



THE THIRD JUDICIAL CIRCUIT  
OF MICHIGAN

711 COLEMAN A. YOUNG MUNICIPAL CENTER  
2 WOODWARD AVENUE  
DETROIT, MICHIGAN 48226-3413

---

**ADMINISTRATIVE ORDER 2006-05**

**STATE OF MICHIGAN  
THIRD JUDICIAL CIRCUIT**

---

**SUBJECT: PLAN FOR ALTERNATIVE DISPUTE RESOLUTION (ADR)  
INCLUDING CIVIL DIVISION CASE EVALUATION AND  
MEDIATION AND FAMILY DIVISION DOMESTIC RELATIONS  
MEDIATION**

**This Administrative Order rescinds and replaces Administrative Order 2004-14.**

The purpose of this Administrative Order is to adopt the local Alternative Dispute Resolution (ADR) Plan for the Third Judicial Circuit in accordance with MCR 2.410. This Administrative Order governs the procedures for ADR in the Third Judicial Circuit, including case evaluation and mediation in the Civil Division and domestic relations mediation in the Family Division, pursuant to MCR 2.403, MCR 2.404, MCR 2.410, MCR 2.411 and MCR 3.216. If there is a conflict between the ADR Plan adopted in this Order and the Michigan Court Rules, the Michigan Court Rules control. If this Administrative Order conflicts with any prior Local Court Rule or Administrative Order, this Administrative Order controls.

Copies of this Administrative Order and ADR Plan are available to the public in the ADR Clerk's office located in the Mediation Tribunal Association, 333 West Fort Street, Detroit MI 48226, and in the Case Processing Department of the Third Judicial Circuit, 770 Coleman A. Young Municipal Center, 2 Woodward Avenue, Detroit, Mi 48226.

## **GENERAL ADR PROVISIONS (MCR 2.410)**

### **A. Designation of ADR Clerk.**

The Third Judicial Circuit has implemented an ADR Plan for its Civil and Family Divisions pursuant to Michigan Court Rules. The Mediation Tribunal Association (MTA), a non-profit private corporation, is the administrator of the Plan. The MTA will process the applications of persons who desire to be eligible for appointment as court selected mediators and neutral case evaluators and administer the rotational selection of court appointed mediators. Statistics will be maintained on cases subject to alternative dispute resolution. Access to the list of court certified mediators will be provided to litigants and members of the general public.

The Executive Director of the Mediation Tribunal Association is designated as the ADR Clerk of the Third Judicial Circuit pursuant to MCR 2.410(B)(2)(a). The ADR Clerk must have extensive experience and/or education in ADR and is required to complete continuous training in ADR issues and rules.

### **B. General Description of ADR.**

All non-criminal cases are subject to ADR processes unless otherwise provided by statute or court rule. Alternative dispute resolution means any process designed to resolve a legal dispute in the place of court adjudication, and 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.

### **C. Access to ADR Process.**

A party may qualify for waiver or suspension of ADR fees under the standard set forth in MCR 2.002. If a party proves indigence to the Court, the case may be mediated *pro bono* through the MTA. The Court also may order payment of reduced ADR fees under appropriate circumstances. The MTA has established a partnership with the Neighborhood Reconciliation Center, a local Community Dispute Resolution Program (CDRP), to insure that all parties desiring to use the ADR process may do so. If it is determined that a case is best suited for a CDRP, the ADR clerk will refer the parties to the local CDRP agency.

If a party qualifies for waiver of filing fees under MCR 2.002 or the Court determines on other grounds that the party is unable to pay the full cost of an ADR provider's services, and free or low cost dispute resolution services are not available, the Court shall not order that party to participate in an ADR process.

**D. Public Information about ADR.**

The Third Judicial Circuit and the Mediation Tribunal Association will provide informational materials to the public regarding the Court's ADR processes. The materials will be available at the MTA (333 West Fort Street), and the Case Processing Department of the Third Circuit Court (770 Coleman A. Young Municipal Center), and may be available in the courtrooms.

**E. Case Evaluation.**

Procedures for case evaluation, including the order to and attendance at case evaluation, are set forth in MCR 2.403.

