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THIRTY-SEVENTH JUDICIAL CIRCUIT OF MICHIGAN
CALHOUN COUNTY PROBATE COURT

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Local Administrative Order C37 2017 - 02

ORDER ADOPTING LOCAL ALTERNATIVE DISPUTE RESOLUTION PLAN


Rescinds LAO C37 2002 - 01

IT IS ORDERED:

This administrative order is issued in accordance with Michigan Court Rule 2.410, Alternative Dispute Resolution. The updated Local Alternative Dispute Resolution Plan appended to this Order is effective upon approval by the State Court Administrative Office and as otherwise stated herein.

Effective Date: August 1, 2017

Date: 7-10-17


Michael L. Jaconette, Chief Judge
Calhoun County Courts

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37th JUDICIAL CIRCUIT
DEPUTY COURT CLERK

37th JUDICIAL CIRCUIT COURT ALTERNATIVE DISPUTE RESOLUTION PLAN

Pursuant to MCR 2.410 and local administrative order C37 2017-01 the 37TH Judicial Circuit Court adopts the following Alternative Dispute Resolution (ADR) Plan.

Alternative Dispute Resolution (ADR) 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 any other procedures provided by local court rule or ordered on stipulation of the parties.”

All civil cases are subject to ADR processes unless otherwise provided by statute or court rule.

I. Alternative Dispute Resolution Clerk

The court designates the Court Administrative Services Manager to serve as the ADR clerk. The ADR clerk shall maintain all records pertaining to the court's ADR program, including applications for and lists of case evaluators, general civil mediators and domestic relations mediators. The ADR clerk shall be responsible for coordinating the referral of cases to ADR and tracking the progress of cases through the ADR processes.

II. Dissemination of Information Regarding the Alternative Dispute Resolution Program

The ADR clerk shall be responsible for disseminating information about the court's ADR program to litigants and the general public. The court, with the assistance of the ADR Committee, will develop and distribute a letter inviting anyone interested in providing case evaluation and/or mediation services to complete an application. In addition, a public information brochure will be developed and distributed throughout the community. The brochure will provide general information about the ADR program, including the voluntary nature of ADR, a litigant's right to object to mediation by timely motion, and the availability of service for indigent litigants. The annual ADR report will also be made available to the public.

III. Case Evaluation - General Civil Mediation - Domestic Relations Mediation

Pursuant to MCR 2.403, the court may submit to case evaluation any civil action in which the relief sought is primarily money damages or division of property. **Case evaluation** is a process by which a panel of three qualified case evaluators assess the relative strengths and weaknesses of the parties' legal positions and assign a value to the case. Rejection of a case evaluation may result in the subsequent assessment of significant monetary sanctions.

Pursuant to MCR 2.411 the court may refer any civil case to alternative dispute resolution processes unless otherwise provided by statute or court rule. Pursuant to 3.216 the court may refer any domestic relations case as defined in MCL 552.502(h) to mediation unless otherwise provided by statute or court rule. **Mediation** is a process in which a neutral third party facilitates communication between parties to a dispute, assists in identifying issues and helps explore solutions to promote a settlement which is mutually acceptable to the parties. In mediation, settlement is voluntary. A mediator has no authority to impose a resolution on the parties or to dictate whether, when or on what terms the dispute will be settled. The process itself does not trigger a subsequent exposure to monetary sanctions.

Evaluative Mediation is a process available to parties in domestic relations matters in which, if the parties so request and the mediator agrees to do so, the mediator may provide a written recommendation for settlement of any issues that remain unresolved at the conclusion of a mediation proceeding. In this process, the court may not impose sanctions against either party for rejecting the mediator's recommendation.

(A) Case Screening: In most civil and domestic relations cases, at the Case Scheduling/Settlement conference, the court shall determine whether the case is appropriate for case evaluation or mediation.

At the time of filing, the plaintiff will be provided with a copy of *Is Mediation Right for You?* and/or *Resolving Your Dispute...Without Going to Trial* and a copy of MC 282 *Domestic Violence Screening for Referral to Mediation*, and the plaintiff will be instructed to also serve a copy of the above documents on the defendant.

