



Tenth Judicial Circuit of Michigan

Courthouse
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ROBERT L. KACZMAREK
CHIEF CIRCUIT JUDGE

Administrative Order 2008-01-J

Alternative Dispute Resolution Plan

This Administrative Order is jointly adopted and administered by the 10th Circuit Court, 70th District Court, and Saginaw County Probate Court to govern the procedure for Alternative Dispute Resolution.

Authority for this Order: MCR 2.410(B)(1).

Effective Date of this Order: April 1, 2008.

Previous Local Administrative Orders 10th Circuit 1998-01C, 70th District 1997-01J, and Saginaw County Probate Court 1997-01J are hereby rescinded by this Order; effective April 1, 2008.

A. GENERAL PROVISIONS OF ADR

1. The Court designates the Circuit Court Administrator to serve as the ADR Clerk. The ADR Clerk will maintain all records pertaining to the Court's ADR program including applications for and lists of case evaluators and mediators. The ADR Clerk will also be responsible for coordinating the referral of and tracking the progress of cases through chosen ADR processes. The ADR Clerk may be assisted by ADR Assistants from the Circuit, District, or Probate Courts.
2. The Court will utilize mediation as established in MCR 2.410 and case evaluation as established in MCR 2.403.

3. Civil cases in the 10th Circuit Court, 70th District Court, and Saginaw County Probate Court are subject to ADR, unless otherwise provided by statute or Court rule.
4. The Chief Circuit Judge will supervise the ADR plan.
5. After consultation with the parties, and if the Court determines that ADR would be beneficial, the Court will determine the appropriate form(s) of ADR for the case.
6. Motions to set aside/modify an order to ADR must be filed within 14 days of the order to ADR.
7. The Court's order to ADR will comply with MCR 2.410(C)(2) and will include, at a minimum, the ADR process to be used, time limits for the initiation and completion of ADR, and provisions for payment to the ADR provider. The Court may, at its discretion, require attendance at ADR proceedings, pursuant to MCR 2.410(D).
8. **Public Access to ADR.** The ADR Clerk will make available an information brochure or document describing the Court's ADR plan and ADR processes utilized by this Court. Copies of this information will be made available to all litigants upon request at the ADR Clerk's office or the Circuit Court Clerk's office.
9. **Access to ADR for Indigent Litigants.**
 - a. The Courts' indigence standard is the same as qualifying for a waiver of filing fees under MCR 2.002. A party meeting the Courts' indigent standard is entitled to free ADR services or deferred payment ADR services if ordered by the Court. The Court may require a mediator or case evaluator to serve in a pro bono capacity for one case each calendar year. The pro bono assignment shall be done on a strict rotational basis.
 - b. If a party is unable to pay for ADR at the time it is ordered, but later becomes able to pay as a result of a resolution of the lawsuit, the Court may require the party to pay for ADR at that time.
 - c. The local Community Dispute Resolution Center may be assigned as the ADR provider in cases where low cost or pro bono mediation services are necessary. If a party is indigent and free or low cost mediation services are not available, the Court will not order that party to participate in an ADR process.

B. CASE EVALUATION

1. **Case Evaluation Plan.** This plan is jointly adopted and administered by the Courts of Saginaw County: the 10th Circuit Court, 70th District Court, and Saginaw County Probate Court.
2. **List of Case Evaluators**
 - a. **Case Evaluator Application.** Any Attorney who shall apply to be a Case Evaluator in Saginaw County shall complete the application form provided by the ADR Clerk, including any required certifications. The completed forms, including the certifications and (optional) section identifying gender and the ethnic background of the applicant, will be filed with the ADR Clerk, Saginaw County Courts, Room 400, Saginaw County Governmental Center, 111 South Michigan Avenue, Saginaw, MI 48602. The applications, certifications, and a record of the action taken on the application, will be maintained on file by the ADR Clerk.
 - b. **Case Evaluator Eligibility.** The qualifications to be Case Evaluator for Saginaw County Courts shall be those specified in MCR 2.404 (B)(2):
 - (1) The applicant must have been a practicing lawyer for at least five years and be a member of good standing of the State Bar of Michigan;
 - (2) The applicant must reside, maintain an office, or have an active practice in Saginaw County;
 - (3) The applicant must demonstrate that a substantial portion of the applicant's practice for the last five years has been devoted to civil litigation matters, including investigation, discovery, motion practice, mediation, settlement, trial preparation, and/or trial of civil cases.
 - c. **Review of Applications.**
 - (1) **Case Evaluator Selection Committee**

