

STATE OF MICHIGAN

IN THE 16TH JUDICIAL CIRCUIT FOR THE COUNTY OF MACOMB

In re: Adoption of ADR Plan
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Local Administrative Order #2014-15

(Rescinds Local Administrative Order 2004-7)

IT IS ORDERED:

This Administrative Order is issued in accordance with MCR 2.410, Alternative Dispute Resolution, and MCR 3.216, Domestic Relations Mediation. Case evaluation is discussed separately in LAO 2014-16. The purpose of this Order is to adopt and encourage appropriate use of the Local Alternative Dispute Resolution Plan in the Macomb County Circuit Court. In adopting this Plan, it is the expectation of the Court that all counsel will discharge their ethical responsibility to discuss and explore ADR options with their clients. Pursuant to MCR 2.410 and MCR 3.216, the Court, after consultation and upon the stipulation of the parties, may order other alternative dispute processes than those specifically provided for in this Order.

A. ADR Clerk

The ADR Clerk is the Alternative Dispute Resolution Clerk – Senior.

B. Mediation

This section covers alternative dispute resolution (ADR) in the Macomb County Circuit Court. Macomb County Circuit Court mediators also mediate cases selected and referred by the Macomb County District Courts which desire to participate.

1. List of Mediators – For cases referred to Mediation under MCR 2.411 and/or MCR 3.216, the ADR Clerk shall maintain separate lists of general civil mediators and domestic relations mediators, qualified under this ADR Plan, available to this Court. The ADR Clerk shall maintain a list of approved mediators which shall be publicly available during business hours in the ADR office (Circuit Court Administration).
 - a. Recruitment – Mediators will be recruited by publishing notice of the opportunity to apply to be a mediator, posting information in the Court buildings and posting information on the Court’s webpage.
 - b. Qualifications – Mediators must meet or exceed the minimum qualifications of MCR 2.411(F) (civil cases) and/or MCR 3.216(G) (domestic cases) or the

minimum training standards promulgated by the Michigan State Court Administrative Office.

c. Application

- i. An application form will be made available to those who wish to apply at the office of the ADR Clerk, on the Court's webpage and at the Macomb County Bar Association Office.
 - ii. A person or committee designated by the Chief Judge shall review applications at least annually. Persons who qualify will be added to the list of qualified mediators maintained by the ADR Clerk. Applications of approved mediators may also be reviewed at the ADR Clerk's office.
 - iii. Applicants not placed on the mediator list may appeal, in writing, to the Chief Judge within thirty (30) days after notice of the decision is mailed to the applicant. There will be no oral argument. The Chief Judge will inform the applicant of the decision in writing.
- d. Removal - Mediators who demonstrate incompetency, bias, made themselves consistently unavailable to serve as a mediator or show other just cause may be removed from the list. A mediator who is removed from a mediator list may appeal, in writing, to the Chief Judge within thirty (30) days after notice of the decision is mailed to the mediator. There will be no oral argument. The Chief Judge will inform the mediator of the decision in writing.

2. Assignment

- a. In the event the Court orders the parties to engage in mediation, the parties are encouraged to agree on the mediator. If the parties are unable to agree on the mediator, a mediator will be assigned cases in a random or rotating manner that assures as nearly as possible that each mediator is assigned approximately the same number of cases over a period of time. If a substitute mediator is assigned, a similar assignment procedure will be used to select the substitute. Upon request and stipulation in writing or on the record, a judge ordering a case into mediation may recommend a specific mediator from the approved list who the judge believes is suited to the type and nature of the case.
- b. When domestic relations cases are being considered for mediation, judges will screen for cases which are not appropriate for mediation pursuant to MCR 3.216(D)(3) prior to referral. Mediators shall screen cases under this rule as part of the mediation process. SCAO domestic violence and child abuse and neglect screening protocols will be disseminated and used. Training materials from the Michigan Judicial Institute will be utilized when available and appropriate.

