



THIRD JUDICIAL CIRCUIT
OF MICHIGAN

TIMOTHY M. KENNY
CHIEF JUDGE

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LOCAL ADMINISTRATIVE ORDER 2021 – 19

STATE OF MICHIGAN
THIRD JUDICIAL CIRCUIT

**SUBJECT: MEDIATION PLAN FOR CASES EVALUATED FOR AN AMOUNT OF
\$25,000 OR LESS**

This Local Administrative Order rescinds and replaces Administrative Order 2016-04.

This pilot project is developed by administrative order in consultation with the State Court Administrative Office (SCAO) to determine whether mediation resolves cases that evaluated for less than the jurisdictional limit more efficiently and economically than the traditional trial docket. Based upon the initial success of the limited pilot program, the Court has expanded the scope of the pilot to include the full Civil Division to obtain additional data and to further analyze the pilot efficiencies for further guidance regarding Court operations relative to this project.

Beginning January 1, 2021 and effective through December 31, 2029 or further order of the court, the Third Judicial Circuit Court adopts the following pilot program to mediate cases in which the aggregated claims evaluated for an amount of \$25,000 or less.

1. **ADR Clerk** – The ADR Clerk is the Executive Director of the Mediation Tribunal Association.
2. **List of Mediators** – Cases ordered to mediation under this plan shall be referred to the Mediation Tribunal Association (MTA). All mediators used by the MTA for purposes of this pilot project shall meet the qualifications listed in MCR 2.411(F). The parties may, within fourteen (14) days of the date of the *Order for Mediation*, object to the appointment of the designated mediator and stipulate to the appointment of an alternate mediator.

3. **Assignment** –

- a. Within fourteen (14) days of the expiration of the acceptance period for case evaluation, the MTA shall send notice to the participating judge that the case evaluated for an amount of \$25,000 or less, that a party rejected the evaluation, and the name of the mediator selected at random by the MTA from the list of participating mediators to be appointed to the case. The Court shall order the parties to mediation within fifty-six (56) days of the order. Unless a party has been excused from eFiling, the Court shall serve the *Order for Mediation* on the parties electronically. The Court shall notify the mediator of the appointment.
- b. Within fourteen (14) days of the date of the order, the parties may stipulate in writing to an alternate mediator subject to the other terms of the Court's *Order for Mediation*. In the alternative, within fourteen (14) days of the date of the order, the parties may present a stipulated order to amend the pleadings to state that the damages do not exceed \$25,000 and to the transfer of the case to the appropriate district court pursuant to MCR 2.227 and Administrative Order 1998-1.
- c. MCR 2.003 shall govern all mediator conflicts. MCR 2.411(B)(5).
- d. All motions and objections to the ordered mediation shall be heard by the assigned judge within twenty-one (21) days of the date of the order.

4. **Case Management** – Each quarter, the Chief Judge will review the mediation results and in consultation with the Presiding Judge – Civil Division recommend the addition or reduction of judges participating in the project. If mediation fails to resolve the case, the matter will return for a settlement conference before the assigned judge at a date and time scheduled by the assigned judge following the conclusion of the mediation.

5. **Information Dissemination** – The ADR Clerk shall make available written documentation describing this pilot project. The documentation shall be made available at the ADR Clerk's office, the Executive Court Administrator's Office, and on the Court's website.

6. **Attendance** – In accordance with MCR 2.410(D):

- a. Attorneys shall appear at and be thoroughly prepared for the mediation of the case. The attorney will have the necessary authority to settle the case;
- b. Unless otherwise excused, parties shall appear at the mediation. However, a legal representative may appear on behalf of an incapacitated party; and
- c. Representatives of lienholders, insurance carriers, and other necessary persons required to effectuate a settlement shall appear at the

mediation or be immediately available by telephone or videoconference throughout the mediation.