All applications shall be reviewed by the Case Evaluator Selection Committee, which shall have seven members appointed by the President, Saginaw County Bar Association. Terms of the committee members shall be 2 years, from November 1 of the first year through October 31 of the second year. For 2008, 3 members shall be appointed for a term of 1 year, and 4 members shall be appointed to a term of two years. In succeeding years, appointments shall be for a period of two years. The Chairperson shall be designated each year by the Bar President.

The responsibilities of the Committee shall include the examination and verification of the qualifications of applicants, the decision as to approval of the applicant and placement in the Plaintiff, Neutral, or Defendant pool. The Committee shall also consider complaints which may arise as to performance of an approved Case Evaluator and may recommend removal of a person from the approved lists to the Chief Judge Committee. The Committee shall regularly seek applicants through announcements at Bar functions, in Bar publications, and other means.

(2) **Chief Judge Committee**

The Chief Judge Committee shall consist of the Chief Judges of the 10th Circuit, 70th District, and Saginaw County Probate Courts. An applicant who has not been approved by the Case Evaluator Selection Committee, or a person whose removal from the approved lists has been recommended by the Committee, may seek reconsideration of that decision by the Chief Judge Committee.

(d.) **Term of Placement on the List.** Placement of an applicant on the Case Evaluator list shall be for a term of 5 years. Renewal of placement will be considered by the Selection Committee upon receipt of a new Case Evaluator application form.

(e.) **Removal from Lists.** Complaints concerning the performance, competence, bias or consistent unavailability of an approved Case Evaluator will be forwarded to, and considered by, the Case Evaluator Selection Committee, which may recommend removal from the approved lists to the Chief Judge Committee.

3. **Assignment to Panels**

(a.) **Random Selection.** Assignment to case evaluation panels will be by a random selection conducted by the ADR Clerk, with the objective that each member of the three pools (Plaintiff, Neutral, and Defendant) is assigned to approximately the same number of panels and approximately the same number of cases annually. The selection shall be witnessed by one or more members of the Case Evaluator Selection Committee, who shall be designated for that duty by the Chairperson of the Committee. Each panel shall be scheduled for a full day of cases.

C. FACILITATIVE MEDIATION.

The Court adopts mediation under MCR 2.411. Mediation is a process by which a neutral third party facilitates communication between the parties, assists in identifying issues, and promotes a mutually acceptable settlement.

1. **Order to Mediation.** Pursuant to MCR 2.410, the Court may order a case to mediation. The order to ADR will set a time period in which the parties must confer and select a mediator. If the parties agree to a mediator, the Court shall appoint that person and they need not meet the requirements specified under MCR 2.411 or be on the approved list of mediators. If the order to mediation does not specify a mediator and the parties do not stipulate to a mediator, one will be appointed from the approved list of mediators on a strict rotational basis.
2. **Scheduling and Conduct of Mediation.** Mediation shall proceed pursuant to the terms of MCR 2.411(C).
 - a. A mediator has no "authoritative decision-making power."
 - b. The mediator will meet with the parties and counsel to explain the mediation process.
 - c. Mediation activities may extend beyond one session if all parties and the mediator feel that continued sessions may result in settlement.
 - d. The mediator may require that documents or summaries of the case be provided to the mediator at a time prior to the time set for mediation.
 - e. The mediation session(s) will continue until either a settlement is reached or the mediator determines that a settlement is not likely to result from further mediation sessions.
3. **Application.** Application forms are available in the ADR Clerk's office.
4. **Mediator Eligibility.** Pursuant to MCR 2.411(F)(2), to be eligible to be a mediator under this program, an applicant must:
 - a. Complete a training program approved by the State Court Administrative Office (SCAO).
 - b. Have either a Juris Doctor degree or graduate degree in "conflict resolution" or a minimum of 40 hours of mediation experience over the prior two year period (may include mediation, co-mediation, observation, and role playing

within the context of mediation).

