

STATE OF MICHIGAN
For The
20TH JUDICIAL CIRCUIT COURT
58TH JUDICIAL DISTRICT COURT
OTTAWA COUNTY PROBATE COURT

Local Administrative Order 2013-02 J

Alternative Dispute Resolution Plan

PRESENT: Honorable Edward R. Post, Chief Circuit Court Judge
Honorable Bradley Knoll, Chief District Court Judge
Honorable Mark A. Feyen, Probate Judge

In response to the State Court Administrative Memorandum 2012-08, the Ottawa County Trial Courts reviewed and rescinded the previously adopted LAO 2002-02 (Alternative Dispute Resolution Plan). The revisions reflected in this revised ADR Plan are intended to comply with Mediator Training Standards and Procedures, effective January 1, 2013. This ADR Plan implements Michigan Court Rules, Subchapter 2.400 as it relates to alternative dispute resolution. The Ottawa County Courts adopt this revised ADR plan pursuant to MCR 2.410(B).

IT IS SO ORDERED that the 20th Judicial Circuit Court, the 58th District Court and the Ottawa County Probate Court adopt this ADR Plan, effective July 15, 2013.

Date: 7/8/13



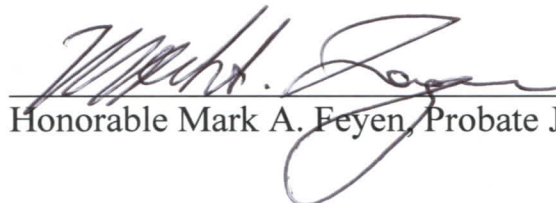
Honorable Edward R. Post, Chief Circuit Judge

Date: 7/9/13



Honorable Bradley Knoll, Chief District Judge

Date: 7-9-13



Honorable Mark A. Feyen, Probate Judge

P-32369

ALTERNATIVE DISPUTE RESOLUTION PLAN

**20TH JUDICIAL CIRCUIT COURT
58TH JUDICIAL DISTRICT COURT
OTTAWA COUNTY PROBATE COURT**

Honorable Edward R. Post, Chief Circuit Court Judge
Honorable Bradley Knoll, Chief District Court Judge
Honorable Mark A. Feyen, Probate Judge

County of Ottawa

OTTAWA COUNTY COURTS
ALTERNATIVE DISPUTE RESOLUTION (ADR) PLAN

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1. Introduction to the ADR Plan

The judges of the 20th Circuit Court, the 58th District Court and the Ottawa County Probate Court 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 justice system.

In addition to the ADR processes traditionally used by the Circuit and District Courts in civil cases, e.g., case evaluation, the Ottawa 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 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.

Pursuant to MCR 2.410 and local administrative order 2013-02 J, the Ottawa County Courts (hereafter Court) adopt the following ADR Plan, effective July 15, 2013.

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: This process may occur at any time after commencement of an action. On its own initiative, or upon request of a party, the Court may direct attorneys (with or without clients) to appear for a conference. More than one conference may be held in any action.

Case Evaluation: Under MCR 2.403, the Court may submit any civil action in which the relief sought is primarily money damages or division of property to case evaluation. Case evaluation is a process by which panels of three attorney case evaluators assess the relative strength and weakness of the parties' legal position and immediately assign a monetary value to the case. Parties may accept or reject the evaluation. Unlike other forms of ADR, if a party rejects an evaluation and the action proceeds to verdict, that party must pay the opposing party's actual costs unless the verdict is more favorable to the objecting party than the case evaluation, MCR 2.403 (O).

Mediation: Under MCR 2.410 (C), the Court may refer any civil action to mediation. Under MCR 3.216 (C), the Court 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: Under MCR 3.216 (I), this process 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 recommendation may not be read by the court and may not be admitted into evidence without consent of the parties. The Court is not to know the identity of a party who rejected the recommendation and the Court cannot impose any monetary sanctions.

