
ADMINISTRATIVE ORDER 1998-02

STATE OF MICHIGAN
THIRD JUDICIAL CIRCUIT

SUBJECT: Mediator Selection

Pursuant to the provisions of MCR 2.403 Mediation and 2.404 Selection of Mediation Panels,

IT IS ORDERED:

A. General.

1. For purposes of MCR 2.403 and MCR 2.404, unless ordered by the court pursuant to MCR 2.404(C)(3), the mediators for the Third Judicial Circuit Court shall be those persons who are approved as mediators by the Mediation Tribunal Association, Inc. (MTA), under the provisions of this administrative order.
2. **MTA Board of Directors.** The MTA Board of Directors (the Board) shall consist of five persons representing the following categories:
 - a. the Chief Judge of the Third Judicial Circuit Court;
 - b. a judge of a district court which utilizes the MTA in accordance with MCR 2.403 and MCR 2.404 to be selected by the Chief Judge of Third Judicial Circuit for a two-year term;
 - c. the Chief Judge Pro Tempore of the Third Judicial Circuit Court;
 - d. a plaintiff representative of the MTA who will serve for a three-year term and who is elected at the annual meeting of the MTA; and,
 - e. a defense representative of the MTA who will serve for a three-year term and who is elected at the annual meeting of the MTA.
3. **Mediation Clerk Designation.** The Third Judicial Circuit Court designates its mediation supervisor or other designee to serve as the mediation clerk.

B. Application.

1. **Forms.** All persons desiring to serve as a mediator in the Third Judicial Circuit Court shall complete an application form as approved by the MTA Board of Directors.
 - a. Subject to the provisions of this administrative order, the Board may amend the form.

2. **Availability.** Mediator application forms shall be available at the offices of the MTA located at 340 E. Congress, Suite 300, Detroit, MI, 48226-4388, (313) 224-5606.
3. **Certification.**
 - a. As indicated on the application form, an applicant must certify that he or she meets the requirements of service and will comply with its requirements, both substantively and procedurally, as it relates to all applicable laws, statutes and ordinances.
 - b. As indicated on the application form, the applicant is encouraged, but is not required to, complete the section identifying the applicant's gender and racial/ethnic background.
4. **Designation.** Applicants shall request assignment as a neutral, plaintiff, defense and/or a commercial mediator. Applicants also may request assignment to the lists for the mediation of medical malpractice, employment/discrimination, condemnation cases and other classes of cases as designated by the Board.
5. **Submission to MTA.** Upon completion of the application, the applicant shall return the application to the MTA offices.

C. Eligibility. To be eligible to serve as a mediator, a person must meet the qualifications provided by this subsection. Persons meeting the qualifications specified in this subsection shall be placed on a list of active approved mediators in accordance with their requested designation as neutral, plaintiff, defense, and where appropriate, an area of specialization.

1. **Mediator Lists.** Under this rule, pursuant to MCR 2.404(B)(4)(b), the MTA will compile and maintain lists of neutral, plaintiff and defense mediators for the mediation of general civil cases, a list for the mediation of commercial cases, as well as lists of neutral, plaintiff and defense mediators for the mediation of medical malpractice, employment/discrimination and condemnation cases.
2. **General Qualifications.**
 - a. The applicant must be a practicing lawyer for at least 5 years and a member in good standing of the State Bar of Michigan.
 - b. The applicant must demonstrate that a substantial portion of his/her practice for the last three years has been devoted to civil litigation matters, including investigation, discovery, motion practice, mediation, settlement, trial preparation, and/or trial.
 - c. The applicant must demonstrate that he or she has a substantial portion of his or her practice devoted to cases filed in the Third Judicial Circuit Court.

- d. The applicant cannot owe past-due fees to the MTA.
3. Neutral Mediators. Under MCR 2.404(B)(2)(c), that a substantial portion of the applicant's practice has been devoted to civil litigation matters and, under MCR 2.404(B)(4)(b), that his/her practice is not identifiable as representing primarily plaintiffs or defendants.
4. Plaintiff Mediators. Under MCR 2.404(B)(2)(c), that a substantial portion of the applicant's practice has been devoted to civil litigation matters and, under MCR 2.404(B)(4)(b), applicant must demonstrate that 80% of his/her practice is representing plaintiffs or the public agency in condemnation cases.
5. Defense Mediators. Under MCR 2.404(B)(2)(c), that a substantial portion of the applicant's practice has been devoted to civil litigation matters and, under MCR 2.404(B)(4)(b), that the applicant must demonstrate that 80% of their current practice is representing defendants, or a public agency in condemnation cases.
6. Specialized Lists.
 - a. With the exception of those seeking placement on the commercial list, applicants seeking placement on one or more specialized lists, as either a neutral, plaintiff or defense mediator, shall demonstrate having an active practice for the last three years in the area of law pertinent to the specialized list on which placement is sought.
 - b. For those seeking placement on the commercial list, applicants must demonstrate an active practice in the jurisdiction, in which 50% of the applicant's practice , over the preceding three years, was devoted to commercial matters.