**F. Order for ADR.**

At any time, after consultation with or by stipulation of the parties, as determined by the applicable court rule, the Court may order that a case be submitted to an appropriate ADR process. More than one such order may be entered in a case. Unless the specific rule under which the case is referred provides otherwise, in addition to other provisions the Court considers appropriate, the order shall (a) specify, or make provision for selection of the ADR provider; (b) provide time limits for initiation and completion of the ADR process; and (c) make provision for the payment of the ADR provider. The order may require attendance at ADR proceedings as provided below.

**G. Attendance at ADR Proceedings.**

The attorneys attending an ADR proceeding shall be thoroughly familiar with the case and shall have the authority necessary to fully participate in the proceeding. The Court may direct that the attorneys who intend to try the case attend ADR proceedings. The Court may direct that persons with authority to settle a case, including the parties to the action, agents of parties, representatives of lien holders, or representatives of insurance carriers, be present at the ADR proceedings or be immediately available at the time of the proceeding. The Court may specify whether the availability is to be in person or by telephone.

Failure of a party or the party's attorney to attend a scheduled ADR proceeding, as directed by the Court, constitutes a default to which MCR 2.603 is applicable or grounds for dismissal under MCR 2.504 (B). The Court will excuse the failure of a party or the party's attorney to attend an ADR proceeding, and enter an order other than one of default or dismissal, if the Court finds that (a) entry of an order of default or dismissal would cause manifest injustice; or (b) the failure to attend was not due to the culpable negligence of the party or the attorney. The Court may condition the order on the payment by the offending party or attorney of reasonable expenses as provided in MCR 2.313(B)(2).

**H. Objections to ADR.**

Within 14 days after entry of an order referring a case to an ADR process, a party may move to set aside or modify the order. The motion will be set for hearing within 14 days after it is filed unless the Court orders otherwise. A timely motion must be decided before the case is submitted to the ADR process.

**I. Supervision and Monitoring of ADR Plan.**

The Chief Judge will exercise general supervision over the implementation of MCR 2.410 and, annually at a minimum, will review the operation of the Court's ADR plan to assure compliance with the rule. In the event of noncompliance, the Court shall take such action as is needed. This action may include recruiting persons to serve as ADR providers or changing the Court's ADR plan. Standard tracking information required by the State Court Administrator's Office, such as gender and race of mediators, will be maintained.

**CIVIL DIVISION**

**A. Case Evaluation pursuant to MCR 2.403.**

The Third Judicial Circuit, in accordance with MCR 2.403; 2.405; 2.501; 2.502; and 2.503, has resubmitted its Local Administrative Order governing MCR 2.403 as "Case Evaluation." All references referring to 2.403 as "Mediation" have been rescinded to reflect the name change to "Case Evaluation." Additionally, the "Mediation Clerk" is referred to as the "ADR Clerk."

**B. Mediation pursuant to MCR 2.411.**

**General Description**

Mediation is a process in which the parties, and their attorneys, if any, meet with a neutral third party to work toward an acceptable resolution of their case. The parties are not required to resolve the case and suffer no court-imposed penalty for failing to do so. The process is confidential. The Court may not require that the mediator or the parties disclose anything other than the degree of compliance with the Court's order of referral and whether the case was resolved.

Any civil dispute may be submitted to mediation. The parties may decide to go to a mediator at any time. The Court may order the parties to mediation at any time after consultation with the parties. If the Court orders the parties to mediation, the parties may select their own mediator. If the parties do not select their own mediator, the next mediator on the court-approved list of mediators will be appointed to mediate the case.

## **Mediation Process**

**Stipulated Mediation:** At any time the parties to a case may submit any matter to mediation or to any other ADR process they choose. They must give the Court notice of this submission by using an ADR notification form. If the parties choose to select their own ADR provider, the Court may not interfere with that selection. Stipulated submission of a case or controversy to ADR does not exempt the case from court ordered ADR and/or case evaluation under MCR 2.403.

**Court Ordered Mediation:** The Court will consider each case individually to determine its appropriateness for an ADR process. The Court may order MCR 2.411 mediation only after consultation with the parties. After consultation, the Court may issue an order of referral. The order must specify the terms of the mediation including:

1. The date by which any objection to the referral and request for hearing must be filed.
2. The time within which the parties may select a mediator.
3. The apportionment of fees.
4. Any deadlines imposed by the Court for completion of the mediation.
5. Any other court order regarding such issues as who must attend the mediation, possible sanctions for failure to comply with court orders, etc. The order of referral must be served on the litigants with copies to Case Processing and the MTA.

