner, and LLC member disputes including buyouts, partner and shareholder conduct, professional organization dissolution and valuation issues, and disputes concerning substantial family-owned farms.

Employment-related claims including noncompete and confidentiality agreements, Fair Labor Standards Act and related state law issues, determinations of whether persons are independent contractors or employees, overtime for donning and doffing, wrongful termination, and

discrimination.

Business-related disputes including defamation in a business setting, misappropriation of proprietary information and intellectual property, invasion of privacy, misrepresentation, professional liability, misappropriation of software, receiverships, and commercial financial services accounts.

Real estate matters including commercial leases, agricultural leases, eminent domain, commercial developments, valuation disputes, commercial foreclosures, slander of title, adverse possession, boundary disputes, easements, and riparian rights.

Commercial and residential construction claims including design and construction (along with related insurance coverage issues), general contractor-subcontractor disputes, owner-general contractor disputes, and theft by contractor.

Insurance coverage disputes including pollution and environmental claims, commercial general liability (CGL) policies, errors and omissions (E&O) policies, homeowner's policies, intentional acts, loss of use and damage to property, reformation, late notice and prejudice, and bad faith.

As a member of the Wisconsin Judicial Council, was actively involved in drafting substantive changes to the rules of evidence and wholesale changes to Wisconsin's class action statute. As a member of the Wisconsin Civil Jury Instruction Committee, has been responsible for substantive changes to instructions and instruction comments concerning intentional interference with a contractual relationship, unjust enrichment, misrepresentation, defamation, invasion of privacy, spoliation of evidence, damages in commercial litigation, damages in statutory claims, and products liability, among other subjects.

Prior to becoming a judge, had a substantial trial practice in a broad range of matters in many lengthy, multiple-party jury trials and court trials. Represented individuals and businesses, and served as national trial counsel for several companies, in the areas of: commercial litigation; trademarks and trade secrets; insurance coverage (including environmental and construction claims); financial services; noncompete and confidentiality agreements; Wisconsin's Fair Dealership Law; products liability including appliances, golf cars, and children's products; class actions; professional liability defense; real estate and riparian rights; and manufacturer recalls. Appeared in federal and state courts in more than twenty jurisdictions, in arbitration hearings, and the Trademark Trial and Appeal Board. Regularly represented clients in federal and state court appeals. Served as President of the Western District of Wisconsin Bar Association and on the State Bar Professional Ethics Committee.

Mediator Experience

Representative Arbitrations and Mediations conducted include the following disputes: shareholder and LLC member buyouts; acquisition of interests in large closely held businesses; employment including covenants not to compete and confidentiality agreements; division and valuation of share options of a publicly traded corporation; dealerships; commercial leases; commercial real estate developments; professional organization dissolution; significant personal injury; commercial and residential construction including owner-general contractor and general contractor-subcontractor issues; legal malpractice; claims in large probate estates concerning undue influence and breach of fiduciary duty; resolution of break-ups of family farms valued in the millions of dollars; and real estate including eminent domain, valuations, and boundaries.

Representative Issues Handled as a Mediator

Representative mediations include the following types of disputes: buyout of interests in large, successful, closely held businesses; division and valuation of share options of a publicly traded corporation; shareholder and LLC member buyouts; division and payments for the transfer of interests in ongoing businesses; covenants not to compete and confidentiality agreements; dealerships; commercial leases; commercial developments; corporate dissolution; professional organization dissolution; significant personal injury; banking; commercial and residential construction including owner-general contractor and general and sub-contractor issues; insurance coverage disputes including environmental claims; legal malpractice; claims in large probate estates concerning undue influence and breach of fiduciary duty; disputes concerning the break-up of family farms valued in the millions of dollars; and real estate including eminent domain, valuations, and boundaries.

Mediator Style & Process Preferences

My approach to mediation is based upon my 40 years of experience as a full-time Mediator, Court of Appeals Judge, Circuit Judge, and an accomplished trial lawyer.

I understand that thorough preparation is vital and details are important. I am prepared at the mediation to discuss all legal and factual aspects of the case to assist counsel and the parties in crafting practical and equitable solutions.

