

# 17<sup>TH</sup> JUDICIAL CIRCUIT COURT ADR PLAN

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## **INTRODUCTION TO ADR PLAN**

The judges of the 17<sup>th</sup> Judicial Circuit Court of Kent County have determined that Alternative Dispute Resolution (ADR) processes serve useful purposes in civil and domestic relations cases. ADR can save costs to the parties, lead to quicker resolutions, and increase parties' satisfaction with the results. ADR encompasses a variety of processes to help parties resolve issues without litigation.

The Court uses the ADR process, such as case evaluation, and intends to refer some cases to mediation, a process described in MCR 2.411 for general civil cases, and MCR 3.216 for domestic cases. To do so, the Court is required to adopt an ADR Plan. For the convenience of parties and counsel, the ADR methods most frequently used in the Court are described briefly below. The balance of the Plan describes the general procedures for mediation. For complete details regarding the procedures for mediation, parties and counsel are advised to read this Plan in conjunction with relevant statutes and court rules.

Pursuant to MCR 2.410 and Local Administrative Order 2017-06, the 17<sup>th</sup> Judicial Circuit Court adopts the following ADR Plan.

## **DEFINITIONS**

Alternative Dispute Resolution ("ADR") means any process designed to resolve a legal dispute without court adjudication. ADR includes the following:

- Settlement conferences under MCR 2.401
- Case evaluation under MCR 2.403
- Mediation under MCR 2.411 and MCR 3.216
- Evaluative mediation under MCR 3.216 (I)
- Arbitration under MCL 600.5070 et seq.
- Friend of the Court ADR processes under MCL 552.501 and MCL 552.505
- Other procedures provided by local court rule or ordered on stipulation of the parties under MCR 2.410.

"Settlement Conferences" (MCR 2.401) may occur at any time after the commencement of the action. On its own initiative, or upon the request of a party, the Court may direct the attorneys for the parties, alone or with the parties, to appear for a conference. More than one conference may be held in any one 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. This decision is not binding on the parties, but sanctions may attend the rejection of the decision if the case proceeds to trial.

"Mediation," whether under MCR 2.411 or MCR 3.216, is a process in which a neutral third party facilitates communication and identification of issues between parties and assists in exploring solutions to promote a mutually acceptable settlement. A mediator has no authoritative decision-

making power. The Court is advised only of the date the process is completed, the participants in the mediation, whether settlement was reached, and whether more ADR proceedings are contemplated.

“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 recommendation may not be read by the court, and may not be admitted into evidence without the 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.

“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 a 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 600.5070 et seq.

## **GENERAL PROCEDURES FOR MEDIATION**

The remainder of the ADR Plan sets forth the general procedures for mediation.

1. **Notice to Litigants and Public.** The ADR Clerk will make available written information describing the ADR Plan and ADR processes used by the Court. These materials will be available at the ADR Clerk’s Office and at other places selected by the ADR Clerk.
2. **ADR Plan Administration.**
  - A. **ADR Clerk.** The ADR Clerk is the Circuit Court Administrator or the Administrator’s designee.
  - B. **ADR Plan Oversight Committee.**
    1. **Membership.** The ADR Plan Oversight Committee will consist of the Chief Judge, the Presiding Judge of the Family Division, the ADR Clerk, two mediators selected at random by the ADR Clerk from the court-approved list, one an approved general civil mediator, the other an approved domestic relations mediator, a person designated by the President of the Grand Rapids Bar Association, a person designated by the State Court Administrative Office (SCAO)-designated local dispute resolution organization, a person designated by the Friend of the Court, a person with expertise in domestic violence issues selected by the Chief Judge and the Presiding Judge of the Family Division, and two attorneys who are not mediators who practice in the Circuit, including one who practices primarily in the Family Division, who will be selected by the Chief Judge and the

Presiding Judge of the Family Division. The Chief Judge and Presiding Judge of the Family Division may appoint additional members as they deem necessary to ensure that the Committee fulfills its duties.

2. **Terms.** The Committee members, other than the ADR Clerk, the Chief Judge, and the Presiding Judge of the Family Division, will serve three-year terms. The terms of Committee members will commence on January 1 following selection. No member (other than the ADR Clerk, Chief Judge, Presiding Judge of the Family Division, FOC designee, and SCAO designee) may serve more than two consecutive terms.

