

State of Michigan 48 <sup>th</sup> Circuit Court Allegan County	<b>AMENDED ADMINISTRATIVE ORDER ALTERNATIVE DISPUTE RESOLUTION PLAN</b>	Order No.: 2008-001
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113 Chestnut Street, Allegan, Michigan 49010

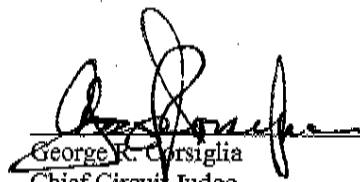
269-673-0300

**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 Local Alternative Dispute Resolution Plan appended to this Order upon approval by the State Court Administrative Office.

Effective Date: 4/2/08

Date: 3/05/08

  
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George R. Corsiglia  
Chief Circuit Judge

48<sup>th</sup> Circuit Court  
Alternative Dispute Resolution (ADR) Plan

Pursuant to MCR 2.410, the 48<sup>th</sup> Circuit Court adopts the following ADR plan effective April 1, 2008.

ADR means "any process designed to resolve a legal dispute in the place of court adjudication: ADR includes settlement conferences ordered 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.

ADR Clerk

The Circuit Court Administrator shall be the designated ADR clerk. The Administrator may utilize the services of other Circuit Court personnel, as necessary; to carry out the duties established under this plan or court rule.

Dissemination of Information Regarding ADR

The ADR Clerk shall 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 Clerk shall be responsible for coordinating the referral of cases to ADR, tracking the progress of cases through ADR and for disseminating information about the Court's ADR program.

Case Evaluation, General Civil Mediation and Domestic Relations Mediation

Under MCR 2.403, a Court may refer 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 a panel of three qualified evaluators assesses the relative strengths and weaknesses of the parties' legal positions and immediately assigns a value to the case. Rejection of a case evaluation may result in the subsequent assessment of monetary sanctions.

Under MCR 2.411, a 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 mutual acceptable settlement. A mediator has no authoritative decision-making power and the process itself does not trigger exposure to monetary sanctions.

Under MCR 3.216, a Court may refer any domestic relations action to mediation unless otherwise provided by statute or court rule. Domestic relations mediation is a nonbinding process, in which, a mutual third party facilitates communication between parties to promote settlement. If the parties so request, and the mediator agrees, the mediator may perform evaluative mediation by providing a written recommendation for settlement of any issues that remain unresolved at the conclusion of a mediation proceeding. MCR 3.216 (I).

- (1) Application: An eligible person desiring to serve as a case evaluator, general civil mediator and/or domestic relations mediator must apply to the ADR Clerk to be placed on the list of qualified case evaluators or mediators. Application forms are available in the office of the ADR Clerk or through the State Court Administrators Office. The application form includes a certification that the applicant meets the requirement for service and that the applicant will not discriminate against parties, attorneys, other case evaluators or mediators on the basis of race, ethnic origin, gender or other protected personal characteristic.

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

- A. The applicant must have been a practicing lawyer for, at least, five (5) years and is a member in good standing of the State Bar of Michigan.
- B. The applicant must demonstrate that a substantial portion of the applicants practice for the last five (5) years has been devoted to civil litigation matters, including investigation, discovery, motion practice, case evaluation, settlement, trial preparation and/or trial.
- C. 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.

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

- A. Complete a training program approved by the State Court Administrator providing the generally accepted components of mediation skills.
- B. Have one or more of the following:
  - (i) Juris doctor degree or graduate degree in conflict resolution; or
  - (ii) 40 hours of mediation experience over two years, including mediation, co-mediation, observation and role playing in the context of mediation.
- C. 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 any approved mediator.
- D. 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 ADR clerk shall refer the application to the Chief Circuit Judge to make the determination on the basis of criteria provided by the State Court Administrator.
- E. Approved mediators are required to obtain eight (8) hours of advanced mediation training during each two- (2) year period. Failure to submit documentation of compliance to the ADR clerk is grounds for removal from the list.
- F. General civil mediators must comply with the court's ADR plan, orders of the court regarding cases submitted to mediation and Standards of Conduct for Mediators promulgated by the State Court Administrator.