Any objections and requests for hearings shall be made by motion pursuant to MCR 2.119. If no timely objection is filed, the MTA will send the parties notice of the next available court approved mediator. The notice will include: the name and address of the mediator, confirmation of the fee and the apportionment of the fee between the parties.

## **Disqualification of Mediator**

The rule for disqualification of a mediator from a case is the same as that provided in MCR 2.003 for the disqualification of a judge. The issue of disqualification of a mediator must be brought before the trial judge by filing a motion.

## **Scheduling the Mediation**

If the Court orders mediation, the mediation proceeding must take place within the time frame specified in the court order. The ADR Clerk will send a copy of the order to each party and the mediator. Parties stipulating to mediation must notify the Court and the ADR Clerk by filing the stipulation and order to mediate the case, containing the name of the mediator selected and the date of the mediation, within 10 days after reaching an agreement to mediate the case.

## **Mediation Proceedings**

The mediation proceedings will be conducted in a private setting. All parties to the mediation proceeding will be required to sign a confidentiality statement. All statements made during the mediation are confidential. Neither the parties nor the mediator may discuss statements or documents revealed during the proceedings or use them in any other proceedings, including trial. The mediator's report of the disposition reached through mediation must be filed with the Court and is not considered confidential.

## **Mediation Report**

Within 7 days after the conclusion of the mediation, the mediator must submit a report to the MTA stating: (1) the date the process was completed; (2) the names of the participants; (3) whether settlement was reached; and (4) whether further proceedings are contemplated.

If the matter is settled through mediation, the attorneys will prepare and submit appropriate documents to the MTA, within 21 days of settlement, to conclude the case. Subsequently, MTA will provide the Court (i.e. the trial judge) with a mediation status report of all cases referred. With the stipulation of the parties, other matters such as resolution of some of the issues in the case may be reported to the Court.

## **Fees.**

The costs of mediation are divided between the parties on a pro-rata basis unless otherwise agreed by the parties or ordered by the Court. A court-approved mediator will be reimbursed based on the hourly fee schedule he/she has submitted to the Court. The parties should make payment directly to their mediator no later than (a) 42 days after the mediation process is concluded, (b) the entry of judgment or (c) the dismissal of the action, whichever occurs first. The apportionment of fees can be part of the negotiated agreement. Parties objecting to mediation fees must file a motion with the judge assigned to their case to have mediation fees waived or modified from the presumptive pro-rata fee sharing arrangement. The MTA will not waive mediation fees unless the Court approves the waiver and a copy of the order is submitted to the MTA prior to the date of mediation.

## **Mediator Certification**

### ***Mediator Qualifications***

Applications for placement on the court-approved list of mediators must be submitted to the MTA and reviewed by the ADR Committee. Any person who meets the criteria of MCR 2.411 will be approved as eligible for court appointment as a mediator on a rotational basis. All approved mediators must agree to abide by the confidentiality agreement per MCR 2.410 and must adhere to the State Court Administrative Office's Code of Conduct for mediators. Appeals from the decisions of the ADR Committee may be made to the MTA Board of Directors. The decision of the Committee may only be overridden by a unanimous vote of the Board.

### ***Waiver of Qualifications***

The State Court Administrative Office, Office of Dispute Resolution, provides grand-parenting provisions for court-approved mediators in "Interim Training Standards for Mediation Programs." Applicable sections are available to the public upon request at the MTA, the Wayne County Clerk's Office and the Court Administrator's Office.

### ***Revocation of Approval***

Any person whose court approval to serve as a mediator is based on holding a professional license and whose license is suspended or revoked by the appropriate licensing authority shall have his/her status as a court approved mediator immediately suspended and shall be required to reapply for approval.

### ***Removal from List***

In accordance with MCR 2.411(E)(4), the ADR Clerk may recommend to the MTA Board that mediators who have demonstrated incompetence, bias, consistent unavailability to serve as a mediator or for other just cause be removed from the list. The Chief Judge has designated the MTA Board to act on a request for reconsideration of a decision to remove a mediator from the list.

