2004-03 J Circuit
2004-02 J District
2004-01 J Probate

STATE OF MICHIGAN
43RD JUDICIAL CIRCUIT COURT
CASS COUNTY

ADMINISTRATIVE ORDER 2004-4

MEDIATION RULE

Pursuant to MCR 2.410 (Alternative Dispute Resolution), the 43rd Judicial Circuit Court, Cass County Probate Court and 4th District Court adopts the following ADR Plan, which replaces Administrative Order 2001-1.

Alternative dispute 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 or other procedures ordered on stipulation of the parties."

ADR CLERK DESIGNATION

This Court designates the Assignment Clerk for Circuit Court to serve as the ADR Clerk. This plan is being jointly adopted by the 43rd Circuit Court, Cass County Probate Court and 4th District Court. The ADR Clerk as so designated will administer the plan, including maintaining records pertaining to the Courts' ADR Program, applications for and lists of case evaluators, general mediators, and domestic relations mediators. The ADR Clerk shall be responsible for disseminating information about the Courts' ADR Program.

DISSEMINATION OF INFORMATION REGARDING ADR

The approved list and the applications of approved mediators, except for the optional section identifying the applicant's gender and racial/ethnic background, shall be available to the public upon written request to the ADR Clerk.

CASE EVALATION
GENERAL CIVIL MEDIATION
DOMESTIC RELATIONS MEDIATION

Case Evaluation under MCR 2.403: A Court may submit to case evaluation any civil action in which the relief sought is primarily money damages or division of property. A case evaluation is a process by which a panel of three qualified evaluators assess the relative strengths and weaknesses of the parties' legal positions and immediately assign a value to the case. The parties have 28 days to either accept or reject the evaluation. If the parties accept the panel's

evaluation, a judgment or dismissal disposing of the case must be submitted to the Court within 35 days. Rejection of a case evaluation may result in subsequent assessments of significant monetary sanctions.

Mediation under MCR 2.411 and 3.216 A Court may refer any civil action to mediation. Under MCR 3.216, a Court may refer any contested issue in a domestic action to mediation. "Mediation" is a process in which a neutral third party facilities communications between parties, assists in identifying issues, and helps explore solutions to promote a mutually acceptable settlement. A mediator has no authoritative decision-making power.

CASE SCREENING

In civil and domestic relations cases, before issuing its Pre-Trial Scheduling Orders, the Court shall determine whether the case is appropriate for case evaluation and/or mediation. When a case is ordered to case evaluation and/or mediation, an appropriate order will be mailed to the parties or their counsel.

MECHANISM FOR OBJECTING TO MEDIATION

Pursuant to MCR 2.410(E), 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. A timely motion must be filed, and the matter noticed out to opposing counsel within 21 days from the date of the ADR order.

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).

Any person who participates as an ADR provider for the Cass County Circuit Court or its Family Division is encouraged to accept one (1) pro bono case per year. To the extent possible, arrangements will be made whereby all parties with the ability to reimburse the ADR provider will be required to do so.

APPLICATION

The ADR Clerk will disseminate information to potential persons who are interested in providing case evaluation and/or mediation services. Those persons who are interested in being a case evaluator and/or mediator shall complete and submit to the ADR Clerk, the State Court Administrative Office's approved application Form MC 34 for Case Evaluator Application; MC 281a for Civil Mediator Application; MC 281b for Domestic Relations Mediator Application. These forms will be made available by the ADR Clerk.

The ADR Clerk will review all applications, and forward qualified applications to the Circuit Judge, Family Court Judge and District Court Judge for their approval. Applicants will be reviewed on an annual basis by the Circuit Judge, Family Court Judge, District Court Judge and ADR Clerk. Applicants who are not placed on the list shall be notified of that decision, and within 21 days of notification of the decision to reject, the applicant may seek reconsideration.

The ADR Clerk will establish the Court's list of approved case evaluators and mediators from those persons meeting the eligibility requirements listed below. Case evaluators/mediators will be placed on the list for a period of five years, and may reapply at that time.

ELIGIBILITY

CASE EVALUATION: To serve as a case evaluator the candidate must meet the following minimum qualifications:

(a) 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;

(b) An applicant must reside, maintain an office, or have an active practice in the jurisdiction for which the list of case evaluators is compiled; and,

(c) An applicant must demonstrate that a substantial portion of the applicant's practice for the last 5 years has been devoted to civil litigation matters, including investigation, discovery, motion practice, case evaluation, settlement, trial preparation, and/or trial.

