

Effective Date: August 1, 2001

The purpose of this administrative order is to adopt the local Alternative Dispute Resolution Plan (ADR) for the Washtenaw County Trial Court in accordance with MCR 2.410.

I. Discretion of the Court

At any time after the commencement of an action, on its own initiative or the request of a party, pursuant to MCR 2.401 and this local court rule, the trial judge shall consider whether case evaluation or alternative dispute resolution is appropriate. It is the Unified Trial Court's expectation that all appropriate cases will be assigned to case evaluation and/or mediation pursuant to this Plan. A form Order for Mediation is attached, A.

- A.** In civil cases, the trial judge shall make a determination regarding referral to case evaluation and/or mediation at the initial pretrial or scheduling conference.
- B.** In family law cases, the trial judge shall schedule an initial conference with attorneys and parties within 60 days after an answer is filed. Both parties shall complete pretrial summaries including a Verified Statement of Assets and Liabilities. At this conference, if the parties have not

initiated private mediation or private evaluative mediation the court will determine whether mediation is appropriate.

II. Alternative Dispute Resolution Clerk

The court will appoint an ADR Clerk who will fulfill all the duties required of the ADR Clerk by the Michigan Court Rules.

III. Alternative Dispute Resolution Committee

A. Membership – The Unified Trial Court shall, in consultation with relevant sections of the Bar Association and other interested entities, select nine (9) individuals to serve as the Washtenaw County ADR Committee. The chief judge or his designee shall chair the committee. The Committee shall be made up of persons knowledgeable about case evaluation and alternative dispute resolution processes and may include lawyers, non-lawyers, judges, court staff and others.

The committee may appoint such subcommittees and advisory committees as it sees fit. These subcommittees may include persons outside the membership of the committee. However, each official action of the committee must be supported by a majority of the members of the committee.

B. Terms – The term of each committee member shall be three (3) years. To create staggered terms, three (3) of the initial appointees shall be appointed to three (3) year terms; three (3) of the initial appointees of the committee shall be appointed to two (2) year terms; and three (3) of the

initial appointees shall be appointed to one (1) year terms. Committee members may serve consecutive terms.

C. Functions – The Committee shall make recommendations to the chief judge regarding the following:

1. Pursuant to MCR 2.404, MCR 2.410(B) and MCR 3.216(F), the criteria for selection of evaluators and mediators; the selection of evaluators and mediators; and certification of the list of persons qualified to act as evaluators and mediators in all civil and family cases in the Unified Trial Court.
2. The development of policies and procedures consistent with and in furtherance of this plan and the development of forms to facilitate the orderly and effective use of alternative dispute resolution in the Unified Trial Court.
3. The review of any complaints and proposed changes in this plan and the resolution of those complaints and the need for any changes in the plan.

The Committee will serve as the liaison between the Unified Trial Court and the Washtenaw County Bar Association as to any matters relating to this Plan. The Committee will work with the Unified Trial Court and the Bar Association to promote and publicize the appropriate use of ADR.

IV. Selection and Assignments of Mediators

- A. Maintenance of the List** – The ADR Clerk shall maintain three separate list of persons: (a) those qualified and available to serve as case evaluators under MCR 2.404(B); (b) those qualified and available to serve as mediators under MCR 2.411 (E); and those qualified and available to serve as mediators under MCR 3.216(F).¹
- B. Recruitment** – The ADR Clerk shall provide notice to the members of the Washtenaw County Bar Association and the special purpose bar associations (e.g., Women Lawyers Association of Michigan, Vanzetti Hamilton Bar Association, etc.), seeking applications to the evaluator/mediator panels. This notice should include a description of the different panels, qualifications and upcoming trainings. The ADR Clerk shall review applications semi-annually and identify those individuals qualified to serve under the applicable court rules as case evaluators and mediators.
- C. Qualifications** – To be listed as a case evaluator, an applicant must satisfy the requirements of MCR 2.404(B) and apply and be certified under this rule. To be listed as a mediator under MCR 2.410 an applicant must satisfy the requirements of MCR 2.411(F) and apply and be certified under this rule. To be listed as a mediator under MCR 3.216 an applicant must satisfy the requirements of MCR 3.216(G) and apply and be certified

¹ The ADR Clerk, upon the recommendation of the ADR Committee, has the authority to create sub-panels, e.g. for juvenile law or elder law mediations or for the commercial litigation case evaluators, etc. The ADR Committee has the authority to assure that members of those sub-panels meet any specialized training requirements necessary to mediate those cases.

under this rule. The ADR Committee is authorized to administer the application and certification process, including the review of qualifications of mediators; satisfaction of training requirements on mediators; and approval of training programs for mediators.