### ***Continuing Mediator Education***

In accordance with MCR 2.411 (F)(4), approved mediators are required to obtain eight hours of advanced mediation training every two-year period. Failure to comply with this continued education requirement is grounds for removal from the court approved mediator list.

### ***ADR Committee***

The ADR Committee in the Civil Division will have seven members: one representative of the Michigan Trial Lawyers Association; one representative of the Association of Defense Trial Counsel; the two Third Judicial Circuit Court judges who are on the MTA Board or their designees; two ADR providers selected by the MTA Board; and a representative of the federal court for the Eastern District of Michigan. A member judge will chair the Committee. The Committee will meet at least three times a year and will act through a majority vote. The ADR Committee is responsible for:

- Reviewing and processing applications of persons who desire to be on the court approved list to insure fairness in the selection process and minimal standards in the pool of approved/certified Third Circuit Court mediators. This Committee shall also recommend by vote any waivers of qualification. (See Waiver of Qualifications)

- Establishing grievance procedures for mediator rejections, removals and complaints, including receiving and reviewing complaints against court certified mediators for violation of SCAO's ethical requirements and any breaches of confidentiality. This Committee shall also recommend action on these complaints to the Chief Judge of the Court.

## **Administration**

### ***The Mediator List***

A list of court approved MCR 2.411 mediators will be available to the public at the ADR Clerk's office located in the Mediation Tribunal Association, 333 West Fort Street, Detroit MI 48226 and the Case Processing Department of the Third Judicial Circuit, 770 Coleman A. Young Municipal Center, 2 Woodward Avenue, Detroit, Mi 48226. Mediators will be recruited to serve on the court appointed list. The MTA will provide annual statistics that reflect the number of times each court designated mediator is utilized. This report will include cases in which the parties did not stipulate their own mediator.

### ***The Mediator Rotational and Selection System***

The Mediation Tribunal Association under MCR 2.411 will maintain a system by which all persons available to serve as mediators will be kept in a database employing a rotational system. The rotational system will be algorithmic in selecting mediators to insure that mediators are randomly selected and equitably used over a specific period of time. When parties cannot agree on their own choice of mediator, they will receive the name of the next court approved mediator on the list.

## **Collection of Outstanding Case Evaluation Fees**

### **1. Preliminary Procedures**

- a. On or about the first day of each month, the ADR Clerk shall examine the records of the MTA to determine if any case evaluation fees under MCR 2.403 (H) or (I) remain outstanding in cases submitted for case evaluation.
- b. If the ADR Clerk's examination reflects that such fees are still outstanding in a particular case, the ADR Clerk shall promptly send by first class mail to the affected counsel, or a party in pro per, (collectively, the person) a letter (the letter) setting forth the fees owed by the person and demand for payment within fourteen days of the date of the letter. The letter shall advise that if the outstanding fees are not paid within the fourteen days, proceedings for collection of the same may be instituted before the Chief Judge of the Court.



## **2. Court Proceedings**

- a. On or about fourteen days after sending the letter, the ADR Clerk shall determine whether the outstanding fees have been paid. If they have not been paid, the ADR Clerk shall submit a certification (the Certification) to the Chief Judge under the caption of the underlying case attesting to the amount of the outstanding fees, the person owing such fees, and identifying the action in which such fees are owed.
- b. From time to time, the Chief Judge shall ascertain whether the ADR Clerk has submitted any Certifications, and in all such cases the Chief Judge shall issue an Order to Show Cause (the Order) to the affected person in the underlying case requiring the person to appear before the Chief Judge, not less than fourteen days after the mailing of the Order, and show cause why a money judgment should not be entered against the person in the amount of the outstanding case evaluation fees and any court costs incurred.
- c. The ADR Clerk shall serve the Order and the Certification on the affected person by first class mail and shall file a certificate of mailing with the Clerk of the Court.
- d. Pursuant to said Order, the Chief Judge shall conduct a hearing to determine whether case evaluation fees are owing. If the Chief Judge determines that fees are owing, the Chief Judge shall enter a money judgment in favor of the MTA against the affected person in the amount owing, plus court costs that may have been incurred.
- e. Upon the issuance of a judgment, the judgment may be served personally on the affected person, or it may be served by first class mail by the ADR Clerk, who, in that instance, shall file a certificate of mailing with the Clerk of the Court.