- c. Observe, at a minimum, two general civil mediation proceedings conducted by an approved mediator, and conduct, at a minimum, one general civil mediation proceeding to conclusion under the supervision of an approved mediator.
5. **Qualifying by Prior Experience.** If an applicant does not meet the particular requirements of paragraph 4 above but has comparable or otherwise relevant specialized experience or training, a special application can be made to the ADR Committee which will assess qualification on the basis of criteria provided by the SCAO.
6. **Continuing Education.** Approved mediators must obtain eight hours of approved advanced mediation training during each 2-year period of service as a mediator, to be approved and monitored by the ADR Committee. Failure to demonstrate compliance with this subsection to the ADR Committee constitutes cause for removal from the approved list of mediators.
7. **ADR Committee.** The Chief Judge may appoint an ADR Committee to assist the Court in the review and approval process for the mediator applicants and to perform other duties as set forth by the Chief Circuit Judge.
8. **List of Approved Mediators.** The ADR Clerk may approve applications submitted by potential mediators or the ADR Clerk may refer applications to the ADR Committee. In 2008, the ADR Clerk will review applications quarterly. After 2008, the ADR Clerk will review applications on an at least an annual basis. All approved mediators will be placed on the Court-approved list. The ADR Clerk will notify all approved mediators at the conclusion of their 5-year period that they must meet the requirements for re-application if they wish to remain on the list. The ADR Clerk will maintain a list of those applicants, and remove those who do not meet the requirements. The list of approved mediators will include the mediator's normal hourly rate for mediation services.
9. **Removal From the List of Approved Mediators.** The ADR Clerk will annually review the list of approved mediators and remove any applicant who has not submitted to the ADR Clerk certification that the mediator has met and completed the continuing education requirements. A mediator may be removed from the list by the ADR Clerk for demonstrated incompetence, bias, consistent unavailability, or other just cause.
10. **Appeal of Rejection/Removal.** If an application is rejected or a mediator removed from the list of approved mediators, the applicant or mediator will be notified in writing of the decision and the applicant or mediator will have 21 days from the date on the written notification of rejection/removal to petition the Chief Circuit Judge for reconsideration of rejection or removal. The Chief Circuit Judge

may appoint an ADR committee of 3 persons who will hear the appeal of the rejection or removal of the mediator who is appealing rejection or removal.

11. **Community Mediation.** Cases may also be referred to the local Community Resolution Center or some other dispute resolution service for the Saginaw community. The Community Resolution Center or other alternative dispute resolution service shall select the mediators for cases so referred.

D. DOMESTIC RELATIONS MEDIATION

The Court adopts Domestic Relations Mediation pursuant to MCR 3.216.

1. DEFINITIONS

Domestic relations mediation is a non-binding process in which a neutral third party facilitates communication between the parties to promote settlement. The parties may request "evaluative mediation" in which the domestic relations mediator provides a written recommendation for settlement of any unresolved issues following the conclusion of domestic relations mediation

Domestic relations matters in Saginaw County are governed by MCR 3.216. Domestic relations mediation is a non-binding process in which a neutral third party facilitates communication between parties to promote settlement. The parties may request "Evaluative Mediation" in which the domestic relations mediator provides a written recommendation for settlement of any unresolved issues following the conclusion of domestic relations mediation activities.

2. Referral to mediation: Any contested issue in a domestic relations case, including post judgment matters can be ordered to mediation by stipulation, motion of a party or the Court's own initiative. Contested issues may not be submitted to evaluative mediation unless stipulated by the parties. If there is a personal protection order or a party is involved in a child abuse and neglect case there must be a hearing before referring to case mediation.