Prior to the Case Scheduling/Settlement conference, judicial staff shall check the courts' Judicial Information System to ascertain whether the parties are involved in any personal protection matters, domestic violence criminal actions or any active or pending child protective actions. The results of this screening will be placed in the court file.

If mediation has been ordered, the mediator, prior to the start of mediation, shall inquire of the parties whether they are involved in any personal protection matters, domestic violence criminal actions, active or pending child protective actions or have been the victim of domestic violence. All mediators will be provided with a copy of the *Mediator In-Person Screening Protocol* and shall comply therewith.

If any of the parties are involved in any of the above matters, a *Motion to Remove Case from Mediation* (MC 276) must be filed with the Court Clerk. A hearing will then be held to determine whether mediation is appropriate.

(B) Application: An eligible person desiring to serve as a case evaluator, a general civil mediator and/or a domestic relations mediator may apply to the ADR clerk to be placed on the list of qualified case evaluators, general civil mediators or domestic relations mediators.

Application forms are available in the office of the ADR clerk. The application form includes a certification that the applicant meets the requirements for service and that the applicant will not discriminate against parties, attorneys, other case evaluators or mediators on the basis of race, ethnic origin, gender or other protected personal characteristic.

(C) Eligibility: To serve as a *case evaluator (MCR 2.403)*, a person must meet the following qualifications:

1. must have been a practicing lawyer for at least five (5) years;
2. must be a member in good standing of the State Bar of Michigan;
3. must reside, maintain an office or have an active practice in Calhoun County or a neighboring county;
4. must demonstrate that a substantial portion of his/her practice for the last five (5) years has been devoted to civil litigation matters, including investigation, discovery, motion practice, case evaluation, settlement, trial preparation, and/or trial;
5. must have had an active practice in the practice area for which the case evaluator is listed for at least the last three (3) years;
6. case evaluators must not discriminate against parties or attorneys on the basis of race, ethnic origin or other protected personal characteristic; and
7. case evaluators must comply with the court's ADR Plan, orders of the court regarding cases submitted to case evaluation and conduct themselves with honesty, integrity and impartiality.

To serve as a *general civil mediator (MCR 2.411)*, a person must meet the following qualifications:

1. must complete a training program approved by the State Court Administrator providing the generally accepted components of mediation skills;

2. must have one or more of the following:
 - (a) juris doctor degree or graduate degree in conflict resolution; or
 - (b) 40 hours of mediation experience over two years, including mediation, co-mediation, observation, and role-playing in the context of mediation;
3. must observe two general civil mediation proceedings conducted by an approved mediator, and conduct one general civil mediation to conclusion under the supervision and observation of an approved mediator;
4. an applicant who has specialized experience or training, but does not meet the specific requirements set forth above, may apply to the ADR clerk for special approval. The ADR Committee shall make the determination on the basis of criteria provided by the State Court Administrator. Service as a case evaluator under MCR 2.403 does not constitute a qualification for serving as a mediator under this section;
5. approved mediators are required to obtain eight (8) hours of advanced mediation training during each 2-year period. Failure to submit documentation establishing compliance is grounds for removal from the list under MCR 2.411(E)(4);
6. general civil mediators must not discriminate against parties or attorneys on the basis of race, ethnic origin or other protected personal characteristic; and
7. general civil mediators must comply with the court's ADR Plan, orders of the court regarding cases submitted to mediation and the *Standards of Conduct for Mediators* adopted by the State Court Administrator in SCAO Administrative Memorandum 2001-1.

To serve as a ***domestic relations mediator (MCR 3.216)***, a person must meet the following qualifications:

1. the applicant must
 - (a) be a licensed attorney, a licensed or limited licensed psychologist, a licensed professional counselor, or a licensed marriage and family therapist;
 - (b) have a master's degree in counseling, social work, or marriage and family therapy;
 - (c) have a graduate degree in a behavioral science; or
 - (d) have 5 years experience in family counseling;
2. the applicant must have completed a training program approved by the State Court Administrator providing the generally accepted components of domestic relations mediation skills;

3. 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;
4. an applicant who has specialized experience or training, but does not meet the specific requirements of MCR 3.216(G)(1), may apply to the ADR clerk for special approval. The ADR Committee shall make the determination on the basis of criteria provided by the State Court Administrator;
5. approved mediators are required to obtain eight (8) hours of advanced mediation training during each 2-year period. Failure to submit documentation establishing compliance is grounds for removal from the list under MCR 3.216(F)(4);
6. domestic relations mediators must not discriminate against parties or attorneys on the basis of race, ethnic origin or other protected personal characteristic; and
7. domestic relations mediators must comply with the court's ADR Plan, orders of the court regarding cases submitted to mediation and the *Standards of Conduct for Mediators* adopted by the State Court Administrator in SCAO Administrative Memorandum 2001-1.