Every case has strengths and challenges, and a party should factor the strength and challenges of their case into the settlement negotiations. I have spoken with hundreds of jurors and have been the finder of fact at hundreds of trials. With that experience, I considerately and effectively communicate insights into how the jurors and judge will likely view an issue if the case continues. With my background as an appellate court judge, I also give practical perspectives into a party's prospects on appeal. These insights are presented as a positive for the party because my perspectives allow the party to assess risks and likely outcomes in a clear-eyed manner.

Patience with the mediation process is important, and I tenaciously but politely continue to focus the parties toward settlement. Early on, parties often express views about settlement that appear irreconcilable. No one wants the mediation to last longer than necessary, but we also do not want to miss settlement opportunities. Parties frequently need time to process and absorb ideas and information introduced by the mediator. The viewpoint of a party at 9:00 A.M. can be modified by the right mediator such that the party has a different viewpoint later in the mediation.

When scheduling the mediation, I ask counsel to give substantial thought to timing. Early mediation saves costs for the parties and is worthwhile when the parties have sufficient information and views of the issues are unlikely to change with discovery. However, some cases need slightly later mediation and limited discovery in order for each party to have confidence about pertinent facts going into the mediation.

Technology Proficiency

Recognized expertise, and substantial judicial experience, resolving discovery and admissibility disputes concerning electronically stored information (ESI). Teaches courses to judges and attorneys concerning discovery and admissibility of ESI. Those courses concern: applicable federal and state rules and case law; practical discussions regarding the resolution of such disputes; and attorney-client privilege and inadvertent disclosure issues as those relate to discovery of ESI.

Available for hearings/conferences via Zoom.

Education

Drake Law School (JD-1984); Drake University (BA-1980).

Professional Licenses

Admitted to the Bar: Wisconsin (1984); US District Courts: Western and Eastern Districts of Wisconsin (1985); US Court of Appeals: 7th Circuit (1988).

Professional Associations

Elected Member, American Law Institute, currently part of the Members Consultative Group for the Restatement Third of Torts; Wisconsin Judicial College Faculty; Wisconsin Civil Jury Instruction Committee; Jurist in the American Inns of Court; Drake Law School Board of Counselors; Wisconsin Business Court Advisory Committee; Board Member, State Bar Dispute Resolution Section; Vice-Chair of ABA TIPS Section Dispute Resolution Committee.

Recent Publications & Speaking Engagements

Continues to serve on the faculty of the Wisconsin Judicial College, a week-long seminar for new and experienced Judges. For many years, presented the Civil Case Law Update at the Wisconsin Judicial Conference and each year prepared for all Wisconsin Judges written summaries of important case law developments. In 2022, delivered the Chapman Distinguished Lecture in Law at the University of Tulsa College of Law and more recently spoke at the American Bar Association's seminar on Toxic Torts and Environmental Law regarding methods for the effective presentation of expert testimony. Frequently invited to speak at seminars for Judges and attorneys on subjects such as: Judges' Application of the Rules of Evidence in the Courtroom; Effective Presentation of Expert Testimony; Admissibility of Expert Opinions; Enforceability of Arbitration Agreements; Business Litigation Motion Practice; Practical Tips for Commercial Litigators; Business-Related Torts; Attorney Fee Awards; Judicial Ethics; and Persuading Judges and Juries (for attorneys and law students). For a complete list of presentations, please see the CV at www.michaelfitzpatrickadr.com.

Locations Where Parties Will Not be Charged for Travel Expenses

There is no charge for travel time in Wisconsin or to the Chicago area.

Mediation Rate	\$360 Per Hour
Languages	English
Citizenship	United States of America
Locale	Janesville, WI

The AAA's Rules provide the AAA with the authority to administer a mediation including, mediator appointment, general oversight and billing. Accordingly, mediations that proceed without AAA administration are not considered AAA mediations, even when the parties select an mediator who is on the AAA's Roster.

The information contained in this resume has been supplied solely by the individual mediator and may, or may not, be a complete recitation of their experience. The AAA assumes no responsibility for the content, completeness, accuracy, or reliability of the information contained in a mediator's resume. If you have any questions about a mediator's experience or background, you are encouraged to contact your case manager.

Mediators on the AAA Roster are not employees or agents of the AAA.