

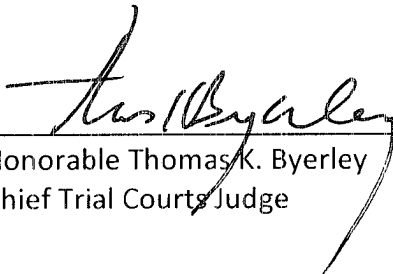
PRESENT: Honorable Thomas K. Byerley, Chief Trial Courts Judge

The revisions in this ADR plan are intended to comply with Mediator Training Standards and Procedures, effective January 1, 2013 and the Mediator Standards of Conduct, effective February 1, 2013. This ADR Plan implements Michigan Court Rules, Subchapter 2.400 as it relates to alternative dispute resolution. The Eaton County Courts adopt this revised ADR Plan pursuant to MCR 2.410(B).

IT IS SO ORDERED:

This Administrative Order is issued in accordance with Michigan Court Rules 8.119(E) and 8.110(C)(7) and rescinds Local Administrative Order 2001-1. The Eaton County Trial Courts adopt this ADR Plan, effective May 1, 2014.

Date: 16th July, 2014



Honorable Thomas K. Byerley
Chief Trial Courts Judge

CONTENTS

1. Introduction to the ADR Plan
2. Definitions
3. ADR Clerk
4. Providing ADR Information
5. General ADR Procedures
 - a. Case Screening
 - b. Application
 - c. Case Evaluator Eligibility
 - d. General Civil Mediator Eligibility
 - e. Domestic Relations Mediator Eligibility
 - f. Review of Applications
 - g. Specialized Lists
 - h. Reapplication
 - i. Advanced Training
 - j. Availability of Lists
 - k. Removal from Lists
 - l. Assignment to Case Evaluator Panels
 - m. Assignment of General Civil Mediators
 - n. Assignment of Domestic Relations Mediators
 - o. Evaluative Mediation in Domestic Relations Cases
 - p. Mediator Compensation
6. Final Settlement Conference in Civil Cases
7. Arbitration and Other ADR Processes
8. ADR for Indigent Litigants
9. Supervision

1. Introduction to the ADR Plan

The judges of the Eaton County Trial Courts have determined Alternative Dispute Resolution (ADR) processes serve useful purposes in a variety of cases. ADR can reduce costs, produce more timely resolutions and increase participant satisfaction with the judicial system.

In addition to the ADR processes traditionally used by the Circuit and District Courts in civil cases, e.g., case evaluation, the Eaton County Courts intend to refer appropriate civil, probate, and juvenile cases to mediation, as well as referring select family cases to domestic relations mediation. To fully use ADR in this manner, the Trial Courts are required to adopt an ADR plan which more fully describes the relevant procedures. The general procedures described below will provide interested persons with the information necessary to participate in local ADR programs; however parties and counsel are advised to read this ADR Plan in conjunction with relevant statutes and court rules.

2. Definitions

Alternative Dispute Resolution (ADR) means any “process designed to resolve a legal dispute in the place of court adjudication.” ADR includes the following:

- Settlement conferences under MCR 2.401
- Case evaluation under MCR 2.403
- Mediation under MCR 2.411
- Domestic relations mediation under MCR 3.216
- Evaluative mediation under MCR 3.216(I)
- Friend of the Court ADR processes under MCL 552.501 and MCL 552.505
- Other procedures provided by court rule or ordered on stipulation of the parties under MCR; e.g., arbitration and summary jury trial.

“Settlement Conferences” (MCR 2.401) may occur at any time after commencement of an action. On its own initiative, or upon request of a party, the judge assigned to the case may direct attorneys (with or without clients) to appear for a conference. More than one conference may be held in any action.

“Case Evaluation” (MCR 2.403) is a process available in any civil action in which the relief sought is primarily money damages or division of property. A panel of three attorneys considers written and oral presentations by the parties or their counsel, or both, and issues an evaluation of the case. Parties may accept or reject the evaluation. This decision is not binding on the parties, but sanctions may attend the rejection of the decision if the case proceeds to trial.

“Mediation” under MCR 2.410 (C) allows the Trial Court to refer any civil action to mediation. Under MCR 3.216 (C), the judge assigned to the case may refer any contested issue in a domestic relations action to mediation. In mediation a neutral third party facilitates discussion between parties, assists in identifying issues, and helps explore solutions to promote a mutually acceptable settlement. A mediator has no final decision-making power and the process does not involve monetary sanctions.