(d) If separate sublists are maintained for specific types of cases, the applicant must have had an active practice in the practice area for which the case evaluator is listed for at least 3 years.

GENERAL CIVIL MEDIATOR: To serve as a general civil mediator the candidate must meet the following minimum qualifications as specified in MCR 2.411(F)(2).

(a) Complete a training program approved by the State Court Administrator providing the generally accepted components of mediation skills;

(b) Have one or more of the following:

- Juris doctor degree or graduate degree in conflict resolution; or
- 40 hours of mediation experience over two years, including

mediation, co-mediation, observation, and role-playing in the context of mediation.

(c) 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.

As permitted by MCR 2.411(F)(3), an applicant who has specialized experience or training, but does not meet the specific requirements of MCR 2.411(F)(2), may apply to the ADR clerk for special approval. The ADR clerk shall make a 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.

Pursuant to MCR 2.411(F)(4), approved mediators are required to obtain eight hours of advanced mediation training during each two-year period. Failure to submit documentation establishing compliance is ground for removal from the list under MCR 2.411(E)(4).

General civil mediators must not discriminate against parties or attorneys on the basis of race, ethnic origin, gender, or other protected personal characteristics.

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 promulgated by the State Court Administrator.

DOMESTIC RELATIONS MEDIATOR: To serve as a domestic relations mediator the candidate must meet the following minimum qualifications as specified in MCR 3.216(G)(1):

(a) The applicant must

- be a licensed attorney, a licensed or limited licensed professional counselor, or a licensed marriage and family therapist;
- have a masters degree in counseling, social work, or marriage and family therapy;
- have a graduate degree in behavioral science; or
- have five years experience in family counseling.

(b) The applicant must have completed a training program approved by the

State Court Administrator providing the generally accepted components of domestic relations mediation skills.

(c) The applicant must have observed two domestic relations mediation proceedings conducted by an approved mediator, and have conducted a 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 of subrule (G)(1), may apply to the ADR Clerk for special approval. The ADR Clerk shall make the determination on the basis of 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.

Domestic relations mediators must not discriminate against parties or attorneys on the basis of race, ethnic origin, gender, or other protected personal characteristics.

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 promulgated by the State Court Administrator.

ASSIGNMENT TO CASE EVALUATION

A Court will refer cases to case evaluation by an order, and the date will be contained in the Pre-Trial Scheduling Order. The ADR Clerk will assign case evaluators to panels from the approved list in a rotating manner which assures as nearly as possible fair and equal selection. If a substitute case evaluator must be assigned, the same or similar procedure shall be used to select the substitute, whenever possible.

The ADR Clerk will schedule the case evaluation and send out a notice with names of the case evaluators, date and time of the case evaluation, and specific instructions for filing case evaluation briefs. The parties are responsible for the payment of case evaluators at the rate of $25.00 per evaluator, with an additional $50.00 per evaluator if case evaluation briefs are not filed 14 days prior to the evaluation.

Specialized lists which designate plaintiff, neutral and defense oriented case evaluators shall include one member from each category to comprise a panel. Presiding judges will not be assigned to case evaluation panels.

On stipulation of the parties, the Court may appoint a panel selected by the parties. Nothing precludes the parties from stipulating to additional alternative dispute resolution procedures that may aid in the resolution of the case.

ASSIGNMENT TO GENERAL CIVIL MEDIATION

The Court may refer cases to general civil mediation by an Order for Mediation or the parties may stipulate to conduct mediation. The ADR Clerk will then provide the parties a list of court-approved mediators. The parties may stipulate to the selection of a mediator and notify the ADR Clerk within the time specified in the order. If the parties so stipulate, the qualifications to act as mediator contained herein shall not apply, and the Court will appoint the mediator selected by the parties.

After selection or appointment, the mediator shall promptly confer with the parties and schedule mediation within the deadline specified in the Court's order. The mediator shall also promptly advise the ADR Clerk in writing of the date and time of the mediation. The parties must provide the mediator with a copy of the Court's Pre-Trial Scheduling Order.

The costs of mediation shall be divided by the parties on a pro-rata basis unless otherwise agreed to by the parties or ordered by the Court.

In the event the parties do not notify the ADR Clerk of their selection within the time specified in the order, the ADR Clerk will select a mediator, and advise the parties or their attorneys and the mediator with a Notice Regarding Court Selected Mediator specifying the mediator and the time within which the mediation is to be completed. The ADR Clerk will select the mediator in a random or 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. The ADR Clerk will also provide the mediator with a copy of the Civil Scheduling Order.