## **3. Post-Judgment**

- a. The MTA may enforce a judgment obtained under this rule according to the procedures generally available by law for the enforcement of judgments.
- b. In addition, when a judgment obtained under this rule is secured against an attorney, the MTA may file a lien in a civil action against any attorney fee prospectively payable to the attorney, by filing a notice of lien with the Clerk of the Court and by giving notice of the same to the parties to the action.

- c. The Chief Judge may preside at a creditor's examination pursuant to a judgment entered under this rule by any other judge of the Court.
- d. The procedures for the collection of outstanding case evaluation fees established herein do not exclude other procedures that may be available to the MTA for the collection of outstanding case evaluation fees.
- e. The Chief Judge may direct in writing that another judge of the Court act in the place of the Chief Judge under any or all provisions of this Administrative Order. The Chief Judge shall not designate a judge under this section who is then serving on the Board of Directors of the MTA.
- f. For purposes of this Administrative Order, reference to the ADR Clerk includes his or her designee.
- g. This Administrative Order applies to all outstanding fees, including fees owing prior to the effective date of the Administrative Order.
- h. The ADR Clerk, MTA, and the Court shall implement the provisions of this section as soon as practicable after its effective date and the date of its approval by the State Court Administrator's Office.

### **FAMILY DIVISION**

#### **A. General Description of Domestic Relations ADR.**

##### **Mediation under MCR 3.216**

Alternative Dispute Resolution in the Family Division includes, but is not limited to, domestic relations mediation pursuant to MCR 3.216. All domestic relations cases, as defined in MCL 552.502(h), are subject to mediation under MCR 3.216, unless otherwise provided by statute or court rule. MCR 3.216 provides for two types of mediation: facilitative mediation and evaluative mediation.

**Mediation** is a non-binding process in which a mediator (a neutral third party) facilitates or assists in the resolution of family and divorce-related disputes by promoting the participants' voluntary agreement. The parties may stipulate to mediation or the Court may order mediation without the agreement of the parties. If the parties have attorneys, the mediation sessions may be conducted without the physical presence of attorneys. The mediator assists communication, encourages understanding and focuses the participants on their individual and common interests. The mediator works with the participants to

explore options, make decisions and reach their own agreements. If the parties reach an agreement, the mediator may assist the parties in putting the agreement into a writing to be signed by the parties. If the parties are represented by attorneys, their attorneys may review the written agreement before the parties sign it. At the conclusion of mediation, the mediator does not provide a report or recommendation, make a specific evaluation or a formal recommendation. If the parties are unable to agree on resolution of all the issues in their case, the parties may submit the unresolved issues to evaluative mediation or to the Court for resolution.

*Evaluative mediation* takes place when the mediator, at the parties' request, agrees to provide a written recommendation for settlement of any issues that remain unresolved at the conclusion of a mediation proceeding. Evaluative mediation can only occur at the request of the parties and with the agreement of the mediator. (For further information on evaluative mediation, see below.)

MCR 3.216 does not restrict the Friend of the Court from enforcing custody, parenting time, and support orders.

### **Other Settlement Procedures**

The Court may order, on stipulation of the parties (that is, with the parties' agreement), the use of other settlement procedures including mediation by a mediator of the parties' choosing and other forms of ADR.

### **B. MCR 3.216 Domestic Relations Mediation.**

#### **Information about Mediation**

Informational materials about ADR will be available through the MTA, the Case Processing Department and the courtrooms. In addition, mediation and other forms of ADR will be discussed at the Case Management Conference scheduled in domestic relations cases.

#### **Referral to Mediation**

At any time, on written stipulation of the parties, on written motion of a party, or on the Court's initiative, the Court may submit to mediation by written order any contested issue in a domestic relations case, including post-judgment matters. The Court may not submit contested issues to evaluative mediation unless all parties request it. Parties who are subject to a personal protection order or who are involved in a child abuse and neglect proceeding may not be referred to mediation without a hearing to determine whether mediation is appropriate.

