

STATE OF MICHIGAN

IN THE 16TH JUDICIAL CIRCUIT COURT FOR THE COUNTY OF MACOMB

In re: Adoption of ADR Plan
_____ /

16th Judicial Circuit Court Local Administrative Order 2020-09
Rescinds 16th Judicial Circuit Court Local Administrative Order 2014-15

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 16th Judicial Circuit Court Local Administrative Order 2020-07. The purpose of this Order is to adopt and encourage appropriate use of the Local Alternative Dispute Resolution Plan in the 16th Judicial 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(s) is/are employees of the 16th Judicial Circuit Court, as designated by Court Administration.

B. Mediation

This section covers alternative dispute resolution (ADR) in the 16th Judicial Circuit Court. 16th Judicial Circuit Court mediators also mediate cases selected and referred by the Macomb County Probate Court and 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(s) shall maintain separate lists of general civil mediators and domestic relations mediators, qualified under this ADR Plan, available to this Court. The ADR Clerk(s) shall maintain a list of approved mediators which shall be publicly available during business hours in the Case Evaluation/ADR Office (Circuit Court Administration).
 - a. Recruitment – Mediators will be recruited by publishing notice of the opportunity to apply to be a mediator 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 Case Evaluation/ADR Office or on the Court's webpage.
 - 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(s). Applications of approved mediators may also be reviewed at the Case Evaluation/ADR 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. Term of Service – Unless removed earlier pursuant to subsection (e), or by the mediator's own election and notification to the ADR Clerk, mediators shall remain on the list for a term of three (3) years. Mediators will be notified by letter or email prior to the expiration of their term.
- e. 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.

The Court expressly disclaims creating any employment contract or property interest in favor of the mediators, and nothing in this Local Administrative Order should be construed as creating any rights or remedies in addition to those mandated by Court Rule.

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 Case Evaluation/ADR Office or on the Business Court's webpage.
 - a. The Business Court Judges will approve applicants for the neutral lists based on the following criteria:
 - i. The applicant must have been a practicing lawyer for at least five (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 (3) 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 Judges 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 16th Judicial 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(s), the Clerk(s) 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 Case Evaluation/ADR Office.
2. The ADR Clerk(s) shall prepare an annual report to the Chief Judge on the Court’s ADR Program. The Chief Judge, ADR Clerk(s) 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.

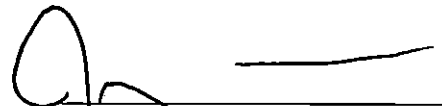
G. Other ADR Programs

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, Summary Jury Trials and Status Conferences.
3. Additionally, pursuant to the 16th Judicial Circuit Court Local Administrative Order #2020- , 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 local administrative order 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.

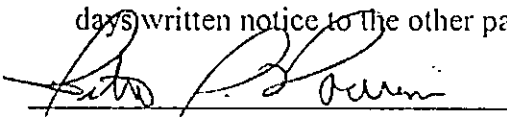
Dated: August 10, 2020


James M. Bjernat, Jr. – Chief Judge
16th Judicial Circuit Court, 42nd District
and Macomb County Probate Courts

AGREEMENT TO PROVIDE MEDIATION

The Macomb County Circuit Court and The Resolution Center enter into this agreement to provide mediation services pursuant to the Circuit Court's ADR Plan.

1. This agreement is contingent on State Court Administrative Office approval of the Macomb County Circuit Court ADR Plan which incorporates this Agreement by reference.
2. The Macomb County Circuit Court will place The Resolution Center on the list of general civil mediators maintained by the Court. The Resolution Center will be appointed cases in rotation in addition to referrals for low cost or no cost mediations.
 - a. The Resolution Center shall comply with all statutes, court rules, and the Macomb County Circuit Court ADR Plan in providing qualified mediators to mediate Macomb County Circuit Court disputes referred to it.
 - b. The Resolution shall keep all communications during intake and mediation confidential, except to advise the mediators of the facts and issues involved.
 - c. The Resolution Center shall operate under its written non-discrimination policy.
 - d. The Resolution Center shall equitably rotate mediators who are assigned to handle court-referred cases to assure as nearly as possible that each mediator is assigned approximately the same number of cases over a period of time.
 - e. The Resolution Center shall report to the ADR Clerk periodically regarding compliance with MCR 2.411.
3. The Resolution Center shall provide low cost mediation services on an as-needed basis pursuant to its Fee Schedule when this service is requested by the Court.
4. The Resolution Center will provide no-cost mediation services to persons determined by the Macomb County Circuit Court to be indigent and in need of no-cost mediation services when this service is requested by the Court.
5. The term of this agreement shall commence upon approval by the State Court Administrative Office of the Macomb County Circuit Court ADR Plan and shall continue indefinitely, but may be terminated by either party upon not less than 60 days written notice to the other party.


Peter J. Maceroni, Chief Judge
Macomb Circuit Court

Dated: OCT. 8, 2004


Diane Kish, President,
The Resolution Center

Dated:

FEE SCHEDULE

THE RESOLUTION CENTER

176 S. Main Street, Suite 2

Mount Clemens, MI 48043

586-469-4714

CIRCUIT & PROBATE COURT MATTERS:

All cases referred by the Circuit Court: \$200.00

Fee to be shared equally by parties, except for criminal restitution matters in which the alleged offender will be assessed the full fee.

DISTRICT COURT MATTERS:

All General Civil and Landlord/Tenant cases: \$100.00

Small Claims \$ 70.00

Fee to be shared equally by parties unless otherwise directed by the referring Judge.

ALL NON- COURT REFERRED MATTERS:

- o To initiate a case- \$25.00 (non-refundable, paid by initiating party)
- o Mediation fee- \$25.00 (assessed to each party)

FEES WILL BE WAIVED FOR INDIGENT PARTIES AND THOSE WHO DEMONSTRATE AN INABILITY TO PAY. EXECUTIVE DIRECTOR EXERCISES THE RIGHT TO WAIVE ANY FEE.