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

3. ADR Clerk

The Court 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 Clerks are:

20th Circuit Court

Trial Division Director or Designee

58th District Court

Chief Clerk – Grand Haven or Designee

Chief Clerk – Holland or Designee

Chief Clerk – Hudsonville or Designee

Probate Court

Probate Register or Designee

4. Providing ADR Information

The ADR Clerk shall be responsible for providing information about the ADR Program to litigants, attorneys and the general public. The Court will educate and inform the public about ADR options. The Court will develop a form letter inviting anyone interested in providing mediation services to complete an Application (MC 34; MC 281a; MC 281b) which will be available to the public. Additional information will be provided through links on the Court website (www.miottawa.org) to relevant materials, including an ADR brochure developed by the SCAO Office of Dispute Resolution, entitled “Resolving Your Dispute...Without Going to Trial”. The brochure includes, among other things, information regarding the voluntary nature of ADR, selection of a mediator, how to object to mediation, costs, and how to learn more about mediation.

5. General ADR Procedures

a. Case Screening

Before issuing a Scheduling Order, the Court 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 Ottawa 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 Court's ADR Plan, orders of the Court 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 skills; 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/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 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 a 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 providing the generally accepted components of domestic relations mediation skills;
- 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 a 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 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

Any person interested in providing case evaluation or mediation services is invited to submit an application to the ADR Clerk. The ADR Clerk will distribute all applications received since the last review process to the Ottawa County Bar Association ADR Committee for review. The ADR Committee will meet as needed to timely review applications and compile a list of qualified case evaluators, general civil mediators and domestic relations mediators. Persons meeting the qualifications specified in (Sections 5 c, d, e) above shall be placed on all lists for which they are qualified. The ADR Committee shall also review all requests for special approval and make recommendations regarding approval to the Court. The ADR Committee shall review the case evaluator list and designate each applicant as plaintiff, defense or neutral for use in assigning case evaluators to case evaluation panels. The ADR Committee shall submit all lists to the Court for final review and approval. Selections shall be made without regard to race, ethnic

origin or gender. No member of the Ottawa County Bar Association may serve on the ADR committee reviewing applications more than three years in any nine-year period. The ADR Committee must have a minimum of three members.

Applicants who are determined to be Not Qualified for placement on the list(s) shall be notified of that decision by the ADR Committee. Applicants will have 21 days to apply for reconsideration by the Chief Judge, or in the case of domestic relations mediation applicants, by the presiding judge of the family division. Any documents considered in the initial review process shall be retained for at least the 21 days described above. The appeal and all related documents must be filed with the ADR Clerk, with a copy for the Chief Judge (or the presiding judge of the family division, as the case may be), and received within 21 days of the date the ADR Committee decision was originally sent.

g. Specialized Lists

Separate lists are maintained by the ADR Clerk, with appropriate designations for each case evaluator as plaintiff, defense or neutral; general civil mediators; domestic relations mediators; and Mediation Services. In addition these lists may include voluntary designations provided by domestic relations mediators, including “child-related issues only”, property-related issues only”, and evaluative mediation.

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.

The Court may require case evaluators attend orientation or training sessions or may provide written materials explaining the case evaluation process and the operation of the Court case evaluation program. However, case evaluators may not be charged any fees or costs for such programs or materials.

j. Availability of Lists

The lists of case evaluators, mediators and Mediations Services are available to the public (<http://miottawa.org/Courts/20thCircuit/ADR.htm>). Copies may be obtained from the ADR Clerk.

k. Removal from Lists

The Court may prohibit a person from serving as a case evaluator or mediator for good cause. Claims of conflict of interest shall be resolved by the judge assigned to the case.

l. Assignment to Case Evaluator Panels

The Court will refer cases to evaluation by an order of referral. The ADR Clerk assigns case evaluators to panels in a random or rotating manner that ensures, as nearly as possible; each case evaluator on a Specialized List is assigned approximately the same number of cases over a period of one year. If a substitute case evaluator must be assigned, the same or similar assignment procedure shall be used to select the substitute, whenever possible.

Specialized Lists which designate plaintiff, neutral or defense oriented case evaluators shall include one member from each category to comprise a panel. The Court does not assign presiding members to case evaluation panels.

On stipulation of the parties, the Court may appoint a panel selected by the parties. In such a case, the qualification requirements do not apply and the parties may agree to modify the procedures for conducting the case evaluation. Nothing precludes parties from stipulating to other alternative dispute resolution procedures that may aid in resolution of the case.