3. Objection to referral to mediation: A party can object to mediation by written motion if the motion, along with a notice of hearing is filed within 14 days of receipt of the mediation notice. Other reasons that a case may not be referred to domestic mediation may include:

- (a) child abuse or neglect

(b) domestic abuse, unless attorneys for both parties will be presenting the session

(c) inability of one or both parties to negotiate for themselves unless attorneys for both parties will be present.

(d) reason to believe one or both parties' safety would be endangered by participating in mediation

(e) for other good cause shown

4. Selection of a Mediator: The parties may stipulate to the selection of a mediator. If the mediator is stipulated to, the mediator need not meet the qualifications set forth in MCR 3.216(G). The Court must appoint a mediator stipulated to by the parties provided their service as mediator does not interfere with the Courts scheduling of the case for trial. If there is no indication it will be treated as not requesting an evaluative mediation. If the parties do not stipulate to a mediator and the judge makes no recommendation or the parties reject the recommendation then the ADR Clerk will appoint one from the list of approved domestic mediators. Appointments done by the ADR Clerk will be done in a strict rotational basis. The rule for disqualification of a mediator is the same as provided in MCR 2.003 for the disqualification of a judge.

5) List of Domestic Mediators: A person meeting the requirements may apply to the ADR Clerk to be placed on the Court's list of approved domestic mediators. Application forms will be available in the office of the ADR Clerk.

6) Mediator Eligibility: To be placed on the list of domestic mediators the applicant must meet the following 3 qualifications:

a) The applicant must meet one of the following 3 requirements:

(i) be a licensed attorney, a licensed or limited psychologist, a licensed professional counselor, or a licensed marriage and family therapist.

(ii) have a master's degree in counseling, social work or marriage and family therapy;

(iii) have a graduate degree in a behavioral science or

(iv) have 5 years experience in family counseling.

b) Complete a training program approved by the State Court Administrative Office (SCAO) providing the generally accepted components of domestic relations mediation skills.

c) The applicant must have observed two domestic relations mediation proceedings conducted by an approved mediator and have conducted one domestic relations mediation to conclusion under the supervision and observation of an approved mediator.

7) Special Application: If an applicant does not meet the particular requirements of paragraph (e) above but has comparable or otherwise relevant specialized experience or training, special application can be made to the ADR Committee who will assess qualification on the basis of criteria provided by the SCAO.

8) Continuing Education: Approved mediators must obtain eight hours of approved advanced mediation training during each two year period of service as a mediator to be approved and monitored by the ADR Clerk. Failure to demonstrate compliance with this subsection to the ADR Clerk constitutes cause for removal from the approved list of domestic mediators.

9) Domestic ADR Committee: The President of the County Bar Association may appoint an ADR Committee to assist in the review and approval process for the mediator applicants and/or to perform other duties as set forth by the Court.

a) Persons placed on the list by the committee will remain on for a period not to exceed 5 years and must reapply at the end of that time to remain on the list.

b) Selections will be made without regard to race, ethnic origin or gender. Residency or principal place of business may not be a qualification.

c) The approved list as well as the applications, except for the optional section identifying the applicant's gender and racial/ethnic background will be available for public inspection in the ADR Clerk's office.

10) Removal from the Approved List of Domestic Mediators: The ADR Clerk may remove from the list mediators who have demonstrated incompetence, bias, make themselves consistently unable to serve or for other just cause. Within 21 days of notification of removal the mediator may seek reconsideration by the presiding judge of the family division. The Court does not need to provide a hearing.

11) Appeal of Rejection/Removal: If an application is rejected or a mediator is removed from the list of approved mediators the applicant or mediator will be notified in writing of the decision and the applicant or mediator will have 21 days from the date on the written notification of rejections/removal to petition the presiding judge of the family division for reconsideration of rejection or removal. The Court does not need to provide a hearing.

12) Screening for Domestic Violence and Neglect: In domestic relations cases where a personal protection order is in effect or there is a child abuse or neglect proceeding there will be no referral to mediation without a prior hearing. In cases where there is no personal protection order, the presiding judge's office will contact the attorneys for

each party of the party themselves, if unrepresented and screen for issues of possible violence or neglect. State Court Administrative Office (SCAO) guidelines will be utilized to screen. If there is a reasonable suspicion of violence, neglect or abuse the case will not be ordered to the ADR process.