Applications to serve as a case evaluator or as a general civil or domestic relations mediator shall include a certification that the applicant agrees to fulfill his or her responsibilities in an impartial manner consistent with best mediation practices and the rules and practices of the 37th Judicial Circuit Court. The certificate for mediators shall also state the fee that will be charged and explain the basis of compensation, fees and charges. All fees shall be reasonable, considering, among other things, the mediation services, the type and complexity of the matter, the expertise of the mediator and the time required.

(D) Review of Applications: The court will disseminate information to potentially interested persons that the review process is approaching. Any person interested in providing case evaluation or mediation services is invited to submit an application to the ADR clerk who will distribute all applications received since the last review process to the local ADR Committee for review. The ADR Committee or a subcommittee thereof shall meet at least annually to review applications and compile a list of qualified case evaluators, general civil mediators and domestic relations mediators. Persons meeting the qualifications specified in (C) above shall be placed on all lists for which they are qualified. The ADR Committee or subcommittee thereof will also review all requests for special approval and make recommendations regarding approval to the court. The ADR Committee will forward the case evaluator list to the Circuit Court Administrator. The

Circuit Court Administrator in consultation with the Presiding Family Division and Presiding Civil/Criminal Division Circuit Judges shall review the case evaluator list and designate each applicant as plaintiff, defense or neutral for use in assigning case evaluators to personal injury case evaluation panels. The ADR Committee shall submit all lists to the 37th Judicial Circuit Court for final review and approval.

Selections shall be made without regard to race, ethnic origin or gender. Except for the ADR clerk, no person may serve on any committee reviewing applications more than three (3) years in any nine (9) year period. No review committee or subcommittee may have fewer than three (3) members.

Applicants who are not found qualified for placement on the list(s) shall be notified of that decision by the ADR Committee. Applicants will have 21 days to apply for reconsideration by the applicable Division Presiding Judge. Any documents considered in the initial review process shall be retained for at least the 21 days described above. The request for reconsideration and all related documents must be filed with the ADR clerk, with a copy to the Presiding Judge, and received within 21 days of the date the ADR Committee decision was mailed.

(E) Specialized Lists: Separate lists are maintained by the ADR clerk for personal injury case evaluation panels, with appropriate designations for each case evaluator as plaintiff, defense or neutral; general civil case evaluation panels, with no designations; general civil mediators; domestic relations mediators for child related issues only and domestic relations mediators for property issues only or for both, with appropriate designations for each mediator as evaluative or non-evaluative; and mediation services.

(F) Reapplication: Persons shall be placed on all lists for which they are qualified for a fixed period of time, not to exceed five (5) years and must reapply at the end of that period in the same manner as persons seeking to be added to the list.

(G) Advanced Training: Every mediator on a court-approved list must notify the ADR clerk and provide written proof of having completed the requisite eight (8) hours of advanced mediation training during each two (2) year period following appointment to a list. Failure to do so will be automatic grounds for removal from the list.

Domestic relations mediators must complete an in-service training program on how to identify cases which are not appropriate for mediation before being assigned to a domestic relations case.

The court may require that case evaluators attend orientation or training sessions or may provide written materials explaining the case evaluation process and the operation of the court's case evaluation program. However, case evaluators may not be charged any fees or costs for such programs or materials.

(H) Availability of Lists: The lists of case evaluators, mediators and mediation services are available to the public. Copies may be obtained from the ADR clerk in the office of the Circuit Court Administrator.

(I) Removal from Lists: Periodic meetings may be scheduled so that the ADR Committee, the Presiding Circuit Court Judges, the Circuit Court Administrator and the ADR clerk may review cases of potential disqualification based upon incompetency, bias, consistent unavailability or other just cause. Persons so notified of their disqualification can request a review of the decision consistent with the procedure described in (D) above.

