

DISTRICT JUDGES
HON. RICHARD A. COOLEY, JR.
HON. DAVID C. NICHOLSON
HON. CYNTHIA S. PLATZER

COURT ADMINISTRATOR
JERRY CELMER, JR.



201 McMORRAN BOULEVARD
PORT HURON, MICHIGAN 48060
(810) 985-2072
Fax: (810) 982-1260

The District Court
72nd Judicial District of Michigan

LOCAL ADMINISTRATIVE ORDER 2005 -02

ALTERNATIVE DISPUTE RESOLUTION PLAN
FOR THE 72ND DISTRICT COURT

IT IS ORDERED:

This administrative order is issued in accordance with MCR 8.123, and is effective MARCH 17, 2005. The purpose of this Order is to establish procedures for submission of cases to ADR process under MCR 2.410 and to adopt the following ADR Plan:

I. **Identification of Need:**

A. The Pro-Se Defendant. The District Court is "the People's Court", that is, a Court wherein a significant and increasing percentage of the civil caseload involves parties who appear *pro se*, that is, without representation of counsel. Where one party is represented by counsel, or is familiar with the law and court procedures, the non-represented, non-familiar party is at a significant disadvantage in presenting his/her case in open court proceedings. This includes: (a) small claims cases where a significant number of cases are collection actions brought by companies who use a trained employee to handle the claim; (b) general civil cases where at least one party is not represented; and, (c) landlord-tenant cases where the overwhelming majority of landlords are represented or well-familiar with the law and procedure, and the overwhelming majority of defendant tenants are not represented or possessed of courtroom savvy. The implementation of facilitative mediation would offer a more equal forum for the resolution of these types of disputes.

B. General Civil Cases. Often cases are filed in the General Civil Division of the People's Court in order to problem solve matters clouded by emotional issues, i.e., cases involving familial relations amongst litigants, longstanding relations between litigants, or situations wherein the relationship will likely continue into the future once the dispute is resolved.

C. Simplicity in Proceedings. Typically, *pro se* litigants have no basis to determine whether mediation would be in their best interests, or to select a mediator on their own. Therefore, the parties must be advised in simple, basic terms of their procedural options, of the applicable forms and documents, and given the opportunity to participate in mediation. The burden of scheduling and facilitating mediation, and the preparation of simple, straight-forward documents and forms must be undertaken by the Court system.

D. Consideration of Lack of Ability to Pay. Given the lower jurisdictional limits of the People's Court, and the lower amounts in controversy, combined with the high percentage of *pro se* litigants, the vast majority of litigants would be unable and/or unwilling to pay for mediation services. To the greatest extent possible, free access to mediation services for cases involving *pro se* litigants and general civil cases as determined by the Court to be amenable to facilitative mediation.

E. Continuation of Prompt Access to the Court. The time frame within which the cases currently flow through the 72nd District Court typically meets or exceeds SCAO guidelines; the scheduling of mediation services must be consistent with the prompt resolution of cases as is currently experienced by parties filing in the Court. The litigants will be provided an informational brochure, and, the Magistrate will explain the procedure to the litigants prior to the parties proceeding to the mediation room(s).

II. Program Description:

The following types of cases may be submitted to mediation under MCR 2.410 in accord with this Plan and the attached Referral Agreement with The Resolution Center.

- A) Small Claims Cases:** There shall be a standing order pursuant to this Local Administrative Order that the Court may mediate Small Claims cases that have not had a default judgment, consent judgment, or dismissal entered or have not been removed to the general civil docket.

Mediation services will be provided by The Resolution Center as provided in the attached Referral Agreement, unless as otherwise provided below.

The Court will notify the parties of the mediation date and shall provide them with an information sheet which explains the mediation process, describes the court process and informs the parties of their procedural options. Specifically, the parties shall be advised that:

- a) Mediation services will be provided by trained mediators from The Resolution Center at no charge to the parties; and,
- b) The parties may select their own mediator if the Court is notified in writing prior to the scheduled mediation date signed by both parties and indicating that both parties have agreed to a mediator who will mediate the case on or before the date set by the Court, and further demonstrating an agreement of the parties to pay any and all fees requested by the mediator upon which the parties have agreed. The Resolution Center roster of mediators will be available at the District Court and may be used by the parties to select a mediator; and,
- c) The parties may request that mediation be waived for good cause by making a written request which is to be filed with the Court Clerk at least 48 hours in advance of the scheduled mediation date.

B) General Civil *Pro Se* Cases: There shall be a standing order pursuant to this Local Administrative Order that the Court may mediate General Civil cases where either or both parties are unrepresented and have not settled or had a default judgment, consent judgment or dismissal entered.

The Court will notify the parties of the mediation date and shall provide them with an information sheet which explains the mediation process, describes the court process and informs the parties of their procedural options. Specifically, the parties shall be advised that:

- a) Mediation services will be provided by trained mediators from The Resolution Center at a total charge of \$70.00 to the parties; and,
- b) The parties may select their own mediator if the Court is notified in writing prior to the scheduled mediation date signed by both

parties and indicating that both parties have agreed to a mediator who will mediate the case on or before the date set by the Court, and further demonstrating an agreement of the parties to pay any and all fees requested by the mediator upon which the parties have agreed. The Resolution Center roster of mediators will be available at the District Court and may be used by the parties to select a mediator; and,

- c) The parties may request that mediation be waived for good cause by making a written request which is to be filed with the Court Clerk at least 48 hours in advance of the scheduled mediation date.

