

54-A DISTRICT COURT

124 W. Michigan Ave., 6th Floor City Hall, Lansing, MI 48933

DISTRICT JUDGES
PATRICK F. CHERRY
FRANK J. DeLUCA
LOUISE ALDERSON
HUGH B. CLARKE, JR.



Court Administrator
ANETHIA BREWER

Magistrate
LAURA A. MILLMORE

Administrative Order No. 2016-3
Rescinds Administrative Order 1997-3

ALTERNATIVE DISPUTE RESOLUTION

This administrative order is issued pursuant to MCR 2.410, for purposes of alternative dispute resolution in general civil cases through case evaluation (MCR 2.403) and mediation (MCR 2.411). The court shall utilize the Alternative Dispute Resolution plan established by the 30th Circuit Court's Local Administrative Order 2016-04.

Effective: Upon approval of the State Court Administrative Office

Date: 10/26/16

Chief Judge Louise Alderson (2015)
Louise Alderson, 54-A District Court

Date: 10.21.16

Chief Judge Janelle A. Lawless
Janelle A. Lawless, 30th Circuit Court

STATE OF MICHIGAN
INGHAM COUNTY CIRCUIT COURT

IN RE:

Alternative Dispute Resolution

Administrative Order 2016-04

Rescinding Administrative Order 2002-1

IT IS ORDERED:

Pursuant to MCR 2.410(B)(1), the following is adopted as the Ingham County ADR Plan:

Alternative Dispute Resolution (ADR) Clerk Designation

The Court hereby designates Brandon Howard to serve as the ADR Clerk/ADR Coordinator. The ADR Coordinator will maintain all records, pertaining to the Court's ADR program including applications for the lists of case evaluators, general civil mediators, and domestic relations mediators. The ADR Coordinator will also be responsible for coordinating the referral of the tracking and progress of cases through the chosen ADR process.

General Provision of ADR

- a.) The 30th Circuit Court will utilize Mediation as established in MCR 2.411, Case Evaluation as established in MCR 2.403, and Domestic Relations Mediation as established in MCR 3.216. The Court may establish additional ADR mechanisms and incorporate them into this ADR plan.
- b.) Civil and domestic cases in the Ingham County Circuit Court are subject to ADR, unless otherwise provided by statute or Court Rule.
- c.) After consultation with the parties, the Court shall determine the appropriate form of ADR, if the Court determines ADR beneficial.
- d.) Any party may object to an order to ADR. Motions to set aside/modify an order to ADR must be filed within fourteen (14) days of the order to ADR.
- e.) The Chief Judge shall supervise this ADR plan.

Order to ADR

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).

Public Access to ADR Plan

The ADR Coordinator will make available an informational 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 Coordinator's Office or the Circuit Court Clerk's Office.

Access to ADR for Indigent Litigants

The Court's indigence standard is the same as qualifying for a waiver of filing fees under MCR 2.002. A party meeting the Court's indigent standard is entitled to free ADR services if ordered by the Court. 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 dispute resolution services are not available, the Court will not order that party to participate in an ADR process.

Mediation

The 30th Circuit hereby 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.

- a) **Order to Mediation:** Pursuant to MCR 2.410(C), the Court may order a case to facilitative mediation. In the Court's order to mediation, the Court may appoint a mediator if stipulated to by the parties. The order to ADR will set a time period in which the parties must confer and select a mediator. If the parties stipulate to a mediator, the Court shall appoint that person and they need not meet the requirements under MCR 2.411(F)(2) 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 by the ADR Coordinator.
- b) **Scheduling and Conduct of Mediation:** Mediation shall proceed pursuant to the terms of MCR 2.411.
 - 1) A mediator has no "authoritative decision-making power."
 - 2) The mediator will meet with the parties and counsel to explain the mediation process.
 - 3) Mediation activities may extend beyond one session if all parties and the mediator feel that continued sessions may result in settlement.
 - 4) 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.
 - 5) 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.
- c) **Application:** Application forms are available in the office of the designated ADR Coordinator.
- d) **Mediator Eligibility:** Pursuant to MCR 2.411(F)(2), to be eligible to be a mediator, an applicant must:
 - 1) Complete a training program approved by the State Court Administrative Office.
 - 2) Have either a juris doctor degree or graduate degree in "conflict resolution"; or a minimum of 40 hours of mediation experience over two years (may include mediation, co-mediation, observation, and role-playing within the context of mediation).
 - 3) 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.
- e) **Special Application:** If an applicant does not meet the particular requirements of paragraph (d) above but has comparable or otherwise relevant specialized experience or training, special application can be made to the ADR Coordinator who will assess qualifications on the basis of criteria provided by the State Court Administrator.
- f) **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 Coordinator. Failure to demonstrate compliance with this subsection to the ADR Coordinator constitutes cause for removal from the approved list of mediators.
- g) **List of Approved Mediators:** Pursuant to MCR 2.411(E)(2), the ADR Coordinator will review all applications submitted by potential mediators and annually compile a list of all Mediators approved for the following year of service. The ADR Coordinator will place on the list only those applicants that meet the specifications set forth in this order. The ADR Coordinator will notify all approved mediators at the conclusion of their seven year period that they must meet the requirements for re-application if they wish to remain on the list. The ADR Coordinator will maintain the list of those applicants, and remove those who do not meet the requirements set forth.
- h) **Removal from List of Approved Mediators:** The ADR Coordinator will annually review the list of approved mediators and remove any applicant who has not submitted to the ADR Coordinator certification that the mediator has met and completed the continuing education requirements. A mediator may be removed from the list by the ADR Coordinator for demonstrated incompetence, bias, consistent unavailability, or other just cause.
- i) **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. The applicant or mediator will have 21 days from the date of rejection/removal to seek reconsideration by the Chief Judge. The Court does not need to provide a hearing.