## **Domestic Violence Screening**

The Court recognizes that mediation is not an appropriate process for all cases and that an agreement is not necessarily the appropriate outcome of all cases referred to mediation. Screening by the Court for domestic violence and child abuse/neglect will help the Court identify cases that are inappropriate for mediation or that require a hearing before being referred to mediation under MCR 3.216. At the scheduled Case Management Conference, prior to referral to mediation, the Court will require the parties to complete and file with the Court a Domestic Violence Screening for Referral to Mediation form that addresses matters of public record, including the existence of current or expired personal protection orders, pending or resolved domestic violence criminal cases and pending child abuse/neglect proceedings.

- The Court will review the Domestic Violence Screening for Referral to Mediation forms submitted by the parties to identify whether any PPO actions or child abuse/neglect actions are pending in other courts.
- A case will not be referred to mediation until the Domestic Violence Screening for Referral to Mediation form has been completed by the parties and reviewed by the Court.
- Once the case has been referred to mediation, the mediator may reject the case as being inappropriate for mediation (due to domestic violence, substance abuse, mental illness, etc.). In order to insure that there is no disincentive for screening out inappropriate cases for mediation, mediators who determine that a case is inappropriate for mediation will be positioned on the approved mediator list as if the matter had not been assigned.

The Court will contact and work with appropriate local organizations to develop informational materials for litigants regarding available local community resources. These organizations include, but are not limited to:

- For domestic violence issues: local domestic violence shelter programs; local domestic violence coordinating council; Michigan Domestic Violence Prevention and Treatment Board; prosecutor; legal assistance organizations; Michigan Coalition Against Domestic and Sexual Violence.
- For mental health issues: Community Mental Health organizations.
- For substance abuse issues: Department of Community Health - Mental Health and Substance Abuse Services.

## **Objections to Referral to Mediation**

To object to mediation, a party must file a written motion to remove the case from mediation and a notice of hearing of the motion, and serve a copy on the attorneys of record within 14 days after receiving notice of the order assigning the action to mediation. The motion must be set for hearing within 14 days after it is filed, unless the hearing is adjourned by agreement of counsel or unless the Court orders otherwise. A timely motion must be heard before the case is mediated.

Cases may be exempt from mediation based on the following: (a) child abuse or neglect; (b) domestic abuse, unless attorneys for both parties will be present at the mediation session; (c) inability of one or both parties to negotiate for themselves at mediation, unless attorneys for both parties will be present at the mediation session; (d) reason to believe that one or both parties' health or safety would be endangered by mediation; or (e) for other good cause shown.

- With all orders of referral to mediation, the Court will include instructions on how to object to a referral to mediation.
- At the Case Management Conference, prior to referring the case to mediation, the Court will make available to each litigant a copy of its mediation information materials, the public notice "Is Mediation Right for You?" and the Domestic Violence Screening for Referral to Mediation form (MC 282).
- If the Court determines that the case is not appropriate for mediation, the Court will not order mediation.

## **Selection of Mediator**

Domestic relations mediation under MCR 3.216 will be conducted by a mediator selected as provided in MCR 3.216(E).

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 in MCR 3.216 (G). (See below) The Court must appoint a mediator stipulated to by the parties, provided the mediator is willing to serve within a period that would not interfere with the Court's scheduling of the case for trial. 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.

If the parties have not stipulated to a mediator, the judge may recommend, but not appoint one. If the parties cannot agree on their own mediator, if the judge does not make a recommendation, or if the recommendation is not accepted by the parties, the ADR Clerk will assign a mediator from the list of qualified mediators maintained pursuant to

MCR 3.216(F). The assignment will be made on a rotational basis, i.e. the next mediator in rotation on the court approved roster will be assigned, except that if the parties have requested evaluative mediation, only a mediator who is willing to provide an evaluation may be assigned.

The rule for disqualification of a mediator is the same as that provided in MCR 2.003 for the disqualification of a judge. The mediator must promptly disclose any potential basis for disqualification.

### **List of Mediators**

**Application.** An eligible person desiring to serve as a domestic relations mediator may apply to the ADR Clerk to be placed on the Court's list of mediators. Application forms are available in the office of the ADR Clerk. The form includes a certification that the applicant (1) meets the requirements for service under the Court's selection plan; (2) will not discriminate against parties or attorneys on the basis of race, ethnic origin, gender, or other protected personal characteristic; and (3) will comply with the Court's ADR plan, orders of the Court regarding cases submitted to mediation, and the standards of conduct adopted by the State Court Administrator under MCR 3.216(K).