- D. Compliance with Plan** - Case evaluators and mediators certified under this rule must agree to comply with the Court's ADR Plan; to comply with all orders of the court regarding cases submitted to case evaluation or mediation; to conduct themselves with honesty, integrity, and impartiality; and to refrain from any form of discrimination prohibited by law. Failure to comply with the provisions of this section or the administrative policies of the Committee or the Court is grounds for removal from the mediator/evaluator list.
- E. Rotation and Maintenance of the List** - To avoid any appearance of favoritism, a strict rotational system will be used. Initially, the parties will be given a copy of the list of mediators and may agree on a mediator from that list. The parties may select a mediator not on the ADR Clerk's list. If the parties are unable to choose a mediator, the next mediator on the list will be assigned by the mediation clerk. In exceptional circumstances, because of the complexity of the issues involved and the particular skills of a mediator, the Court may assign a specific mediator in a case.
- F. Annual Review and Report** - The rotational system should insure that mediators are equitably used over a period of time. The ADR Clerk shall maintain statistics indicating the number of times each mediator is selected

off the rotational list, selected privately by the parties or selected based on the recommendation of a judge. These records will be summarized in a report that shall be made available to all mediators as well as members of the public.

V. Dissemination of Information

The ADR Clerk shall provide every trial court making referrals to ADR with brochures, directed at potential litigants, explaining ADR. Such brochures shall be provided to every plaintiff with an additional copy to be served upon the defendant. The brochures shall describe the following:

- A. Basic information about ADR and the different processes (mediation v case evaluation);
- B. Information regarding cases not appropriate for mediation; and
- C. Right and process to object to mediation (the State Court Administrative Office pro se Motion to Object to Mediation shall be made available to the public).

VI. Exemption for Cases Involving Domestic Violence, Child Abuse, Elder Abuse or Neglect

- A. If a family court case involves child abuse or neglect, elder abuse or neglect, or a personal protection order has been issued, or there are sworn statements that domestic violence has occurred, the case is exempt from referral to ADR under MCR 3.216(C)(3). This provision does not preclude parties otherwise exempt from ADR from stipulating to a written order referring the case to ADR or from requesting a hearing on the appropriateness of referral to ADR.

- B.** Cases will be screened for potential domestic violence through Model Screening Protocol developed by the State Court Administrative Office.
- C.** A mediator shall not engage in mediation when it appears to the mediator or when either party asserts that domestic or family violence has occurred unless:

 - 1. Mediation is ordered by the court after a hearing or agreed to by the victim of the alleged domestic or family violence; and
 - 2. Mediation is provided in a specialized manner that protects the safety of the victim by a mediator who is trained in the mediation of domestic and family violence cases; and
 - 3. The victim is permitted to have in attendance at mediation a supporting person of her or his choice, including but not limited to an attorney or advocate.

VII. Fees

Each mediator listed on the ADR Clerk’s list pursuant to MCR 2.411 and 3.216 shall have their fee schedule included on that list. Each mediator providing services under this plan shall execute a written fee agreement with the parties. A mediator providing services under MCR 2.411 is entitled to fees pursuant to MCR 2.411 (D). A mediator providing services under MCR 3.216 is entitled to fees pursuant to MCR 3.216(J).

VIII. Access to ADR for the Indigent

- A. Definitions** – Indigency will be defined as household income at or below 50% of the median income for Washtenaw County, Michigan, according

to figures published by the U.S. Department of Housing and Urban Development. These income guidelines will be updated annually. A person seeking to receive a fee waiver or a pro bono case evaluation or mediation services shall complete S.C.A.O. form MC20, Affidavit for the Suspension of Fees and Costs. The affidavit shall be presented to the Court at the first pretrial conference. The Court shall review the affidavit and may make other appropriate inquiries about the financial circumstances of the household. A litigant who is determined “indigent” is exempt from case evaluation and mediation fees under this Plan. However, in a domestic case, the Court may order a fee waiver as to one party only or may order that full fees be paid by one party.

- B. Indigent Access to Mediation and Evaluation Services** – A party meeting the Court’s indigency standard is entitled to free ADR process if ordered by the Court. All listed case evaluators and mediators under MCR 2.404(B), MCR 2.410 or MCR 3.216 are expected to provide pro bono services to indigent persons in up to two cases per year as assigned by the Court. If the Court assigns a case under this section the Court shall notify the ADR provider at the time of the assignment that fees are not to be charged to the indigent party. If an ADR provider fails to accept a pro bono assignment after three attempts by the ADR clerk, the provider may be removed from the panel by the chief judge upon recommendation of the ADR committee. A provider who has been removed from the panel may seek to be readmitted at the next open application period.

C. Records – The ADR Clerk shall maintain pro bono service records for each person listed as a case evaluator or mediator. The ADR Clerk, in conjunction with the ADR Committee, shall determine how to identify pro bono service hours. The ADR reporting form shall identify when ADR services are provided on a pro bono basis.

Date

Timothy P. Connors, Chief Judge