



THE FORTIETH JUDICIAL CIRCUIT OF MICHIGAN

NICK O. HOLOWKA
Circuit Judge

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40th CIRCUIT COURT ADMINISTRATIVE ORDER NO. 2004-05J
71A DISTRICT COURT ADMINISTRATIVE ORDER No. 2004-07J
LAPEER COUNTY PROBATE COURT ADMINISTRATIVE ORDER No. 2004-02J

ORDER ADOPTING ALTERNATIVE DISPUTE RESOLUTION PLAN

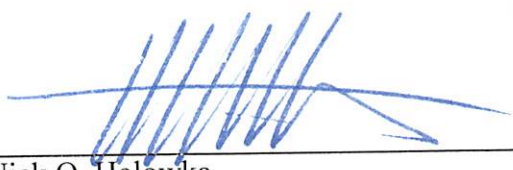
IT IS ORDERED:

This administrative order is issued in accordance with Michigan Court Rule 2.410 Alternative Dispute Resolution, effective August 1, 2000. The purpose of this order is to adopt the Alternative Dispute Resolution Plan appended to this Order upon approval by the State Court Administrative Office.

This administrative order rescinds Administrative Order 1997-1-J dated September 30, 1997.

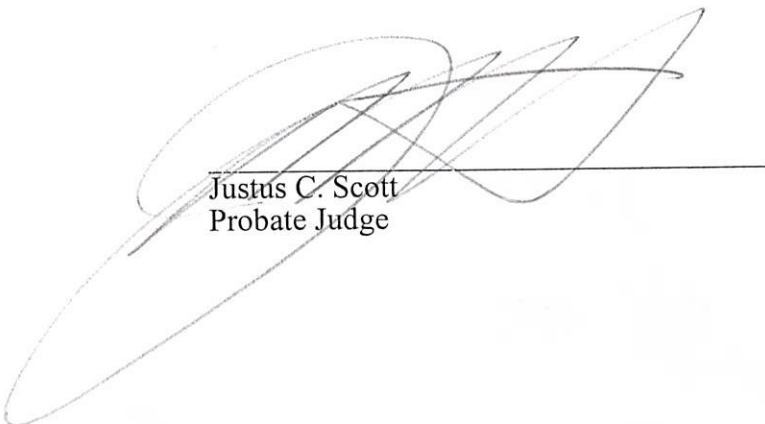
Effective Date: October 1, 2004

Date: September 7, 2004



Nick O. Holowka
Chief Judge

Dated: September 7, 2004



Justus C. Scott
Probate Judge

**ALTERNATIVE DISPUTE RESOLUTION (“ADR”) PLAN
FOR THE 40TH CIRCUIT COURT, 71A DISTRICT COURT AND
LAPEER COUNTY PROBATE COURT**

Alternative Dispute Resolution (“ADR”) means “any process designed to resolve a legal dispute in the place of court adjudication.” ADR includes settlement conferences under MCR 2.401; case evaluation under MCR 2.403; mediation under MCR 2.411; domestic relations mediation under MCR 3.216; and other procedures provided by local court rule or ordered on stipulation of the parties.

All civil cases are subject to ADR processes unless otherwise provided by statute or court rule.

These alternative dispute resolution procedures are subject to and, in the event of a conflict with, are superceded by the provisions of MCR 2.401, 2.403, 2.404, 2.410, 2.411 and 3.216.

ADR CLERK AND COMMITTEE

Unless otherwise designated by the Chief Judge of the Circuit Court, the Administrative Assistant to the Chief Judge of the Circuit Court will serve as the ADR Clerk. In addition to other responsibilities assigned to the ADR Clerk by the Court, the ADR Clerk shall maintain all records pertaining to the Court’s 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 shall also be responsible for disseminating information on the ADR Plan to litigants and the public and shall prepare the annual report, all as set forth below.

The ADR committee as referred to herein shall consist of the ADR clerk and the administrators of the courts.

CASE EVALUATION

Under MCR 2.403, unless otherwise determined by the judge assigned to the case, all civil action in which the relief sought is primarily money damages or division of property will be assigned to case evaluation (formerly known as mediation). Case evaluation shall be conducted in accordance with MCR 2.403.

1. Selection of Case Evaluators

An eligible person desiring to serve as a case evaluator may apply to the ADR Clerk to be placed on the list of qualified case evaluators. Application forms shall be available in the office of the ADR Clerk. The application form for a case evaluator shall comply with the requirements of MCR 2.404(B)(1) and filed on form MC34.

2. Eligibility for Case Evaluators

To be eligible to serve as a case evaluator, a person must meet the qualifications set forth in MCR 2.403(B)(2).