**C. Committee Duties.** The Committee will meet, at the call of the ADR Clerk, at least annually, to:

- (1) Fulfill the duties specified in the ADR Plan;
- (2) Make recommendations regarding improvement to the ADR Plan;
- (3) Oversee and support mediators to ensure quality;
- (4) Address formal complaints received by the ADR Clerk; and
- (5) Perform other tasks as necessary to ensure the success of the ADR Plan.

3. **Policy of Non-discrimination.** All participants in mediation and other procedures described in this Plan will not be discriminated against on the basis of race, ethnic origin, age, gender, disability, veteran status, religion, sexual orientation or other personal characteristic protected under local, state, or federal law.
4. **Screening for Violence and Neglect.** In domestic relations cases where a personal protection order is in effect or a child abuse or neglect proceeding is pending, the Court will not order mediation without a hearing or stipulation. The Model Protocol for Domestic Violence and Child Abuse Screening for Domestic Relations Mediation will be followed.
5. **Timing of Referral to Mediation.** A case may be ordered to mediation any time upon stipulation by both parties, upon motion by either party, or upon the court's own motion. When a motion for temporary relief is pending, the Court must consider mediation. If a case has not been referred to mediation before the settlement conference, the Court must consider referral then.
6. **Selection and Assignment of Mediators.** The ADR Clerk will maintain a list of approved mediators for general civil cases under MCR 2.411 and approved mediators for domestic relations cases under MCR 3.216.

- A. Selection.** The Court strongly encourages the parties to select a mediator who is properly trained and qualified to administer the mediation process and who will be fully subject to all provisions of this ADR Plan and the Michigan Court Rules. The Court maintains a list of Court-approved mediators who meet the qualifications set forth in the Michigan Court Rules. The list is available to the public and will be provided to the parties. The parties may, however, choose any mediator they believe qualified to serve in their case, including mediators who do not meet the training and experience qualifications set forth in the Michigan Court Rules. The Court will appoint any mediator the parties select, if the mediator accepts the appointment and is willing to serve within the time for completion of the mediation set forth in the Order of Referral.
- B. Assignment.** If the parties fail to notify the ADR Clerk, in writing, of their selected mediator by the date specified in the Court's Order of Referral, the ADR Clerk will assign a mediator from the Court's list of approved mediators.
- C. Method of Assignment.** The ADR Clerk will assign mediators from the Court-approved list of mediators so the opportunity for assignments will be distributed as equally as possible among mediators over a period of time. Neither selection of mediators by the parties nor assignment of pro bono mediations will be considered part of the distributive process. A mediator may decline any assignment, in which case the ADR Clerk will assign another mediator from the list. After assignment, upon motion of a party or stipulation, the Court may order that the parties select an alternate mediator. The Court's order will address payment for fees and costs incurred by the mediator initially assigned.

## **7. Mediator Conflict of Interest, Disclosure, and Disqualification.**

- A. Conflict and Disclosure.** Conflicts of interest are addressed in the SCAO Standards of Conduct for Mediators as follows:
- (1) A mediator should avoid a conflict of interest or the appearance of a conflict of interest both during and after mediation. A conflict of interest is a dealing or relationship that could reasonably be viewed as creating an impression of possible bias or as raising a question about the impartiality or self-interest on the part of the mediator.
  - (2) A mediator shall make a reasonable inquiry to determine whether there are any facts that a reasonable individual would consider likely to create a potential or actual conflict of interest for a mediator. The duty to make reasonable inquiry is a continuing duty during the mediation process.
  - (3) A mediator shall promptly disclose conflicts of interest and grounds of bias or partiality reasonably known to the mediator. A mediator should resolve all doubts in favor of disclosure. Where possible, such disclosure should be made early in the mediation process and in time to allow the participants to select an

alternate mediator. The duty to disclose is a continuing duty during the mediation process.

- (4) After disclosure, the mediator shall decline to mediate unless all parties choose to retain the mediator. If all parties agree to mediate after being informed of conflicts, the mediator may proceed with the mediation.
- (5) If a mediator's conflict of interest could be reasonably viewed as undermining the integrity of the mediation process, a mediator shall withdraw from or decline to proceed with the mediation regardless of the express agreement of the parties to the contrary.
- (6) A mediator shall not establish another relationship with any of the participants during the mediation process that would raise reasonable questions about the integrity of the mediation process, or impartiality of the mediator, without the consent of all parties.
- (7) In considering whether establishing a personal or another professional relationship with any of the participants after the conclusion of the mediation process might create a perceived or actual conflict of interest, the mediator should consider factors such as time elapsed since the mediation, consent of the parties, the nature of the relationship established, and services offered.
- (8) A mediator shall not use information about participants obtained in mediation for personal gain or advantage.