Any party, by timely motion, may object to the referral of their case to case evaluation. The Case Preparation Order makes this right clear to counsel and parties.

m. Assignment of General Civil Mediators

The Court will refer cases to general civil mediation by an order of referral. A list of court-approved mediators and Mediation Services will be provided to the parties. Except for good cause shown, the parties' attorneys or the parties, if

unrepresented, shall confer and select a mediator or Mediation Services within 14 days of the date of the order and notify the ADR Clerk. Within 21 days of the date of the order, the mediator or Mediation Services shall advise the ADR Clerk and all parties, in writing, who will be conducting the mediation and the date and time set for the mediation. The parties will provide the mediator or Mediation Services with the Court ADR referral order.

In the event that the parties do not notify the ADR Clerk of their selection within the 14 days allowed, the ADR Clerk will select a mediator without notice to the parties and advise the parties and their attorneys who will be conducting the mediation. The ADR Clerk will select a mediator in a random or rotating manner that ensures, as nearly as possible; 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 Mediation Services.

Any party, by timely motion, may object to the referral to mediation. The Case Preparation Order makes this right clear to counsel and parties.

n. Assignment of Domestic Relations Mediators

The Court will refer all domestic relations cases to mediators by the Case Preparation Order, unless a personal protection order exists, or a child abuse and neglect case is pending. In such cases, mediation shall be held only if stipulated by the parties, or a hearing is held to determine the appropriateness of mediation. The Case Preparation Order shall advise the parties that low-cost mediation is available through Mediation Services (<http://www.mediationsolvesconflicts.org/>), and without charge to parties whose fees have been waived or suspended by court order. A list of Court approved domestic relations mediators and Mediation Services is available to the parties (<http://miottawa.org/Courts/20thCircuit/ADR.htm>). Except for good cause shown, the parties' attorneys, or the parties, if unrepresented, shall select a mediator or Mediation Services within 14 days of the date of the order. Within 21 days of the date of the order, the mediator or Mediation Services shall advise the ADR Clerk and all parties, in writing, who will be conducting the mediation and the date and time set for the mediation. The parties will provide the mediator with a copy of the Case Preparation Order.

In the event the parties do not notify the ADR Clerk of their selection within the 14 days allowed, the ADR Clerk shall select a mediator without notice to the parties and advise the parties and/or their attorneys who will be conducting the mediation. The ADR Clerk will select a mediator 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. Domestic relations mediators who have designated “child-related issues only” or “property-related issues only” shall be assigned on a rotating basis in accordance with such designations. 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 Mediation Services.

Any party, by timely motion, may object to the referral of their case to mediation. The Case Preparation Order makes this right clear to counsel and parties. Domestic relations mediation must take place within a reasonable time at a location accessible by the parties within Ottawa County or an adjoining county.

o. Evaluative Mediation in Domestic Relations Cases

The ADR Clerk shall note on the list of qualified domestic relations mediators which mediators are willing to provide evaluative mediation. Parties seeking evaluation mediation must notify the mediator. With seven (7) days after the evaluative mediation, the mediator shall prepare and send a written report to the parties setting forth the mediator’s proposed recommendation for settlement purposes only and send a proof of service to the ADR Clerk. The parties shall, within seven (7) days of the date of service, accept or reject the recommendation of the mediator in writing. If both parties accept the recommendation in full, the attorneys or the parties, if unrepresented, shall schedule a final hearing for entry of a judgment of divorce. If either party rejects the recommendation, the mediator shall report the results of the mediation to the ADR Clerk as provided in MCR 3.216 (H) (6), and the case shall proceed to trial.

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 a 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 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 or through the American Arbitration Association. Information regarding private arbitrators, local arbitration services and arbitration through the American Arbitration Association is available at www.adr.org.

8. ADR for Indigent Litigants

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 Court shall encourage mediators who receive referrals from the Court to provide a portion of their services on a free or reduced fee basis. The Court may also refer indigent cases to Mediation Services of Holland, Michigan.

9. Supervision

The Chief 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 Court shall review the operation of the ADR Plan at least annually to ensure compliance. In the event of non-compliance, the Court shall take such action as needed. This action may include recruiting persons to serve as case evaluators and mediators or revising the ADR Plan. Any concerns regarding the ADR process shall be submitted in writing to the ADR Clerk. The concerns will be reviewed by Court Administration and the Chief Judge will be advised as appropriate.

In implementing the ADR Plan, the Court, Court employees, and the ADR Committee shall take all reasonable steps necessary to ensure the list of case evaluators and mediators fairly reflects the racial, ethnic and gender diversity of the members of the state bar in the jurisdiction for which the list is compiled who are eligible to serve as case evaluators and mediators.