(J) Assignment to Case Evaluation Panels: The court will refer cases to case evaluation by an order of referral which may be contained in the court's Scheduling Order. The ADR clerk assigns case evaluators to panels in a random or rotating manner that assures, as nearly as possible, that each case evaluator on a specialized list is assigned approximately the same number of cases over a period of one year. If a substitute case evaluator must be assigned, the same or similar assignment procedure shall be used to select the substitute, whenever possible. The ADR clerk maintains records of service of case evaluator panels and shall include those in the court's annual ADR report.

Specialized lists which designate plaintiff, neutral and defense oriented case evaluators shall include one member from each category to comprise a panel. The 37th Circuit Court does not assign presiding judges to case evaluation panels.

On stipulation of the parties, the court may appoint a panel selected by the parties. In such a case, the qualification requirements do not apply; and the parties may agree to modification of the procedures for conduct of case evaluation. Nothing precludes parties from stipulating to other alternative dispute resolution procedures that may aid in resolution of the case.

Any party, by timely motion, may object to the referral of their case to case evaluation. The court's referral order makes this right clear to counsel and parties.

(K) Assignment of General Civil Mediators: The court will refer cases to general civil mediation by an order of referral which may be contained within the court's Scheduling Order. A list of court-approved mediators and mediation services will be provided to the parties. Except for good cause shown, the parties' attorneys or the parties, if unrepresented, shall confer and select a mediator or mediation service within 14 days of the date of the order and notify the ADR clerk. Within 21 days of the date of the order, the mediator or mediation service shall advise the ADR clerk and all parties, in writing, who will be conducting the mediation and the date and time set for the mediation. The parties will provide the mediator with a copy of the Scheduling Order.

In the event the parties do not notify the ADR clerk of their selection within the 14 days allowed, the ADR clerk will select a mediator without notice to the parties and advise the parties or their attorneys who will be conducting the mediation. The ADR clerk will select a mediator in a rotating manner that assures, as nearly as possible, that each mediator on the list is assigned approximately the same number of cases over a period of one year. If a substitute mediator must be assigned, the same or similar assignment procedure shall be used to select the substitute, whenever possible. Once the ADR clerk selects a mediator, the parties are responsible for any fees generated by that mediator or service.

Any party, by timely motion, may object to the referral of their case to mediation. The court's referral order makes this right clear to counsel and parties.

(L) Assignment of Domestic Relations Mediators: The court will refer contested issues in domestic relations cases to mediators by an order of referral which may be contained with the court's Scheduling Order. A list of court-approved domestic relations mediators and mediation services will be provided to the parties. Except for good cause shown, the parties' attorneys or the parties, if unrepresented, shall select a mediator or mediation service within 14 days of the date of the order. Within 21 days of the date of the order, the mediator or mediation service shall advise the ADR clerk and all parties, in writing, who will be conducting the mediation and the date and time set for the mediation. The parties will provide the mediator with a copy of the Scheduling Order.

In the event the parties do not notify the ADR clerk of their selection within the 14 days allowed, the ADR clerk will select a mediator without notice to the parties and advise the parties and/or their attorneys who will be conducting the mediation. The ADR clerk will select a mediator in a rotating manner that assures, as nearly as possible, that each mediator on the list is assigned approximately the same number of cases over a period of one year. If a substitute mediator must be assigned, the same or similar assignment procedure shall be used to select the substitute, whenever possible. Once the ADR clerk selects a mediator, the parties are responsible for any fees generated by that mediator or service.

Any party, by timely motion, may object to the referral of their case to mediation. The court's referral order makes this right clear to counsel and parties.

(M) Evaluative Mediation in Domestic Relations Cases: The ADR clerk shall note on the list of qualified domestic relations mediators which mediators are willing to provide evaluative mediation. If the parties seek evaluative mediation, the mediator must be so advised and, after mediation, the mediator shall, within seven (7) days of completion of the mediation, prepare a written report to the parties setting forth the mediator's proposed recommendation for settlement purposes only and send a proof of service to the ADR

clerk. The parties shall, within seven (7) days of the date of service, accept or reject the recommendation and notify the mediator in writing. If both parties accept the recommendation in full, the attorneys or parties, if unrepresented, shall proceed to request a final hearing for entry of a judgment. If either party rejects the recommendation, the mediator shall report the results of the mediation to the ADR clerk as provided in MCR 3.216(H)(6), and the case shall proceed toward trial.