D. Selection Committees.

1. Submission to Appropriate Selection Committee. Upon receipt of an application, the mediation clerk or designee shall forward it to the attention of pertinent selection committees formed under the MTA bylaws and this administrative order for that purpose.
 - a. The selection of committee members shall be designed to assure that the goals stated in MCR 2.404(D)(2) are met.
 - b. Selections shall be made without regard to race, ethnic origin, gender, and other protected classifications.
 - c. Except for judges serving as the chair of a committee, a person may not serve on the committee more than three years in any nine year period.
2. Neutral Selection Committee. The Neutral Selection Committee shall review all

applications in which the applicant has sought certification as a neutral mediator, either generally or on one of the specialized lists. The Neutral Selection Committee shall review all applicants who wish to serve as a commercial law mediator.

- a. **Composition.** The Neutral Selection Committee will have eight members: Chief Judge Pro Tempore of the Third Judicial Circuit Court, who shall serve as its chair; one judge of the Third Judicial Circuit Court; one judge of a district court utilizing the MTA; two representatives of the plaintiff attorneys; two representatives of the defense attorneys; and one representative of the commercial attorneys. The attorney representatives shall be active mediators already approved as such by the Board.
3. **Plaintiff Selection Committee.** The Plaintiff Selection Committee shall review applications in which the applicant has sought certification as a plaintiff mediator, either generally or on one of the specialized lists, with the exception of the commercial law list.
 - a. **Composition:** The Plaintiff Selection Committee shall consist of seven members: two judges of the Third Judicial Circuit Court, one judge of a district court utilizing the MTA, and three attorneys selected by the Detroit Chapter of the American Trial Lawyers Association. The attorney representatives shall be active mediators who have been approved by the Board. The seventh member shall be the plaintiff representative member of the Board who shall also serve as the chair of the Plaintiff Selection Committee.
 4. **Defense Selection Committee:** The Defense Selection Committee shall review applications in which the applicant has sought certification as a defense mediator, either generally or on one of the specialized lists, with the exception of the commercial law list.
 - a. **Composition:** The Defense Selection Committee shall consist of seven members: two judges of the Third Judicial Circuit Court, one judge of a district court utilizing the MTA, and three attorneys selected by the Association of Defense Trial Counsel. The attorney representatives shall be active mediators who have been approved as such by the Board. The seventh member shall be the defense representative member of the Board who shall also serve as the chair of the Defense Selection Committee.
 5. **Review by Committees:** At least once a year, or more often if deemed necessary by the chair, each selection committee shall meet and act on the applications forwarded by the mediation clerk. Before a final decision is reached by a selection committee with respect to an application, the selection committee may request additional information from the applicant.
 - a. The selection committee shall either recommend or decline to recommend an applicant.

- b. Recommendation of an applicant shall be by majority vote of the Selection Committee.
- c. The selection committee need not provide any applicant with a hearing.
- d. If the selection committee declines to recommend approval of an applicant, the selection committee shall advise the mediation clerk who, within seven days, shall notify in writing the applicant of the committee's action. If the selection committee recommends Board approval, the selection committee shall forward its recommendation along with the application and any other relevant documents to the Board for its consideration.

E. Board Approval.

1. The Board shall act on recommendations for approval submitted by each selection committee. The Board shall approve or reject the recommendations of the selection committee, or delay its consideration to seek additional information. Approval must be by unanimous vote of the Board.
2. The Board need not provide any applicant with a hearing.
3. If the Board rejects the recommendation of the selection committee and does not approve an application, the Board shall advise the mediation clerk or designee who, within seven days, shall notify in writing, the applicant of the Board's action.