The applicant must indicate on the form whether he/she is willing to offer evaluative mediation, and the applicant's hourly rate for providing mediation services. The form also includes an optional section identifying the applicant's gender and racial/ethnic background; however, this section will not be made available to the public.

**Review of Applications.** The Domestic Relations Mediation Review Committee will review applications annually, or more frequently if appropriate, and compile a list of qualified mediators. Persons meeting the qualifications specified in MCR 3.216(G) (see below) will be placed on the list of approved mediators. Approved mediators will remain on the list for a fixed period, not to exceed five years, and must reapply at the end of that time in the same manner as the persons seeking to be added to the list.

Selections will be made without regard to race, ethnic origin, or gender. Residency or principal place of business may not be a qualification.

The approved list and the applications of approved mediators, except for the optional section identifying the applicant's gender and racial/ethnic background, are available to the public in the office of the ADR Clerk.

**Rejection; Reconsideration.** Applicants who are not placed on the list will be notified of that decision. Within 21 days of notification of the decision to reject an application, the applicant may seek reconsideration of the ADR Clerk's decision by the Presiding Judge of the Family Division. The Court does not need to provide a hearing. Documents considered in the initial review process will be retained for at least the period during which the applicant can seek reconsideration of the original decision.

**Removal from List.** The ADR Clerk may recommend to the MTA Board that mediators who have demonstrated incompetence, bias, consistent unavailability to serve as a mediator or for other just cause be removed from the list. Within 21 days of notification of the decision to remove a mediator from the list, the mediator may seek reconsideration of the ADR Clerk's decision by the Presiding Judge of the Family Division. The Court does not need to provide a hearing.

### **Qualification of Mediators**

To be eligible to serve as a domestic relations mediator under MCR 3.216, an applicant must meet the following minimum qualifications: the applicant must (1) be a licensed attorney, a licensed or limited licensed psychologist, a licensed professional counselor, or a licensed marriage and family therapist; (2) have a masters degree in counseling, social work, or marriage and family therapy; (3) have a graduate degree in a behavioral science; or (4) have 5 years experience in family counseling. The applicant also must have completed a training program approved by the State Court Administrator providing the generally accepted components of domestic relations mediation skills. The 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.

An applicant who has specialized experience or training, but does not meet the specific requirements listed above, may apply to the ADR Clerk for special approval. The ADR Clerk will make the determination based on criteria provided by the State Court Administrator. 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.

Additional qualifications may not be imposed upon mediators.

### **Mediation Procedure**

The mediator must schedule a mediation session within a reasonable time after the case is referred to mediation at a location accessible by the parties. A mediator may require that no later than 3 business days before the mediation session, each party submit to the mediator, and serve on the opposing party, a mediation summary that provides the following information, where relevant: (1) the facts and circumstances of the case; (2) the issues in dispute; (3) a description of the marital assets and their estimated value, where such information is appropriate and reasonably ascertainable; (4) the income and expenses of the parties; (5) a proposed settlement; and (6) such documentary evidence as may be available to substantiate information contained in the summary. Failure to submit these materials to the mediator within the designated time may subject the offending party to sanctions imposed by the Court.

The parties must attend the mediation session in person unless excused by the mediator. Except for legal counsel, the parties may not bring other persons to the mediation session, whether expert or lay witnesses, unless permission is first obtained from the mediator, after notice to opposing counsel or the opposing party if he/she is not represented by an attorney. If the mediator believes it would be helpful to the settlement of the case, the mediator may request information or assistance from third persons at the time of the mediation session.

The mediator will discuss with the parties and counsel, if any, the facts and issues involved. The mediation will continue until a settlement is reached, the mediator determines that a settlement is not likely to be reached, the end of the first mediation session, or until a time agreed to by the parties.

Within 7 days of the completion of mediation, the mediator will advise the Court that mediation has been completed, stating only the date of completion of the process, who participated in the mediation, whether settlement was reached, and whether further ADR proceedings are contemplated. If a mediation evaluation will be made (see below), the mediator may delay reporting to the Court until completion of the evaluation process.