Case Evaluation

Cases ordered to case evaluation will proceed under the guidelines set forth in MCR 2.403 and MCR 2.404 including as amended subsequent to the adoption of this Administrative Order.

- a) **Case Evaluator Selection Process:** Case evaluations in the 30th Circuit are classified into three separate categories: tort, commercial, and discrimination/labor. The Chief Judge or Designee Judge will appoint committees to oversee the respective categories and will review those individuals serving on the committees annually. The committees may meet annually and will be comprised of three members for discrimination/labor, three members for commercial, and six members for tort. The respective committees will review and approve all prospective applicants for service on an annual basis with final approval coming from the Chief Judge or Designee Judge.
 - 1) Pursuant to MCR 2.404(B)(3)(b)(iii), a person may not serve on a committee more than three years in any nine year period.
- b) **Qualifications of Case Evaluators:** The following, pursuant to MCR 2.404(B)(2), will serve as qualifications for eligibility to be appointed as a case evaluator in Ingham County:
 - 1) The applicant shall be a licensed attorney for a period of no less than five years, and shall be a member in good standing of the State Bar of Michigan.
 - 2) The applicant must reside, maintain an office, or have an active practice in Ingham County.
 - 3) The applicant must determine which panel they wish to apply to and have been practicing for no less than five years with a substantial portion of their practice devoted to civil litigation, including investigation, discovery, motion practice, case evaluation, settlement, trial preparation, and/or trial.
 - 4) As long as Ingham County maintains separate sublists for each case evaluation panel category, the applicant must have had an active practice in the practice area for which the case evaluator is listed for at least the last three years.
- c) **Review of Applications:** Pursuant to MCR 2.404(B)(3), review of applications will be done on an annual basis by the respective case evaluation committee and ADR Coordinator. Persons meeting the qualifications set forth shall be placed on the list of approved case evaluators. Persons who are not placed on the list will be notified of the decision by the ADR Coordinator. Within 21 days of the notification, applicants who were not placed on the list may seek reconsideration by contacting the Chief Judge or Designee Judge in writing.
- d) **Reapplication:** Pursuant to MCR 2.404(B)(5), persons who are placed on the list must re-apply at the end of a seven year term of service as directed by the Court.
- e) **Removal from List of Case Evaluators:** At the time set for annual review of applications, the respective committee and ADR Coordinator will consider those persons on the list of case evaluators and remove those persons that have demonstrated incompetency, bias, have consistently been unavailable to serve, or for other just cause which the committee and ADR Coordinator determines.
- f) **Specialized Lists:** Pursuant to MCR 2.404(B)(4), the ADR Coordinator shall maintain separate lists for each case evaluation panel category: tort, commercial, and discrimination/labor. Separate sublists for plaintiff, defendant, and neutral case evaluators will be maintained for the tort and discrimination/labor panel categories. The commercial panel list shall not maintain a sublist of plaintiff, defendant, and neutral case evaluators.
- g) **Assignment to Panel:** Pursuant to MCR 2.404(C), assignment to serve on a case evaluation panel will be done annually on a rotational basis within the particular case evaluation panel for which the evaluator has been approved. This will be done by communicating with the evaluators and finding out which months are best suited to their schedules to serve. Once this has been determined, the remaining available spots will be filled accordingly. In the event that all panels are filled and there are still case evaluators on the list that have not been assigned to a panel, those evaluators will be put first in rotation the following year. With the exception of the commercial panel, each panel will consist of one evaluator from each of the sublists (i.e. plaintiff, defendant, and neutral). The commercial panel will consist of three evaluators with no aforementioned designation.
 - 1) Pursuant to MCR 2.404(C)(3), if the parties stipulate, the Court may appoint a special panel selected by the parties. In such a case, the eligibility requirements of section b) above do not apply.
- h) **Supervision of Selection Process:** The Chief Judge or Designee Judge will supervise the implementation of this Administrative Order and will annually review the plan to assure compliance with the terms of MCR 2.404.
- i) **Disqualification of Case Evaluators:** The rule for disqualification of a case evaluator is the same as that provided in MCR 2.003 for the disqualification of a judge. If an evaluator has a conflict of interest, they are to promptly notify the ADR Coordinator of such circumstance. The ADR Coordinator shall find a substitute case evaluator when an evaluator is unavailable or has recused himself/herself.
- j) **Summary and Supporting Documents Following Hearing:** The ADR Coordinator shall collect all summaries and supporting documents at the end of the case evaluation hearing. Such documents shall be secured for destruction at the earliest possible opportunity.