Conduct of Mediation: The mediator shall meet with the parties and counsel to explain the mediation process. Mediation activities may extend beyond one session if all parties and the mediator feel that continued sessions may result in settlement. The mediator may require that documents or summaries of the case be provided to them at a time prior to the mediation. The mediation session(s) shall continue until either settlement is reached or the mediator determines that a settlement is not likely to result from further mediation activities.

Completion of Mediation: Within seven days after the completion of the mediation, the mediator shall so advise the Court, 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.

Settlement: If the case is settled through mediation, within 35 days the attorneys shall prepare and submit to the Court the appropriate documents to conclude the case.

ASSIGNMENT TO MEDIATION IN DOMETIC RELATIONS CASES

The Court may refer contested issues in domestic relation cases to mediation by an Order for Mediation or by stipulation of the parties. A list of court-approved domestic relations mediators will be provided to the parties. Except for good cause shown, the parties' attorneys, or the parties, if unrepresented, shall select a mediator within 14 days of the date of the order. Within 28 days of the date of the order, the **mediator** 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 Divorce Pre-Trial 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 in a random or 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. The ADR Clerk will advise the parties or their attorneys and the mediator with a Notice Regarding Court Selected Mediator specifying the mediator and the time within which the mediation is to be completed. Within 14 days of the date of the Notice, the mediator shall advise the ADR Clerk and all parties, in writing, the date and time set for the mediation. The ADR Clerk will also provide the mediator with a copy of the Divorce Pre-Trial Order.

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.

Conduct of Mediation: The 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, pursuant to MCR 3.216(H)(2).

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. 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.

Domestic relations mediation activities may extend beyond one session if all parties and the domestic relations mediator feel that continued sessions may result in settlement. The domestic relations mediation session(s) shall continue until either a settlement is reached or the domestic relations mediator determines that a settlement is not likely to result from further mediation activities.

Completion of Mediation: The domestic relations mediator must, within 7 days of completion of the mediation process, whether the result is settlement or the determination that further mediation activity will not result in settlement, notify the ADR Clerk in writing, stating only the date on which the mediation activities were concluded, who participated in the mediation, and whether settlement was reached.

If a settlement is reached as a result of domestic relations mediation, to be binding upon the parties, the terms of the settlement must be reduced to a written document signed by the parties or acknowledged by the parties on an audio or video recording.

After settlement has been reached, the parties have 35 days to take all necessary steps to take divorce proofs, but in all cases prior to or on the trial date.

EVALUATIVE MEDIATION IN DOMESTIC RELATION 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 the mediation, the mediator shall, within seven days of the 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 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 the parties, if unrepresented, shall proceed to request a pro confesso hearing date. 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.

MEDIATOR COMPENSATION

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

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 upon written request to mediators and the general public.

SUPERVISION

The Chief Judge shall exercise general supervision over the implementation of this plan and the case evaluator and mediator selection process and shall annually review the operation of the Court's ADR Plan.

In implementing the ADR Plan, the Court, Court employees, and any other person involved in the application review procedures 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 in the jurisdiction for which the list is compiled and who are eligible to serve as case evaluators and/or mediators.

Date: 8-26-04 Michael E. Dodge

Michael E. Dodge, Chief Circuit Judge

Date: 8-30-04 Susan L. Dobrich

Susan L. Dobrich, Probate/Family Court Judge

Date: August 30, 2004 Paul E. Deats

Paul E. Deats, District Court Judge

Michigan Supreme Court
State Court Administrative Office
Trial Court Services Division
Michigan Hall of Justice
P.O. Box 30048
Lansing, Michigan 48909
Phone (517) 373-4835

September 15, 2004

Honorable Michael E. Dodge
Chief Judge
43rd Circuit Court
Law and Courts Building
60296 M-62, Suite 26
Cassopolis, MI 49031

Re: Administrative Order C43 2004-05J
Alternative Dispute Resolution
Joint Courts & Orders: D04 2004-02J
P14 2004-01J
Rescinds: 2001-01

Dear Judge Dodge:

This is to advise that we have reviewed the above- referenced administrative order and find that it conforms with the requirements of MCR 8.112(B). This order is being accepted and filed until advised by your court of any change.

Sincerely,

Nial Raaen
Director, Trial Court Services

NR/dmm
cc: Ms. Barbara Wilson
Mr. James P. Hughes, Region 2 Administrator

SEP 22 2004