C. Business Court – ADR Neutrals

1. To assist the parties in mutually selecting appropriate neutral(s), the ADR Clerk will make available to the parties in Business Court cases a roster of ADR neutrals. The roster may include biographical information that sets forth the experience, subject matter expertise, and rates of each neutral, and shall be maintained as a public document available to all counsel in Business Court cases.
2. An application form for Business Court ADR neutrals will be made available to those who wish to apply at the office of the ADR Clerk, on the Business Court's webpage and at the Macomb County Bar Association Office.
 - a. The Business Court Judge will approve applicants for the neutral lists based on the following criteria:
 - i. The applicant must have been a practicing lawyer for at least 5 years and be a member in good standing of the State Bar of Michigan.
 - ii. The applicant must demonstrate an active practice in the designated business law area for at least the past three years.
 - b. Applicants not placed on the Business Court ADR neutral list may appeal, in writing, to the Chief Judge within thirty (30) days after notice of the decision is mailed to the applicant. There will be no oral argument. The Chief Judge will inform the applicant of the decision in writing.
 - c. Removal – Business Court ADR neutrals who demonstrate incompetency, bias, made themselves consistently unavailable to serve as a neutral or show other just cause may be removed from the list. A neutral who is removed from a list may appeal, in writing, to the Chief Judge within thirty (30) days after notice of the decision is mailed to the neutral. There will be no oral argument. The Chief Judge will inform the neutral of the decision in writing.
3. The parties are free to select mutually agreed upon neutral that is not on the Business Court ADR neutral list. Upon request and stipulation in writing or on the record, the Business Court Judge ordering a case into mediation may recommend a specific neutral from the approved list who the judge believes is suited to the type and nature of the case. If the parties are unable to mutually agree on a mediator and the Business Court orders mediation, the mediator will be selected pursuant to MCR 2.411.

- D. Information Dissemination – Written documentation shall be available from the ADR Clerk in the Macomb County Circuit Court Administration Office, the Clerk's Office, the Macomb County Bar Association Office, and the Court's webpage, which shall describe the ADR plan, process, access, and that persons ordered to ADR may object by timely motion.

E. Indigent Access to ADR

1. ADR processes will be provided at a lower cost to persons not able to pay the hourly rate of mediators on the approved list by entering into a contract with the Macomb County Dispute Resolution Program ("The Resolution Center"). For purposes of this Plan, 'low cost' means usage of The Resolution Center's fee schedule. A copy of the fee schedule is attached as Appendix A. A copy of the initial contract with The Resolution Center is attached as Appendix B. In addition, the Court will explore the provision of mediation services at a rate commensurate with the person's ability to pay.
2. Persons who are determined by the judge referring a case to mediation to be 'indigent' will be provided a court ordered ADR process without cost to the indigent person. The standards of MCR 2.002 shall be a guide in determining indigency. The judge may order another party to pay all or part of the mediation fee. If a mediator must be selected by the ADR Clerk, the Clerk shall contact The Resolution Center to conduct the mediation or, if it is unable to provide the service, shall determine whether a mediator in rotation will provide pro bono mediation. Mediators will be strongly encouraged to provide mediation services pro bono to persons unable to afford mediation.

F. Evaluation of ADR Programs

1. The Court will maintain statistics on the appointment of mediators in cases in which parties did not stipulate to their own mediator. Statistics will be compiled annually and will be made available to mediators, litigators and the public in the ADR Clerk's office.
2. The ADR Clerk shall prepare an annual report to the Chief Judge on the Court's ADR Program. The Chief Judge, ADR Clerk and designated staff shall meet to review the program. The Chief Judge may schedule meetings to review the ADR program with designated judges, staff and stakeholders, if needed.

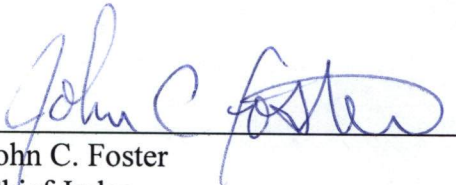
G. Other ADR Programs

1. The use of other ADR processes is encouraged by this Court.
2. Examples of encouraged ADR methods include: Arbitration, Early Disposition Settlement Conferences, Case Evaluation, Fast Track/Expedited Jury Trials, and Status Conferences.
3. Additionally, pursuant to LAO 2006-2, this Court continues to require mediation in cases that are evaluated for less than \$25,000.00 during case evaluation under MCR 2.403.
4. The Court has made available a pamphlet entitled "A Taxonomy of ADR" for consideration by the parties. This pamphlet discusses various ADR techniques and processes and the settings in which those processes might be most effective.

5. None of the provisions of this LAO are intended to inhibit or discourage the parties from seeking any other form or person for ADR the parties choose for resolution of their matter.

This Order shall be effective immediately upon approval of the State Court Administrator's Office.

Dated: 7-17-14



John C. Foster
Chief Judge
16th Circuit, 42nd District, and
Macomb County Probate Courts