

Effective Date: June 12, 2018

This Order replaces and rescinds LAO 2001-08D

The purpose of this administrative order is to adopt the local Alternative Dispute Resolution Plan (ADR) for the Washtenaw County Trial Court (Trial Court) in accordance with MCR 2.410.

I. Discretion of the Court

At any time after the commencement of an action, on its own initiative or the request of a party, pursuant to MCR 2.401 and this local court rule, the trial judge shall consider whether alternative dispute resolution is appropriate. It is the Trial Court's expectation that all appropriate cases will be assigned to ADR pursuant to this Plan.

- A. In civil cases, the trial judge shall make a determination regarding referral to ADR at the initial pretrial or scheduling conference.
- B. In family law cases, Judge O'Brien and Judge Conlin require all divorce with minor children (DM) cases to pursue ADR at the time of the filing of the Complaint. Judge Brown and Judge Connors require a Pretrial Conference for divorce cases (DM, DO), with attorneys and Pro Per parties after an answer is filed. Parties are required to be present unless the case is settled and proofs can be placed on the record. Both parties shall complete pretrial summaries and a Verified Personal Financial

Statement of Assets and Liabilities. At the Pretrial Conference, if private ADR has not been initiated, the court will determine whether ADR is appropriate and order same.

- C. In child protective proceedings, the hearing officer shall make a determination regarding referral to ADR pursuant to MCR 3.970.

II. Alternative Dispute Resolution Clerk

The court will appoint an ADR Clerk who will fulfill all the duties required of the ADR Clerk by the Michigan Court Rules.

III. Alternative Dispute Resolution Committee

- A. **Membership** – The Trial Court shall, in consultation with the Washtenaw County Bar Association and other interested entities, select five (5) individuals to serve as the Washtenaw County ADR Committee; three members to be appointed by the current President of the Washtenaw County Bar Association and 2 members to be appointed by the Chief Judge of the Washtenaw County Trial Court. The ADR clerk shall serve as an ex officio member of the committee. The committee members shall be persons knowledgeable about alternative dispute resolution processes and may include lawyers, non-lawyers, judges, court staff and others.

The committee may appoint such subcommittees and advisory committees as it sees fit. These subcommittees may include persons outside the membership of the committee. However, each official action of the subcommittee must be supported by a majority of the members of the committee.

B. Terms – The term of each committee member shall be three (3) years. Terms shall be staggered. Committee members may serve consecutive terms.

C. Functions – The ADR clerk has the authority to approve mediators/facilitators to be placed on or remain on an approved mediator/facilitator list, provided the specific requirements listed in this plan are met. The Committee shall assist the ADR Clerk in making recommendations to the chief judge regarding the following:

1. Pursuant to MCR 2.410, MCR 2.411, MCR 2.412, MCR 3.216, and MCR 3.970, the criteria for selection of mediators/facilitators; the selection of mediators/facilitators; and certification of the list of persons qualified to act as mediators/facilitators in all civil and family cases in the Trial Court.
2. The development of policies and procedures consistent with and in furtherance of this plan and the development of forms to facilitate the orderly and effective use of alternative dispute resolution in the Trial Court.
3. The review of any complaints and proposed changes in this plan and the resolution of those complaints and the need for any changes in the plan.
4. Assist in the process of reviewing and approving mediator/facilitator applications to be placed on, or remain on, an approved mediators list.

5. The Committee will serve as the liaison between the Trial Court and the Washtenaw County Bar Association as to any matters relating to this Plan. The Committee will work with the Trial Court and the Washtenaw County Bar Association to promote and publicize the appropriate use of ADR.

IV. Selection and Assignments of Mediators/Facilitators

- A. Maintenance of the List** – The ADR Clerk shall maintain three separate lists of persons: (1) those qualified and available to serve as mediators under MCR 2.411; (2) those qualified and available to serve as mediators under MCR 3.216; (3) and those qualified and available to serve as mediators/facilitators under MCR 3.970.
- B. Recruitment** – The ADR Clerk shall provide notice to the members of the Washtenaw County Bar Association seeking applications to the mediator/facilitator lists. The ADR Clerk shall review applications semi-annually, with the submission deadlines of June 30th and December 31st each year, and identify those individuals qualified to serve under the applicable court rules as mediators/facilitators.
- C. Qualifications** – To be listed as a mediator under MCR 2.411 an applicant must satisfy the requirements of MCR 2.411(F) and apply and be certified under this rule. To be listed as a mediator under MCR 3.216 an applicant must satisfy the requirements of MCR 3.216(G) and apply and be certified under this rule. To be listed as a mediator/facilitator under MCR 3.970 an

applicant must satisfy the requirements of MCR 3.970(H) and apply and be certified under this rule. The ADR Clerk, with the assistance of the ADR committee as needed, is authorized to administer the application and certification process, including the review of qualifications of mediators/facilitators; satisfaction of training requirements of mediators/facilitators; and approval of training programs for mediators/facilitators.