**B. Disqualification.** MCR 2.411 and MCR 3.216 address disqualification.

**C. Complaint.** If a party believes they have been prejudiced as a result of a conflict of interest, that party may file a complaint with the ADR Clerk as provided in Section 12.

## **8. Mediation Costs.**

### **A. Compensation of Mediators.**

1. **Selected Mediators.** If the parties select a mediator not on the Court-approved list, they may agree to any method and rate of compensation. The agreement will be reduced to writing and signed by all parties or their attorneys and the mediator.
2. **Listed Mediators.** Mediators appointed to the Court-approved list (Section 11.D.) will set their hourly rates consistent with their experience and usual charges for services performed. Their rates will be posted along with their names on the Court-approved list. They may change their posted rates annually, effective on a date to be set by the Court.

3. **Assigned Mediators.** Mediators assigned by the Court under this Plan will be compensated in accordance with MCR 2.411(D) and 3.216(J). The parties will pay the mediator's posted rate. The parties will not compensate the mediator for travel time or travel expenses unless otherwise agreed.

**B. Order of Referral Regarding Mediator Fees and Expenses.** The Order of Referral to ADR will include the following provisions regarding payment of the mediator:

“It is ordered: within 42 calendar days after the mediation, the entry of judgment, or the dismissal of the action, whichever occurs first, the designated mediator will be paid his or her hourly rate, which will be paid equally by the parties unless they otherwise agree. The mediator will not advance costs on behalf of the parties to the mediation. Costs related to the mediation will also be paid equally by the parties unless they agree otherwise.”

“In the event of noncompliance, the mediator may petition the Court for an order directing the payment of his or her fees. Response to the petition must be made within 10 days of service. The Court may set the matter for hearing, or rule on the matter without a hearing. If the Court finds a party is in violation of this order regarding payment of fees, the Court may assess costs in favor of the mediator and impose sanctions against the violating party.”

**C. Site Costs.** If the parties do not agree on a place to mediate or have been assigned an out of county mediator pursuant to this Plan, the mediation will occur in Kent County, Michigan, and the mediator may request the ADR Clerk for space to be provided by the Court without cost to the parties.

**9. Indigent Access to Mediation.** A litigant is “indigent” if he or she applies and qualifies for the waiver of filing fees under MCR 2.002, or on other grounds determined by the Court. A party meeting the Court's indigency standard is entitled to reduced cost or free mediation ordered by the Court. The SCAO-designated local dispute resolution organization, or other mediator willing to provide services pro bono, may be assigned to mediate cases where a party is indigent. The method of assignment of pro bono mediators will be as described at Section 6(C). A mediator may decline an assignment because a party is entitled to free services. If a party is unable to pay and free or low-cost mediation is unavailable, the Court will not order that party to participate in mediation.

**10. Conduct of Mediation.** Mediators will conduct the mediation pursuant to MCR 2.411(C) or 3.216 (H or I) and the Michigan Standards of Conduct for Mediators.

**11. Mediator Approval.**

**A. Recruitment.** The ADR Clerk will notify interested persons of the application procedure to be approved as a mediator. It will be publicized as needed through print, electronic and other appropriate means to reach interested parties, to maintain mediator rosters sufficient to handle the caseload, and to ensure mediator diversity.

**B. Qualifications.** General civil mediators will meet or exceed the qualifications listed in MCR 2.411(F) and the SCAO Mediation Training Standards and Procedures. Domestic relations mediators will meet or exceed the qualifications listed in MCR 3.216(G) and the SCAO Mediation Training Standards and Procedures.

**C. Application.** Mediator application forms will be available through the ADR Clerk, and will be filed with the ADR Clerk. The application forms will be consistent with MCR 2.411, MCR 3.216 and this Plan. The ADR Clerk and ADR Plan Oversight Committee may revise them to achieve the goals of the ADR Plan. The application will seek information from all applicants about their willingness to provide mediation services pro bono to fulfill Section 9.