13) Scheduling and Conduct of Mediation: The following will be the suggested procedure for conducting domestic mediation:

a) The mediator must schedule a mediation session within a reasonable time a location accessible by the parties.

b) The mediator may require that at least 4 days before the session that each party submit a summary to the mediator to serve the opposing party same. If required, the summary should include:

i) facts and circumstances of the case;

ii) the issues in dispute;

iii) description of marital assets and their estimated value, where such information is appropriate and reasonably ascertainable;

iv) the income and expenses of the parties;

v) a proposed settlement; and

vi) any documentary evidence available to substantiate information in the mediation summary.

c) The parties must attend session in person unless excused by mediator.

d) With the exception of counsel, parties may not bring other persons to the session unless permission is obtained from the mediator prior to the session. If the mediator believes the involvement of third persons will aid in settlement then the mediator may request information or assistance from a third party at the time of the mediation session.

e) The mediation will continue until settlement is reached the mediator determines that a settlement cannot be reached or until a time for a second session can be agreed upon.

f) The mediator will notify the Court within 7 days of the completion of a mediation. The information given by the mediator will include the date of completion, parties present, whether settlement was reached and whether further sessions are needed. If an evaluative mediation is done then the mediator may delay reporting until completion of the evaluation.

g) If settlement is reached by mediation the terms of the settlement must be acknowledged by the parties by signatures or on an audio or video tape recording.

h) Any statements made during a mediation, written or otherwise, may not be used in any proceedings including trial. All communications between the parties, counsel and the mediator are confidential and will not be disclosed without the written consent of all parties. The only exceptions to this being:

i) the report of the mediator under paragraph (6);

ii) information required by Court personnel to administer the program;

iii) information necessary for the Court to resolve disputes regarding the mediator's fee;

iv) information necessary for the Court to consider issues raised under paragraph (11).

14) Evaluative Mediation: If the parties request and mediator agrees, an evaluation will be provided by the mediator. This may occur at the conclusion of a mediation if a settlement is not reached but the parties and the mediator agree to a written evaluation from the mediator. In the event of an evaluative mediation the mediator will within a reasonable period of time prepare a written report to the parties setting forth the mediators recommendation for settlement. The recommendation will be submitted to the parties and may not be made available to the Court. If both parties accept the evaluation then a judgment will be prepared in conformity with the recommendation. If either party rejects the recommendation the case will proceed to trial. The Court may not impose sanctions against either party for rejecting the recommendation. The Court may not inquire of the mediator or the parties who rejected. The mediator's recommendation may not be read by the Court and the information it contains will not be admitted as evidence without the consent of both parties.

15) Fees: A mediator is entitled to fees that commensurate with their experience. The parties shall agree in writing that each shall pay half of the mediator's fees no later than:

i) 42 days after the mediation process is concluded or the mediator has issued a recommendation in the case of an evaluative mediation, or

ii) entry of judgment or

iii) dismissal of the action, whichever occurs first.

If appropriate the Court may have discretion in the allocation of fees given the economic circumstance of the parties. The mediator's fees are deemed a cost of the action and the Court may make an appropriate judgment to enforce the payment of fees. If either party objects to the total fees the matter may be scheduled for a hearing before

the judge to determine the reasonableness of the fees.

16) Standards of conduct: The State Court Administrator shall develop and approve standards of conduct for domestic mediators designed to promote honesty, integrity and impartiality in providing court ordered dispute resolution services. These standards will be made a part of all training and educational requirements for court ordered programs, will be provided to all mediators involved in court ordered mediation, and will be available to the public.

13-12-08
date

Robert L. Kaczmarek
ROBERT L. KACZMAREK, Chief Judge
10th Circuit Court

3-13-08
date

M. Randall Jurrens
M. RANDALL JURRENS, Chief Judge
70th District Court

3-13-08
date

Patrick J. McGraw
PATRICK J. MCGRAW, Chief Judge
Saginaw County Probate Court