- D. Compliance with Plan** - Mediators/facilitators certified under this rule must agree to comply with the Court's ADR Plan; to comply with all orders of the court regarding cases submitted to ADR; to conduct themselves with honesty, integrity, and impartiality; and to refrain from any form of discrimination prohibited by law. Failure to comply with the provisions of this section or the administrative policies of the Committee or the Court is grounds for removal from the mediator/facilitator list. Approved mediators/facilitators must submit proof of at least 8 hours of advanced mediation training every 2 years to the ADR Clerk.
- E. Removal from List** – Removal of a mediator/facilitator from one or more of the Approved Mediator/Facilitator lists may occur as the result of demonstrated incompetence or bias, repeated failure to be available to serve as a mediator/facilitator, or for other just cause. Recommendations for removal will be presented at the regular Committee meetings. No mediator/facilitator shall be removed from an Approved Mediator/Facilitator list without a majority vote of the Committee. Within

21 days of notification of the decision to remove a mediator from the list, the mediator may seek reconsideration of the ADR committee's decision by the Chief Judge. The court does not need to provide a hearing.

F. Rotation and Maintenance of the List - Initially, the parties will be given a copy of the list of mediators/facilitators and may agree on a mediator/facilitator from that list at any time. The parties may select a qualified mediator/facilitator not on the ADR Clerk's list. If the parties are unable to choose a mediator/facilitator, the next mediator/facilitator on the list will be identified by the ADR clerk, but the parties retain the option to agree on a different mediator/facilitator from the list. In exceptional circumstances, because of the complexity of the issues involved and the particular skills of a mediator/facilitator, upon motion of the parties, the Court may assign a specific mediator/facilitator in a case.

G. Annual Review and Report - The rotational system should insure that mediators/facilitators are equitably assigned by the ADR Clerk over a period of time. The ADR Clerk shall maintain statistics indicating the number of times each mediator/facilitator is selected off the rotational list.

V. Dissemination of Information

The ADR Clerk shall provide every Trial Court Judge and office making referrals to ADR with information, directed at potential litigants, explaining ADR. Such information shall be provided to every plaintiff, and shall generally be available in the Trial Courts Clerk's offices, the ADR office and on the Trial Court website. This information shall describe the following:

- A. Basic information about ADR
- B. Information regarding cases not appropriate for ADR; and
- C. Right and process to object to ADR.

VI. Exemption for Cases Involving Domestic Violence, Child Abuse, Elder Abuse or Neglect

- A. If a domestic relations case involves domestic abuse, child abuse or neglect, elder abuse or neglect, or a personal protection order has been issued, or there are sworn statements that domestic violence has occurred or there is reason to believe that one or both parties' health or safety would be endangered by ADR or for other good cause shown the case is exempt from referral to ADR under MCR 3.216(C)(3). This provision does not preclude parties otherwise exempt from ADR from stipulating to a written order referring the case to ADR or from requesting a hearing on the appropriateness of referral to ADR.
- B. A mediator/facilitator shall not engage in ADR when it appears to the mediator/facilitator or when either party asserts that domestic or family violence has occurred unless:
 - 1. ADR is ordered by the court after a hearing or agreed to by the victim of the alleged domestic or family violence; and
 - 2. ADR is provided in a specialized manner that protects the safety of the victim by a mediator/facilitator who is trained in the ADR of domestic and family violence cases; and

3. The victim is permitted to have in attendance at ADR a supporting person of her or his choice, including but not limited to an attorney or advocate.

VII. Fees

Each mediator listed on the ADR Clerk's list pursuant to MCR 2.411 and 3.216 shall have their fee schedule included on that list. Each mediator providing services under this plan shall execute a written fee agreement with the parties. A mediator providing services under MCR 2.411 is entitled to fees pursuant to MCR 2.411 (D). A mediator providing services under MCR 3.216 is entitled to fees pursuant to MCR 3.216(J). Under MCR 3.970, the court shall not order a party to pay for ADR services for child protection proceedings.

VIII. Access to ADR for the Indigent

- A. Definitions** –If a party qualifies for waiver of filing fees under MCR 2.002 or the court determines on other grounds that the party is unable to pay the full cost of an ADR provider's services, and free or low-cost dispute resolution services are not available, the court shall not order that party to participate in an ADR process.
- B. Indigent Access to Mediation and Facilitation Services** – A party meeting the Court's indigency standard is entitled to free ADR process if ordered by the Court. All listed mediators/facilitators under MCR 2.411, MCR 3.216, or MCR 3.970 are encouraged to provide pro bono services to indigent persons. The Court may also refer indigent cases to the Dispute Resolution Center.

6/24/16
Date



David Swartz
Chief Judge
Washtenaw County Trial Court