**D. Appointment to Court-Approved List.**

1. The ADR Plan Oversight Committee will meet at least annually to review applications and compile the list of qualified general civil and domestic relations mediators. Applications may be accepted any time and applicants may be added to the list periodically as determined by the ADR Clerk and ADR Plan Oversight Committee. Inclusion on the list means the mediator has met the minimum qualifications required in the court rules, and does not mean the Court endorses the listed person or that person's qualifications.
2. The ADR Clerk will notify applicants not qualified for placement on the list. Applicants may apply for reconsideration by the ADR Plan Oversight Committee, before seeking reconsideration by the Chief Judge as provided for in MCR 2.411(E)(3).

**E. Reapplication and Continuing Training.** Approved mediators will be placed on the list for a fixed period not to exceed seven years, provided they submit to the ADR Clerk proof they have completed at least eight hours of advanced mediation training during each two-year period. At the end of seven years, the mediator must re-apply as set forth above.

**F. Dispute Resolution Programs.** Upon approval of the Court, the Court will list any SCAO-designated local community dispute resolution program, such as the Dispute Resolution Center of West Michigan and other Court approved programs, on the list of approved mediators. The local community dispute resolution organization will assign only those mediators who meet the qualifications stated above.

**G. Access to Mediator List.** The ADR Clerk will make available to the public the list of approved mediators, together with the applications of approved mediators, in accordance with MCR 2.411(E)(2)(c) and MCR 3.216(F)(2)(c). In addition, the ADR Clerk will make available biographical data as the mediator may supply on a form developed by the ADR Plan Oversight Committee.

## **12. Complaints.**

### **A. Procedure for Complaints About Mediators.**

1. When a complaint is received (whether by survey or other means), the ADR Clerk will assess whether the individual wishes to pursue a formal complaint.

This assessment will include an explanation of the process and confidentiality of the process, including the applicability of MCR 2.412 (D) (10) and the Michigan Standards of Conduct for Mediators. In order to proceed with a formal complaint, the individual must sign and return a form of intent to pursue a formal complaint. The prospective complainant will also be advised that non-complaining parties and counsel will be notified of the formal complaint consistent with Standard V. Confidentiality, paragraph (B).

Until final disposition, complaints and the complaint procedure shall be confidential pursuant to MCR 2.412.

2. The ADR Clerk will bring each formal complaint to the attention of the ADR Grievance Subcommittee. That standing Subcommittee will be comprised of one civil attorney, one domestic attorney and one additional member. Within 14 days of receiving a formal complaint, the subcommittee will discuss the complaint and vote to either a) dismiss it summarily or b) pursue it.
  - a. If the Subcommittee votes to dismiss the complaint summarily, it will notify the complainant and the mediator of its decision in writing within 14 days.
  - b. If the Subcommittee votes to pursue the formal complaint, the mediator against whom the formal complaint has been lodged will be notified by the ADR Clerk of the complaint and may respond, in writing, within 28 days after notice of the formal complaint is mailed to the mediator. Non-complaining parties and counsel will also be notified of the formal complaint. The ADR Clerk will notify the Subcommittee if/when a response is submitted. The Subcommittee may elect to discuss the response prior to presenting the formal complaint to the full Committee.

3. The Subcommittee will bring each formal complaint that has been summarily dismissed to the ADR Plan Oversight Committee at its next meeting.
4. The ADR Plan Oversight Committee will then address the formal complaint and the mediator's response and respond following its next meeting, and the ADR Clerk will immediately notify the mediator and the complainant in writing of the Committee's response.

**B. Grounds for Removal From List of Mediators.** A mediator will be removed from the list of approved mediators if he or she demonstrates incompetence as a mediator; 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 the ADR Plan, orders of the Court, or the Standards of Conduct for Mediators promulgated by the State Court Administrator; or for other just cause. The process for removal is set forth in Section 12(A)(4).

**C. Other Complaints.** Complaints regarding the mediation process, administration of this Plan, or any other aspect of this Plan will be submitted in writing to the ADR Clerk. The ADR Clerk will acknowledge receipt of the complaint within 14 days, and forward it to the ADR Plan Oversight Committee for response.

### **13. Evaluation of ADR Plan.**

- A. Plan Evaluation.** The ADR Plan Oversight Committee will evaluate the Plan periodically.
- B. Participant Evaluation.** All mediation participants will be asked to evaluate the mediation process and the mediator. The evaluation form will solicit information about the mediation process and whether those responding would choose mediation and that mediator for a future matter. The form may identify the responder or be filed anonymously. The general nature of the responses relating to each mediator will be compiled for use by the ADR Plan Oversight Committee and will be made available on request.