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

- A. The applicant must
  - (i) be a licensed attorney, a licensed or limited licensed psychologist, a licensed professional counselor, or a licensed marriage and family therapist;
  - (ii) have a Masters degree in counseling, social work, or marriage and family therapy;
  - (iii) have a Graduate degree in a behavioral science, or
  - (iv) have five (5) years experience in family counseling.
- B. The applicant must have completed a training program approved by the State Court Administrator providing the generally accepted components of domestic relations mediation skills.

- C. The applicant must have observed two (2) 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.
  - D. 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 ADR Clerk shall refer the application to the Chief Circuit Judge to make the determination based on criteria provided by the State Court Administrator.
  - E. Approved mediators are required to obtain eight (8) hours of advanced mediation training during each two (2) year period. Failure to submit documentation establishing compliance is grounds for removal from the list.
  - F. Domestic relations mediators must comply with the court's ADR plan, orders of the court regarding cases submitted to mediation and standards of conduct for mediators promulgated by the State Court Administrator.
- (3) Recruitment: Notice will be provided to members of the local Bar Association, as well as, Bar Associations in adjoining counties to encourage qualified applicants.
- (4) Review of Applications: Any qualified person interested in providing case evaluation or a mediation service is invited to submit an application to the ADR Clerk. The ADR Clerk shall submit all applications to the Circuit Judges for review. Persons meeting the qualifications specified in this plan and the court rules shall be placed on all lists for which they have applied. Approved mediators and/or case evaluators shall be placed on the list for a period not to exceed five (5) years and must re-apply at the end of that time in the same manner as persons seeking to be added to the list.
- (5) Availability of Lists: the ADR Clerk shall maintain the approved lists of case evaluators and mediators. The lists shall be available to the public upon request. The ADR clerk shall also maintain information available to all mediators and case evaluators showing the number of times each mediator or case evaluator was used on an annual basis.
- (6) Assignment.
- A. Case evaluators.

The ADR Clerk shall assign case evaluators on a random basis taking into consideration availability and potential conflicts in making said assignments in accordance with MCR 2.404(c)(1).

B. General Civil Mediators.

At the time of the court's pre-trial hearing, if the case is referred to mediation, the parties may stipulate to the selection of the mediator. If the parties agree to the selection of the mediator the court's pre-trial order shall specify the mediator selected provided the mediator is willing to serve within a period that would not interfere with the timeframes set by the court's scheduling order.

If the parties do not agree to the selection of a mediator the ADR Clerk shall be provided with a copy of the court's pre-trial order referring the matter to mediation. The ADR Clerk shall assign the next available mediator from the approved list. This rotational assignment shall assure, as nearly as possible, that each mediator on the list is assigned approximately the same number of cases over a period of time.

C. Domestic Relations Mediators.

At the time of the court's pre-trial hearing, if the case is referred to mediation, the parties may stipulate to the selection of the mediator. If the parties agree to the selection of the mediator the court's pre-trial order shall specify the mediator selected provided the mediator is willing to serve within a period that would not interfere with the timeframes set by the court's scheduling order.

If the parties have not stipulated to a mediator, the parties must indicate whether they prefer a mediator who is willing to conduct evaluative mediation. Failure to indicate a preference will be treated as not requesting evaluative mediation.

A copy of the court's pre-trial order referring the matter to mediation shall be provided to the ADR Clerk. If the parties have not agreed on the selection of a mediator the ADR Clerk will assign a mediator from the approved list. The assignment shall be made on a rotational basis, except that if the parties have requested evaluative mediation, only a mediator who is willing to provide an evaluation may be assigned. The attorneys for the parties, or the party if unrepresented, shall be supplied with a Domestic Violence Screening questionnaire which must be completed and returned to the ADR Clerk within seven (7) business days. Parties who are subject to a personal protection order or who are involved in a child abuse and neglect proceeding may not proceed to mediation without a hearing to determine whether mediation is appropriate.

(7) ADR For 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 will encourage mediators who receive referrals from the court to provide a portion of their services on a free or reduced fee basis. The court's pre-trial order, which refers a case to mediation, shall include notice to all parties of their right pursuant to MCR 2.410 (E) to file a motion to set aside or modify the order.

(8) Evaluation and Oversight:

The Chief Circuit Judge shall exercise general supervision over the implementation of this plan, the case evaluator and mediator selection process and shall annually evaluate the operation of the Court's ADR plan.