In order for a settlement reached as a result of the mediation to be binding, the terms of that settlement must be reduced to a signed writing by the parties or acknowledged by the parties on an audio or video recording. After a settlement has been reached, the parties must take steps necessary to enter judgment as in the case of other settlements.

Statements made during the mediation, including statements made in written submissions, may not be used in any other proceedings, including trial. Any communications between the parties or counsel and the mediator relating to a mediation are confidential and will not be disclosed without the written consent of all parties. This prohibition does not apply to (1) the report of the mediator under section MCR 3.216(H)(6); (2) information reasonably required by court personnel to administer and evaluate the mediation program; (3) information necessary for the Court to resolve disputes regarding the mediator's fee; or (4) information necessary for the Court to consider issues raised under MCR 2.410 (D)(3) or 3.216(H)(2).

### **Evaluative Mediation under MCR 3.216**

This section applies if the parties requested evaluative mediation, or if they do so at the conclusion of mediation and the mediator is willing to provide an evaluation.

If a full settlement is not reached during mediation, the mediator, within a reasonable period after the conclusion of mediation, will prepare a written report to the parties setting forth the mediator's proposed recommendation for settlement purposes only. The mediator's recommendation will be submitted to the parties of record only and may not be submitted or made available to the Court.



If both parties accept the mediator's recommendation in full, the attorneys will proceed to have a judgment entered in conformity with the recommendation.

If the mediator's recommendation is not accepted in full by both parties and the parties are unable to reach an agreement as to the remaining contested issues, the mediator will report to the Court in the manner described above and the case will proceed to trial.

The Court may not impose sanctions against either party for rejecting the mediator's recommendation. The Court may not inquire and neither the parties nor the mediator may inform the Court of the identity of the party or parties who rejected the mediator's recommendation.

The mediator's report and recommendation may not be read by the Court and may not be admitted into evidence or relied upon by the Court as evidence of any of the information contained in it without the consent of both parties. The Court shall not request the parties' consent to read the mediator's recommendation.

### **Fees**

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 must agree in writing that each will pay one-half of the mediator's fee no later than: (1) 42 days after the mediation process is concluded or the service of the mediator's report and recommendation, or (2) the entry of judgment, or (3) the dismissal of the action, whichever occurs first. If the Court finds that some other allocation of fees is appropriate, given the economic circumstances of the parties, the Court may order that one of the parties pay more than one-half of the fee.

If acceptable to the mediator, the Court may order an arrangement for the payment of the mediator's fee other than that provided above. The mediator's fee is deemed a cost of the action, and the Court may make an appropriate judgment under MCL 552.13(1) to enforce the payment of the fee. In the event either party objects to the total fee of the mediator, the matter may be scheduled before the trial judge for determination of the reasonableness of the fee.

### **Standards of Conduct for Mediators**

The State Court Administrator has developed and approved standards of conduct for domestic relations mediators designed to promote honesty, integrity, and impartiality in providing court-connected dispute resolution services. These standards have been incorporated into all training and educational requirements for court-connected programs, are provided to all mediators involved in court-connected programs, and are available to the public.

### **Domestic Relations Mediation Review Committee**

The Domestic Relations Mediation Review Committee will have six members: the two Third Judicial Circuit Judges who are on the MTA Board or their designees; two family law attorneys selected by the MTA Board; the Friend of the Court or designee; and a representative of the Family Counseling and Mediation Unit designated by the Friend of the Court. A member judge will chair the Committee. The Committee will meet at least once a year and will act through a majority vote. The Committee will be responsible for:

- Reviewing and processing applications of persons who desire to be on the court approved list to insure fairness in the selection process and quality in the pool of approved Third Circuit mediators. This Committee will also recommend by vote any waivers of qualifications.
- The Committee will also assist the ADR Clerk in recruiting mediators, establishing grievance procedures, identifying and addressing training needs and mediator support needs. The Committee will recommend action on these matters to the Chief Judge and Presiding Judge of the Family Division – Domestic Relations Section.

***EFFECTIVE DATE:* July 1, 2006.**

**Dated:** May 24, 2006



---

**MARY BETH KELLY**  
**Chief Judge**  
**Third Judicial Circuit of Michigan**