(N) Rotation Report: The ADR clerk shall maintain records that reflect the number of times each mediator was used in a case in which the parties did not stipulate to their own mediator. The ADR clerk shall prepare an annual report of this information. The annual report shall be made available to all mediators and the general public.

(O) Mediator Compensation: A mediator is entitled to reasonable compensation based on an hourly rate commensurate with the mediator's experience and usage charges for services performed. Before mediation, the parties shall agree, in writing, on the fee, when it will be paid and by whom in accordance with MCR 2.411(D).

IV. *Final Settlement Conference*

A final settlement conference will be scheduled in every case after discovery has been completed, all motions have been heard and other ADR options have been explored. MCR 2.401. The purpose of the final settlement conference is to give the parties and their counsel one last, court-assisted opportunity before trial to settle the case or to narrow the issues in dispute and to discuss how the trial will proceed. Each party and person(s) with authority to settle the case, as well as the attorney(s) who will be trying the case, are required to attend. At the conference, the parties will provide a trial brief and marked exhibits to the court. If the case is scheduled for a non-jury trial, they will also provide stipulated facts and proposed findings of fact and conclusions of law. If the case is scheduled for a jury trial, they will also provide written full text jury instructions and a proposed verdict form.

V. *Arbitration and Other ADR Processes*

Nothing in this ADR Plan shall preclude the parties from stipulating to an ADR process of their choice so long as the schedule for completing same does not interfere with the court's Scheduling Order and the orderly progression of the case. Parties are encouraged to pursue any form of ADR which they believe will assist them in resolving their disputes. Arbitration may be pursued through a private arbitrator or arbitration service or through the American Arbitration Association. Information regarding private arbitrators, local arbitration services and arbitration through the American Arbitration Association is available through the ADR clerk.

VI. *ADR for Indigent Litigants*

The court shall take steps to make mediation available to indigent litigants. A litigant is "indigent" if he or she qualifies for the waiver or suspension of fees or costs in accordance with MCR 2.002(C) or (D).

A person seeking to receive a fee waiver or a pro bono case evaluation or mediation services shall complete SCAO form MC 20 (Affidavit for the Suspension of Fees and Costs). The affidavit shall be presented to the court at the first scheduled conference. The court shall review the affidavit and may make appropriate inquiries about the financial circumstances of the person. A litigant who is determined "indigent" is exempt from case evaluation and mediation fees under this Plan. However, in a domestic case, the court may order a fee waiver as to one party or may order all fees be paid by one party.

The court expects all case evaluators and mediators who receive referrals from the court to provide pro bono services to indigent persons in up to two (2) cases per year as assigned by the court. The court may also refer indigent cases to the local Community Dispute Resolution Center, and the Community Dispute Resolution Center will be encouraged to submit an application to be placed on the court's list of approved mediators.


VII. *Supervision*

The Chief Judge, with input from the Presiding Circuit Court Judges, shall exercise general supervision over the implementation of this Plan and the case evaluator and mediator selection process and shall review the operation of the court's ADR Plan at least annually to assure compliance. In the event of non-compliance, the court shall take such action as is needed. This action may include recruiting persons to serve as case evaluators and mediators or changing the court's ADR Plan. The court shall develop a set of quality assurance questionnaires to be completed by the mediator, attorneys and litigants that will be distributed by the mediator at every mediation. The ADR clerk will review the questionnaires and notify the Chief Judge and Presiding Circuit Judges of any concerns. The court shall take such action as is needed to investigate and resolve any problems. The court shall submit an annual report to the State Court Administrator on the operation of the court's ADR program on a form provided by the State Court Administrator.

In implementing the ADR Plan, the court, court employees, members of Bar committees and any other person involved in the application review procedure shall take all steps necessary to assure that, as far as reasonably possible, the list of case evaluators and mediators fairly reflects the racial, ethnic and gender diversity of the members of the state bar who are eligible to serve as case evaluators and/or mediators in our community.

This Order is effective August 1, 2017.

Dated: 7-10-17



Michael L. Jaconette, Chief Judge
Calhoun County Courts

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