“Evaluative Mediation” (MCR 3.216 (I)) may occur in domestic relations cases when the parties request it and the mediator agrees to provide it. The mediator will provide a written recommendation for settlement of any issues unresolved at the conclusion of the mediation process. The evaluative mediator’s report and the recommendation may not be read by the judge assigned to the case and may not be admitted into evidence without consent of the parties. The judge assigned to the case is not to know the identity of a party who rejected the recommendation and the judge assigned to the case cannot impose any monetary sanctions.

“Arbitration” is a voluntary process in which parties contract to participate. Parties to any civil action, including for divorce, annulment, separate maintenance, child support, custody, or parenting time, or to post judgment proceeding related to any civil action, may stipulate to binding arbitration by a signed agreement that specifically provides for entry of a judgment based on an arbitrator’s decision. Any arbitration may proceed by contract or stipulated order, and domestic relations cases may also proceed pursuant to MCL 600.5076.

3. ADR Clerk

The Chief Trial Court Judge shall designate an ADR Clerk who shall maintain all records pertaining to the ADR Program, including applications for and lists of case evaluators, general civil mediators, and domestic relations mediators. The ADR Clerk shall be responsible for coordinating the referral of cases to ADR and tracking the progress of cases through ADR processes.

The ADR Clerk for the Eaton County Trial Courts is supervised by the Court Administrator.

4. Providing ADR Information

The ADR Clerk shall maintain a copy of this Administrative Order, as shall the Circuit Court Clerk’s Office, which shall be available to the public for inspection. In addition, the Trial Court will develop a brochure detailing what methods of ADR the Trial Court employs, what cases are eligible for ADR, how to access ADR services, and how a party can object to an Order to ADR, including where the necessary forms may be obtained.

5. General ADR Procedures

a. Case Screening

Before issuing a Scheduling Order, the judge assigned to the case shall determine whether the case is appropriate for case evaluation or mediation. Parties who participate in mediation or other procedures described in this plan will not be discriminated against on the basis of race, ethnic origin, age, gender or other legally protected characteristics. A Court Clerk shall routinely check Court records to determine whether the parties are subject to a personal protection order and in domestic relations cases where no PPO is in effect, the Model Screening Protocol for Domestic Violence and Child Abuse/Neglect for Domestic Relations Mediation will be followed.

b. Application

An eligible person desiring to serve as a case evaluator, a general civil mediator and/or a domestic relations mediator may apply to the ADR Clerk to be placed on the list of qualified case evaluators, general civil mediators or domestic relations mediators. Application forms, including the Case Evaluator Application (MC 34), the Civil Mediator Application (MC 281a) and the Domestic Relations Mediator Application (MC 281b) are available on the State Court Administrative Office website (www.courts.michigan.gov) and in the Office of the ADR Clerk. The application forms include a certification that the applicant meets all requirements and will not discriminate against parties, attorneys, other case evaluators or mediators on the basis of race, ethnic origin, gender or other protected personal characteristic.

c. Case Evaluator Eligibility

To be eligible to serve as a case evaluator, a person must meet the following qualifications:

- i. The applicant must have been a practicing lawyer for at least five years and be a member in good standing of the State Bar of Michigan;
- ii. The applicant must reside, maintain an office, or actively practice in Eaton County;
- iii. The applicant must demonstrate 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, case evaluation, settlement, trial preparation and/or trial;
- iv. The applicant must have had an active practice in the subject area of the assigned specialized list for at least the last three years (MCR 2.404);

- v. Case evaluators must not discriminate against parties or attorneys on the basis of race, ethnic origin, gender, or other protected personal characteristic;
- vi. Case evaluators must comply with the Trial Court's ADR Plan, orders of the judge assigned to the case regarding cases submitted to case evaluation, and conduct themselves with honesty, integrity and impartiality.

d. General Civil Mediator Eligibility

To be eligible to serve as a general civil mediator, a person must meet the following qualifications:

- i. Complete a training program approved by the State Court Administrative Office providing the generally accepted components of mediation skill; or a similar training program conducted outside Michigan;
- ii. Have one or more of the following:
 - Juris doctor degree or graduate degree in conflict resolution; or
 - 40 hours of mediation experience in the past two years;
- iii. Observe two general civil mediation proceedings conducted by an approved mediator, and conduct one general civil mediation to conclusion under the supervision and observation of an approved mediator;
- iv. An applicant who has specialized experience or training, but does not meet the specific requirement above, may apply to the ADR Clerk for special approval. The Chief Judge or designee shall make the determination on the basis of criteria provided by the State Court Administrative Office. The SCAO criteria are available in the Mediator Training Standards and Procedures (Section 5.2, 5.3), <http://courts.mi.gov/Administration/SCAO/ResourcesDocuments/standards/odr/Mediator%20Training%20Standards%20and%20Procedures%201.1.2013.pdf>. Service as a case evaluator under MCR 2.403 does not constitute a qualification for serving as a mediator;
- v. Approved mediators are required to obtain eight hours of advanced mediation training during each two-year period. Failure to submit documentation establishing compliance is grounds for removal from the list;
- vi. General civil mediators must not discriminate against parties or attorneys on the basis of race, ethnic origin, gender or other protected personal characteristic;