Domestic Relations Mediation

Domestic relations matters in the Ingham County Circuit Court, Family Division 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.

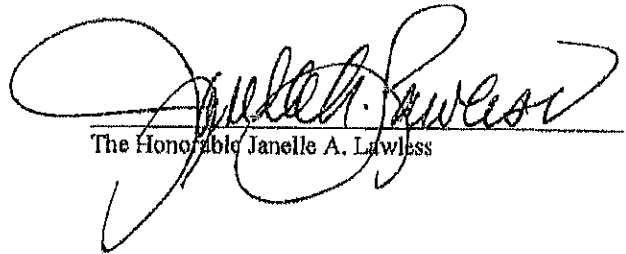
- a) **Referral to Mediation:** Any contested issue in a domestic relations case, including post judgment matters, can be ordered to mediation by stipulation, motion of a party, or the Court's own initiative. Contested issues may not be submitted to evaluative mediation unless stipulated to by the parties. 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 a case to mediation.
- b) **Objection to Referral to Mediation:** A party can object to mediation by written motion if a 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:
 - 1) child abuse or neglect
 - 2) domestic abuse, unless attorneys for both parties will be present in the session
 - 3) inability of one or both parties to negotiate for themselves unless attorneys for both parties will be present
 - 4) reasons to believe one or both parties' safety would be endangered by participating in mediation
 - 5) for other good cause shown
- c) **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 court's 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 Coordinator will appoint one from the list of approved domestic mediators. Appointments done by the ADR Coordinator will be done in a strict rotational basis. The rule for disqualification of a mediator is the same as that provided in MCR 2.003 for the disqualification of a judge.
- d) **List of Domestic Mediators:** A person meeting the requirements of MCR 3.216(G) may apply to the ADR Coordinator to be placed on the court's list of approved domestic mediators. Application forms will be available in the office of the ADR Coordinator.
- e) **Mediator Eligibility:** To be placed on the list of domestic mediators, the applicant must meet the following three qualifications:
 - 1) The applicant must meet one of the following requirements:
 - (i) be a licensed attorney, a licensed or limited licensed psychologist, a license 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 five years experience in family counseling
 - 2) Complete a training program approved by the State Court Administrative Office, providing the generally accepted components of domestic relations mediation skills.
 - 3) 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.
- f) **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 Coordinator who will assess qualifications on the basis of criteria provided by the SCAO.
- g) **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 Coordinator. Failure to demonstrate compliance with this subsection to the ADR Coordinator constitutes cause for removal from the approved list of domestic mediators.
- h) **Review of Applications:** On an annual basis, the ADR Coordinator will review and approve mediator applicants and perform other duties as set forth by the court.
 - 1) Persons placed on the list will remain on for a period not to exceed seven years and must reapply at the end of that time in the manner directed by the Court.
 - 2) Selections will be made without regard to race, ethnic origin, or gender. Residency or principal place of business may not be a qualification.

- 3) The approved list and applications, except for the optional section identifying the applicants' gender and racial/ethnic background, will be available for public inspection in the ADR Coordinator's Office.
- i) **Removal from Approved List of Domestic Mediators:** The ADR Coordinator may remove from the list mediators who have demonstrated incompetence, bias, make themselves consistently unavailable 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.
- j) **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 rejection/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.
- k) **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 or themselves, if unrepresented, and screen for issues of possible violence or neglect. State Court Administrative Office 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.
- l) **Scheduling and Conduct of Mediation:** The following will be the suggested procedure for conducting domestic mediation:
- 1) The mediator must schedule a mediation session within a reasonable time at a location accessible by the parties.
 - 2) The mediator may require that at least three days before the session, that each party submit a summary to the mediator and serve the opposing party the 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 ascertained.
 - (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.
 - 3) The parties must attend session in person unless excused by mediator.
 - 4) 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.
 - 5) 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.
 - 6) The mediator will notify the court within seven days of completion of mediation. The information given by the mediator will include the date of completion, the 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.
 - 7) 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.
 - 8) Any statements made during a mediation, written or otherwise, may not be used in any other proceedings, including trial. All communications between 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 about a party's failure to attend.
- m) **Evaluative Mediation:** If the parties request, and the 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 mediator's 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 as to which party 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.

- n) **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 fee 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 fee is 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.
- o) **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.

Dated

6-3-16



The Honorable Janelle A. Lawless