3. Review of Applications for Case Evaluators.

- a. At least annually, the ADR Clerk will disseminate information to potentially interested persons that the review process is approaching. Any person interested in providing case evaluation services is invited to submit an application to the ADR Clerk, who will distribute all applications received since the last review process to the ADR Committee for review.
- b. Persons meeting the qualifications shall be placed on the list of approved case evaluators for a period of 5 years and must reapply at the end of that time in the same manner as persons seeking to be added to the list.
- c. Selections shall be made without regard to race, ethnic origin or gender.
- d. Applicants who are rejected as case evaluators shall be notified of that decision by the ADR clerk within 7 days. Within 21 days of notification of the decision to reject an application, the applicant may seek reconsideration of the committee's decision by the Chief Judge of the Circuit. The court does not need to provide a hearing. Documents considered in the initial review process shall be retained for at least the period during which the applicant can seek reconsideration of the original decision.
- e. The list of qualified case evaluators will be available to the public in the ADR Clerk's office.
- f. A case evaluator may be removed from the list of qualified evaluators by the Chief Judge of the Circuit Court if he or she demonstrates incompetence as an evaluator, clear bias for or against a party or attorney, is consistently unavailable to serve as an evaluator, fails to submit documentation establishing compliance with the continuing

education requirement, fails to comply with this ADR Plan, orders of the court, or the standards of conduct for evaluators promulgated by the state court administrator, or for other just cause.

4. Assignment to Panels.

Case evaluators will be selected for service by a system of blind draw rotation by the ADR Clerk to assure that each case evaluator on the list is offered and assigned approximately the same days of service. If a substitute case evaluator must be assigned, the same or similar assignment procedure shall be used by the ADR Clerk to select the substitute. The ADR Clerk shall maintain records of service of case evaluators on panels and make those records available to the public.

GENERAL CIVIL MEDIATION

Under MCR 2.411, the Court may refer any civil action to mediation. "Mediation" is a process in which a neutral third party facilitates communication between parties, assists in identifying issues, and helps explore solutions to promote a mutually acceptable settlement. A mediator has no authoritative decision-making power and the process itself does not trigger a subsequent exposure to monetary sanctions.

1. Application for General Civil Mediators

An eligible person desiring to serve as a general civil mediator may apply to the ADR Clerk to be placed on the list of qualified general civil mediators. Application forms shall be available in the office of the ADR Clerk. The application form for a general civil mediator shall comply with the requirements of MCR 2.411(E)(1).

2. Eligibility for General Civil Mediators

To be eligible to serve as a general civil mediator, a person must meet the qualifications set forth in MCR 2.411(F).

3. Review of Applications for General Civil Mediators.

- a. At least annually, the ADR clerk will disseminate information to potentially interested persons that the review process is approaching. Any person interested in providing general civil mediation services is invited to submit an application to the ADR Clerk who will distribute all applications received since the last review process to the ADR Committee for review.

- b. Persons meeting the qualifications shall be placed on the list of approved general civil mediators for a period of 5 years and must reapply at the end of that time in the same manner as persons seeking to be added to the list.
- c. Selections shall be made without regard to race, ethnic origin, or gender. Residency or principal place of business may not be a qualification. The approved list and the applications of approved general civil mediators, except for the optional section identifying the applicant's gender and racial/ethnic background, shall be available to the public in the office of the ADR clerk.
- d. Applicants who are rejected for the list of general civil mediators shall be notified of that decision by the ADR Clerk within 7 days. Within 21 days of notification of the decision to reject an application, the applicant may seek reconsideration of the committee's decision by the Chief Judge. The court does not need to provide a hearing. Documents considered in the initial review process shall be retained for at least the period during which the applicant can seek reconsideration of the original decision.
- e. The names of applicants who have been approved shall be placed on the list of general civil mediators no later than 28 days after approval by the committee or approval by the Chief Judge on a motion for reconsideration.
- f. A mediator may be removed from the general civil mediator list by the Chief Judge of the Circuit Court if he or she demonstrates incompetence as a mediator, clear bias for or against a party or attorney, is consistently unavailable to serve as a mediator, fails to submit documentation establishing compliance with the continuing education requirement, fails to comply with this ADR Plan, orders of the court, or the standards of conduct for mediators promulgated by the state court administrator, or for other just cause.

4. Assignment of General Civil Mediators.

Assignment of general civil mediators will be made in accordance with MCR 2.411(B). If the parties do not notify the ADR Clerk of their selection within the 14 days allowed, the ADR Clerk will select a mediator from the list of general civil mediators without notice to the parties and advise the parties or their attorneys who will be conducting the mediation. The ADR Clerk will select a mediator from the list of general civil mediators in a random or rotating manner that assures, as nearly as possible, that each mediator on the list is assigned approximately the same number of cases over a period of one year. If a substitute mediator must be assigned, the same or similar assignment procedure shall be used

to select the substitute, whenever possible. Once the ADR Clerk selects a mediator, the parties are responsible for any fees generated by that mediator or service. A mediator selected in this manner may decline to be appointed to the particular case, but such unaccepted appointment shall count as an appointment for purposes of the random or rotating selection procedure.