- vii. General civil mediators must comply with the Court ADR Plan, orders of the Court regarding cases submitted to mediation and the Standards of Conduct for Mediators promulgated by the State Court Administrative Office;
- viii. Pursuant to MCR 2.411(B)(1), the parties may stipulate to the selection of a mediator. A mediator selected by agreement of the parties need not meet the qualifications set forth above.

e. Domestic Relations Mediator Eligibility

To be eligible to serve as a domestic relations mediator, a person must meet the following qualifications:

- i. An applicant must
 - be a licensed attorney, a licensed or limited licensed psychologist, a licensed professional counselor, or a licensed marriage or family therapist;
 - have a master's degree in counseling, social work, or marriage and family therapy;
 - have a graduate degree in behavioral science; or
 - have five years' experience in family counseling;
- ii. An applicant must have completed a training program approved by the State Court Administrative Office;
- iii. An 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;
- iv. An applicant who has specialized experience or training, but does not meet the specific requirements described above, may apply to the ADR Clerk for special approval. The Chief Judge or designee shall make the determination on the basis of criteria provided by the State Court Administrative Office. The SCAO criteria are available in the Mediator Training Standards and Procedures (Section 7.1), <http://courts.mi.gov/Administration/SCAO/Resources/Documents/standards/odr/Mediator%20Training%20Standards%20and%20Procedures%201.1.2013.pdf>. Service as a case evaluator under MCR 2.403 does not constitute a qualification for serving as a domestic relations mediator;

- v. Approved mediators are required to obtain eight hours of advanced mediation training during each two-year period. Failure to submit documentation establishing compliance is grounds for removal from the list;
- vi. Domestic relations mediators must not discriminate against parties or attorneys on the basis of race, ethnic origin, gender, or other protected personal characteristic;
- vii. Domestic relations mediators must comply with the Court ADR Plan, orders of the Court regarding cases submitted to mediation and the Standards of Conduct for Mediators promulgated by the State Court Administrative Office;
- viii. Pursuant to MCR 3.216(E)(2), the parties may stipulate to the selection of a mediator. A mediator selected by agreement of the parties need not meet the qualifications set forth above.

Applications to serve as case evaluator or as general civil or domestic relations mediator shall include a certification that the applicant agrees to fulfill the mediator's responsibilities in an impartial manner consistent with the rules and practices of the Trial Court. The certificate portion of the Application form for civil and domestic mediators will also state the hourly fee that will be charged or the basis on which the applicant agrees to have the fee determined.

f. Review of Applications

The ADR Clerk shall initially review all applications to ensure compliance with the Trial Court's requirements to be a Case Evaluator. All qualified applicants will be forwarded to the Chief Trial Courts Judge for final approval and placement on the list. Applicants denied placement on the list shall be notified in writing of that decision. Within 21 days of that notice, the applicant may seek reconsideration by providing a written response to the notice of rejection to the office of the Chief Trial Courts Judge. Such request for reconsideration shall be reviewed by a majority of the Judges of the Circuit Court and its Family Division. Written notification of the results of this appeal shall be provided by the ADR Clerk.

g. Specialized Lists

The Chief Trial Courts Judge may require that the ADR Clerk maintain a separate list of case evaluators in specialized areas of the law. Such specialized lists will include case evaluators who demonstrate competence in that specialized area of the law.

h. Reapplication

Persons shall be placed on all lists for which they are qualified for a fixed period of time, not to exceed five years, and must reapply at the end of that period in the same manner as persons seeking to be added to the list.

i. Advanced Training

Every general civil and domestic relations mediator on a Court-approved list must notify the ADR Clerk and provide written proof of having completed the requisite eight hours of advanced mediation training during each two-year period following appointment to a list. Failure to do so will result in removal from the list.

j. Availability of Lists

The lists of case evaluators and mediators may be obtained from the ADR Clerk. In addition, the public may access the lists on the county's website at www.eatoncounty.org.

k. Removal from Lists

At any time a case evaluator or mediator may be removed from the list upon a finding by the Chief Trial Courts Judge that the case evaluator or mediator has demonstrated incompetence, bias, has consistently been unavailable to serve, or the failure to comply with the Mediator Standards of Conduct, effective February 1, 2013.

l. Assignment to Case Evaluator Panels

Assignment to serve on a case evaluation panel shall be done on a rotational basis. Sublists which designate plaintiff, neutral or defense oriented case evaluators are used to comprise the panel of evaluators by assigning one case evaluator who primarily represents plaintiffs, one case evaluator who primarily represents defendants, and one neutral case evaluator.