- d. As provided at MCR 2.410(D)(3), the failure of a party and party's attorney, if represented, or other representative to attend and meaningfully participate in the mediation may result in the entry of a default or dismissal.

7. Fees –

- a. The mediator is entitled to reasonable compensation commensurate with the mediator's experience and usual charges for services performed with a maximum mediation of two hours. Unless otherwise provided, each party is responsible for a pro-rata share of the total mediation fees.
- b. Each party shall pay a deposit or cancellation fee as determined by the mediator. Fees shall be paid directly to the assigned mediator at a time directed by the mediator.
- c. Parties that enter an order either settling their case or removing it from mediation and who give at least five days' written notice to the mediator shall not be liable for the mediation fee. If the mediator does not receive timely notice of the settlement or removal, each party is liable for a \$100.00 mediation cancellation fee.
- d. A party that fails to pay the mediation fee as directed, which prevents the mediation from proceeding as scheduled, shall be subject to sanctions at a show cause hearing ordered by and heard before the assigned judge pursuant to a letter from the mediator.

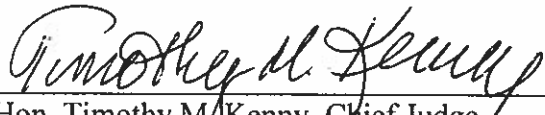
8. Indigent Access to ADR –

- a. A party is indigent if he or she qualifies for the waiver or suspension of fees in accordance with MCR 2.002(C) or (D).
- b. When a party is found to be indigent, the ADR Clerk will appoint a mediator willing to handle a pro bono case or refer the case to the Wayne Mediation Center, a local Community Dispute Resolution Program (CDRP) with whom the Court and Mediation Tribunal Association have an existing ADR relationship. The assigned mediator will offer pro bono services to any party determined to be indigent by the Court. For low income, but non-indigent parties, the Wayne Mediation Center will use its sliding payment scale and base its fee upon a party's ability to pay.
- c. Unless a party qualifies for a fee waiver or reduced rate mediation fee under either subsections a or b of this section or an order of this Court, the party is not indigent and remains liable for the mediation fee.

9. **Submission of Documents** – The mediator may require each party to submit a brief summary not to exceed 40 pages inclusive of summary and exhibits outlining the disputed facts and issues in the case. The mediator shall notify the parties of the due date for the summary and the manner in which it shall be submitted.
10. **Reports and Further Proceedings** – At the conclusion of the mediation, the mediator shall deliver a copy of the completed mediation status report or failure to appear report to the Judge. The mediation report shall indicate only whether the attorneys and parties participated in the mediation, the date of completion of the process, whether the case was resolved, or whether further proceedings are contemplated. If the case settled, the parties shall submit a stipulated order or judgment closing the case within twenty-one (21) days of the mediation or on or prior to the trial date, whichever comes first. Participation in this pilot project does not prevent the Court from ordering the case to other Alternative Dispute Resolution processes pursuant to MCR 2.410 and LAO 2021-18.
11. **Evaluation of ADR Program** – The ADR Clerk, the Court, and the SCAO, shall develop program evaluation forms for parties, attorneys, and mediators. The forms shall assess the perceptions of participants, lawyers, and mediators regarding the effectiveness of the mediation referral and of the process. The ADR Clerk shall collect data regarding case age, case type, mediator, and method of disposition to evaluate the efficacy of this pilot project. The results shall be presented in an annual report. The report shall be available in the ADR Clerk’s office and the Executive Court Administrator’s Office. After distribution of the annual report, the Chief Judge, the Presiding Judge of the Civil Division, the Executive Court Administrator, the Court’s General Counsel, the ADR Clerk, the chair of the MTA Board, and the Director of the Case Processing Office shall meet to review the program.

IT IS SO ORDERED.

Dated: November 22, 2021



Hon. Timothy M. Kenny, Chief Judge
Third Judicial Circuit of Michigan

Date Approved by SCAO: December 1, 2021