DOMESTIC RELATIONS MEDIATION

Under MCR 3.216, the Court may refer any contested issue in a domestic relations action to mediation. "Mediation" is a process in which a neutral third party facilitates communication between parties, assists in identifying issues, and helps explore solutions to promote a mutually acceptable settlement. A mediator has no authoritative decision-making power and the process itself does not trigger a subsequent exposure to monetary sanctions.

1. Application for Domestic Relations Mediators

An eligible person desiring to serve as a domestic relations mediator may apply to the ADR Clerk to be placed on the list of qualified domestic relations mediators. Application forms shall be available in the office of the ADR Clerk. The application form for a domestic relations mediator shall comply with the requirements of MCR 3.216(F)(1).

2. Eligibility for Domestic Relations Mediators

To be eligible to serve as a domestic relations mediator, a person must meet the qualifications set forth in MCR 3.216(G).

3. Review of Applications for Domestic Relations Mediators.

- a. At least annually, the ADR clerk will disseminate information to potentially interested persons that the review process is approaching. Any person interested in providing domestic relations mediation services is invited to submit an application to the ADR Clerk, who will distribute all applications received since the last review process to the ADR Committee for review.
- b. Persons meeting the qualifications specified in MCR 3.216 shall be placed on the list of approved domestic relations mediators for a period of 5 years and must reapply at the end of that time in the same manner as persons seeking to be added to the list.
- c. Selections shall be made without regard to race, ethnic origin, or gender. Residency or principal place of business may not be a qualification.

- d. The approved list and the applications of approved domestic relations mediators, except for the optional section identifying the applicant's gender and racial/ethnic background, shall be available to the public in the office of the ADR clerk.
- e. Applicants who are not approved as domestic relations mediators shall be notified of that decision by the ADR Clerk within 7 days. Within 21 days of notification of the decision to reject an application, the applicant may seek reconsideration of the Committee's decision by the Chief Judge. The court does not need to provide a hearing. Documents considered in the initial review process shall be retained for at least the period during which the applicant can seek reconsideration of the original decision.
- f. The names of applicants who have been approved shall be placed on the list of domestic relations mediators no later than 28 days after approval by the Committee or approval by the Chief Judge on a motion for reconsideration.
- g. A mediator will be removed from the domestic relations mediator list by the Chief Judge of the Circuit Court if he or she demonstrates incompetence as a mediator, clear bias for or against a party or attorney, is consistently unavailable to serve as a mediator, fails to submit documentation establishing compliance with the continuing education requirement, fails to comply with this ADR Plan, orders of the court, or the standards of conduct for mediators promulgated by the state court administrator, or for other just cause.

4. Assignment of Domestic Relations Mediators.

Assignment of domestic relations mediators will be made in accordance with MCR 3.216(E). If the parties do not notify the ADR Clerk of their selection within the 14 days allowed, the ADR Clerk will select a mediator from the list of domestic relations mediators without notice to the parties and advise the parties or their attorneys who will be conducting the mediation. The ADR Clerk will select a mediator in a random or rotating manner that assures, as nearly as possible, that each mediator on the list is assigned approximately the same number of cases over a period of one year. If a substitute mediator must be assigned, the same or similar assignment procedure shall be used to select the substitute, whenever possible. Once the ADR Clerk selects a mediator, the parties are responsible for any fees generated by that mediator or service. A mediator selected in this manner may decline to be appointed to the particular case, but such unaccepted appointment shall count as an appointment for purposes of the random or rotating selection process

DISSEMINATION OF INFORMATION TO THE PUBLIC REGARDING ADR

The ADR Clerk shall be responsible for disseminating information about the Court's ADR Program to litigants and the general public. This information shall be made available in the ADR Clerk's office, the County Clerk's office, the Court's web site and other locations the ADR Clerk may deem appropriate. This information will include, among other things, information regarding the voluntary nature of ADR and a litigant's right to object to mediation by timely motion, as well as the provisions being made for indigent litigants. The information will also include information as to which domestic relations cases are not appropriate for mediation. The Court's annual ADR report will also be made available to the public.

INDIGENT PERSONS

The 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 Courts will make use of community dispute resolution service available to Lapeer County residents as well as mediators on the Court's list of qualified mediators who are willing to provide services on a non-fee or reduced fee basis. If a party is unable to pay a fee and non-fee or reduced fee mediation is not available, the Court will not order that party to participate in mediation. The Court shall encourage mediators who receive referrals from the Court to provide a portion of their services on a pro bono basis.

SUPERVISION

The Chief Judge of the Circuit Court shall exercise general supervision over the implementation of this Plan and the case evaluator and mediator selection process and shall review the operation of the Court's ADR Plan at least annually to assure compliance. In the event of non-compliance, the Court shall take such action as is needed. This action may include recruiting persons to serve as case evaluators and mediators or changing the Court's ADR Plan.

(ADR Plan 7/04)