Pursuant to MCR 2.404(C)(3), if the parties so stipulate, the judge assigned to the case may appoint a panel selected by the parties. In such a case, the eligibility requirements set forth herein shall not apply to such case evaluators.

m. Assignment of General Civil Mediators

The judge assigned to the case may refer cases to general civil mediation in its scheduling order. The judge assigned to the case may specify a date by which all mediation activities shall be concluded.

The Trial Court will have available a list of court-approved mediators. The parties may stipulate to the selection of a mediator. If the parties are unable to agree on a mediator they shall contact the judge assigned to the case within 14 days of the date of the scheduling order. The judge assigned to the case shall appoint the next available mediator from the Approved List of Mediators, which is maintained by the ADR Clerk. The mediator will be selected in a random or rotating manner that ensures, as nearly as possible; each mediator on the list is assigned the same number of cases over a period of one year.

n. Assignment of Domestic Relations Mediators

The judge assigned to the case may refer cases to domestic relations mediation in its scheduling order, unless a personal protection order exists, or a child abuse and neglect case is pending. In such cases a hearing is held to determine the appropriateness of mediation.

The Trial Court will have available a list of court-approved mediators. The parties may stipulate to the selection of a mediator. If the parties are unable to agree on a mediator they shall contact the judge assigned to the case within 14 days of the date of the scheduling order. The judge assigned to the case shall appoint the next available mediator from the Approved List of Mediators, which is maintained by the ADR Clerk. The mediator will be selected in a random or rotating manner that ensures, as nearly as possible; each mediator on the list is assigned the same number of cases over a period of one year.

The judge assigned to the case may specify a date by which all mediation activities shall be concluded. The mediator must schedule a mediation session within a reasonable time at a location accessible by the parties.

Any party may object to the referral of their case to mediation by filing a timely motion to remove the case from mediation pursuant to MCR 3.216(D).

o. Evaluative Mediation in Domestic Relations Cases

Parties seeking evaluative mediation must notify the mediator. If the parties requested evaluative mediation and settlement is not reached during domestic relations mediation, the domestic relations mediator shall, within a reasonable period of time after the conclusion of domestic relations mediation activities, prepare a written report to the parties setting forth the domestic relations mediators recommendations for settlement.

MCR 3.216(l) governs the terms of acceptance/ rejection of evaluative mediation.

p. Mediator Compensation

A mediator is entitled to reasonable compensation based on an hourly rate commensurate with the mediator’s experience and usual charges for services performed. Before mediation, the parties shall agree in writing on the amount of the fee, as well as the time and manner of payment in accordance with MCR 2.411.

If domestic relations mediation is ordered, the parties shall each pay one-half of the mediator’s fees in accordance with MCR 3.216(J), unless a party objects or moves for some other allocation of the fee.

6. Final Settlement Conference in Civil Cases

A final settlement conference will be scheduled in every case after discovery has been completed, all motions have been heard and other ADR options have been explored, MCR 2.401. The purpose of the final settlement conference is to give the parties and their counsel one last, court-assisted opportunity before trial to settle the case or to narrow the disputed issues and discuss how the trial will proceed. Each party and person(s) with authority to settle the case, as well as the attorney who will be trying the case, are required to attend. If the case is scheduled for non-jury trial, they will tender stipulated facts and proposed findings of fact and conclusions of law.

7. Arbitration and Other ADR Processes

Nothing in this ADR Plan shall preclude the parties from stipulating to an ADR process of their choice so long as the schedule for completing same does not interfere with Trial Court scheduling and the timely progression of the case. Parties are encouraged to pursue any form of ADR which they believe will assist them in resolving their dispute. Arbitration may be pursued through a private arbitrator or arbitration services.

8. ADR for Indigent Litigants

The Trial Court shall take steps to make mediation available to indigent litigants. A litigant is “indigent” if he or she qualifies for the waiver or suspension of fees or costs in accordance with MCR 2.002(C) or (D).

The Trial Court shall encourage mediators who receive referrals from the Trial Court to provide a portion of their services on a free or reduced fee basis.

9. Supervision

The Chief Trial Courts Judge shall exercise general supervision over the implementation of this ADR Plan and the case evaluator and mediator selection process (except as provided above with respect to applicants for domestic relations mediation). In addition, the Chief Trial Courts Judge shall review the operation of the ADR Plan at least annually to ensure compliance. In the event of non-compliance, the Chief Trial Courts Judge shall take such action as needed. Any issues or concerns with the ADR process should be addressed in writing to the ADR Clerk. Concerns will be directed to the Court Administrator for review.