F. Rejected Applications. If a selection committee declines to recommend approval to the Board, the applicant shall not be placed on the list of active approved mediators, unless the Board approves the application under the following procedure:

1. Within 20 days after receipt of written notice from the selection committee of its decision to not recommend approval, the applicant must file at the MTA office, a written request that the Board consider and approve his/her application to be a mediator, notwithstanding that the selection committee has not recommended approval of his/her application. The date of filing shall be deemed as the date when the request is actually received at the MTA office.
2. Upon receipt of a written request for approval from an applicant whose application the selection committee declined to recommend, the matter shall be placed on the agenda of the next Board meeting following receipt of the written request. When the Board meets, it shall consider and approve or reject the request. Approval must be 60% of members of the Board who are present at that meeting. Prior to making a final decision, the Board may delay its consideration to seek additional information from the applicant. The Board need not provide any applicant upon reconsideration with a hearing.
3. In the event that the Board rejects the recommendation of the selection committee for

approval, the applicant shall have the right to seek reconsideration of the Board's rejection within 20 days after receipt of the Board's decision under the procedures provided in subsections (F)(1) and (2).

G. Retention of Documents. Documents considered by a selection committee or the Board shall be provided to the mediation clerk who shall retain them for at least 30 days following the rejection of an application, and thereafter may be discarded unless the applicant has filed a request for approval with the Board under the foregoing procedures.

H. Placement on Lists.

1. **Board Approval.** Upon approval by the Board, applicants shall be placed on the appropriate list(s) of active approved mediators, from which the mediation clerk or designee shall form mediation panels. These lists shall include neutral, plaintiff and defense mediators for the mediation of cases in general, a list for the mediation of commercial cases, as well as lists of neutral, plaintiff and defense mediators for the mediation of medical malpractice, employment/discrimination and condemnation cases.

2. **Terms of Approval.** Persons shall be placed on the list of mediators for a five-year period, commencing with the date of approval by the Board. Prior to the end of the five-year period, the mediation clerk or designee shall notify mediators that they must reapply and supply MTA with an application form. Mediators who fail to reapply by the end of the five-year period, will be placed on an inactive list of approved mediators and be ineligible for assignment to mediation panels until such time as the Board approves their application.

3. **Availability of Lists.** The list of active approved mediators shall be available to the public at the office of the MTA.

I. Removal from Lists.

1. The mediation clerk shall remove from all lists of approved mediators, the name of any mediator who is disbarred or suspended from the practice of law in this state or any other jurisdiction.

2. The mediation clerk shall remove from all lists of active approved mediators, the name of any mediator who is appointed or elected to a judgeship in Michigan.

3. **Removal for Just Cause.** The Board may remove from all lists of approved mediators, any mediator who in the sole discretion of the Board, has demonstrated incompetency, bias, consistently made himself or herself unavailable to serve as a mediator, owes past due fees to MTA, or for any other just cause.

4. If any letter of negative comment is received regarding the performance of the duties of a mediator, the letter will go into his/her file, and a copy sent to the appropriate selection

committee with a request that it make a recommendation to the Board as to what further action, if any, should be taken.

5. In the event that a mediator's name is removed from the lists of approved mediators, the mediation clerk shall send written notice to the mediator. The mediator may request that the Board rescind the removal of his/her name from the list of approved mediators under the procedure established in section F.


J. Assignment to Panels.

1. **Method of Assignment.** The mediation clerk shall assign mediators to panels in a rotating manner so that, as nearly as possible, each mediator on a list, receives the same number of assignments on an annual basis. This procedure will also be followed for the assignment of substitute mediators. The mediation clerk or designee shall maintain records of service of mediators on panels, and this record shall be available upon request.
2. **Assignment to Panels.** In forming panels for mediation, except for commercial panels, the mediation clerk or designee shall include one mediator from the plaintiff list, one mediator from the defense list and one mediator from the neutral list. The term of a member on a mediation panel is two (2) days unless otherwise ordered by the Board. If a judge is assigned to a panel, permitted by MCR 2.403(D)(3), the judge shall serve as the neutral mediator.
3. **Special Panels.** On stipulation of the parties, the court may appoint a panel selected by the parties. In such a case, the qualification requirements of this administrative order do not apply.

K. Supervision of Selection Process.

1. The Chief Judge of the Third Judicial Circuit Court shall exercise general supervision over the implementation of this administrative order and shall review the operation of the court's mediators selection procedure annually to assure compliance with this administrative order. In the event of noncompliance, the court shall take such action as provided for in MCR 2.404(D)(1).
2. In implementing this administrative order, the Third Judicial Circuit Court, the Board, court employees, attorneys and others involved in the procedure, shall take all steps necessary to assure that as far as reasonably possible, the lists of active approved mediators fairly reflect the racial, ethnic, and gender diversity of the members of the state bar who are eligible to serve as mediators in the Third Judicial Circuit Court.

This Administrative Order supersedes and repeals Administrative Order 1990-02.



Michael F. Sapala
Chief Judge
Third Judicial Circuit

Dated: March 6, 1998