C. Landlord-Tenant Cases: A judge may order a case to be mediated on the date of trial if: (a) the case has not settled or had a default judgment, consent judgment or dismissal entered and (b) the judge believes it to be in the parties' best interest, and (c) a mediator is immediately available. An Order for Mediation (MC 274) shall be completed and signed by the judge.

Specifically, the parties shall be advised that:

- a) Mediation services will be provided by trained mediators from The Resolution Center at a total charge of \$70.00 to the parties; and,
- b) The parties may select their own mediator if the Court is notified in writing prior to the scheduled mediation date signed by both parties and indicating that both parties have agreed to a mediator who will mediate the case on or before the date set by the Court, and further demonstrating an agreement of the parties to pay any and all fees requested by the mediator upon which the parties have agreed. The Resolution Center roster of mediators will be available at the District Court and may be used by the parties to select a mediator; and,
- c) The parties may request that mediation be waived for good cause and shall proceed directly to trial.

If the case is not resolved at mediation, the judge will hear the case immediately or as soon as possible.

D. General Civil Cases where both parties are represented: A judge may order to mediation any general civil case where both parties are represented by counsel, after consultation with the parties. An Order of Mediation (MCR 274) shall be completed and signed by the judge. The parties shall pay the cost of mediation unless as otherwise provided below.

Specifically, the parties shall be advised that:

- a) Mediation services will be provided by trained mediators from The Resolution Center at a total charge of \$70.00 to the parties; and,
- b) The parties may select their own mediator if the Court is notified in writing prior to the scheduled mediation date signed by both parties and indicating that both parties have agreed to a mediator who will mediate the case on or before the date set by the Court, and further demonstrating an agreement of the parties to pay any and all fees requested by the mediator upon which the parties have agreed. The Resolution Center roster of mediators will be available at the District Court and may be used by the parties to select a mediator; and,
- c) The parties may request that mediation be waived for good cause by making a written request which is to be filed with the Court Clerk at least 48 hours in advance of the scheduled mediation date.

III. Plan Contents.

1. **ADR Clerk.** The ADR Clerk is SHARON JAHN.
2. **List of Mediators.** For all cases referred to mediation under MCR 2.411, the ADR Clerk shall enter into an agreement with The Resolution Center. The Center shall maintain a list of available qualified mediators to be used by this Court and shall be responsible for assigning mediators in a rotational manner in accordance with the Court Rules.
 - a. **Recruitment.** The Center has a pool of mediators who qualify under MCR 2.411(F) and who shall be provided notice and opportunity to mediate in this Court. Notice shall be published in the Center's Volunteers' Newsletter at a minimum of four (4) times per year. Additional notices will be published or mailed, as necessary, to maintain a roster of sufficient number of mediators to handle the caseload.

- b. Application. The Center shall make an application to the ADR Clerk annually to provide mediation services for the following year. The application shall be reviewed by the ADR Clerk and the Chief Judge.
 - c. Assignment. The Center shall be responsible for assigning qualified mediators so that eligible mediators on the Center's Court roster will be used equitably over an annual period. A mediator may decline an assignment. The Center shall annually provide the ADR Clerk with an annual report that shall compare the number of opportunities each mediator had to serve with the number of times each mediator was used. Mediators shall be provided a copy of the report upon written request to the Center.
 - d. Qualifications. Mediators used in general civil cases shall meet or exceed the qualifications listed in MCR 2.411(f)(2). Small Claims mediators shall meet the training requirements established by SCAO for community mediators, including a 40-hour mediator training course and a 10 hour internship.
3. **Information Dissemination**. The ADR Clerk shall make available a brochure to the above-mentioned case types. Copies of this brochure shall be given to all litigants. Copies of the ADR Plan shall be available at the ADR Clerk's office.
 - a. Domestic relations cases are not within the jurisdiction of the District Court;
 - b. All parties will be notified in the brochure or other documents that they may object to mediation by making written request that mediation be waived for good cause prior to the scheduled date of mediation.
4. **Indigent Access to ADR**. ALL parties, including indigent parties, on small claims, general civil *pro se* referred to mediation shall have equal access to mediation provided by The Center *at no cost* as provided in the attached Referral Agreement.

For general civil cases where all parties are represented, and parties qualify for waiver of filing fees under MCR 2.002, no cost mediation services shall be provided by The Center in accordance with the attached Referral Agreement.

5. **Evaluation of ADR Program.** The ADR Clerk shall have primary responsibility for program oversight and monitoring and shall meet annually with the Chief Judge to evaluate the ADR Program. The evaluation shall include:
 - a. Summary of Program Activity. Review the number of cases mediated and the outcome by case type. This will include a review of the number of cases mediated by the Center and mediated by an agreed upon mediator as well as the number of cases that requested not to participate in mediation and did not participate in mediation.
 - b. Analysis of program compliance with MCR 2.411(B). The Center shall provide an annual report that lists the number of assignment opportunities for each mediator on the Court's list and the number of mediator assignments. Procedures will be reviewed to ensure that the list is being properly maintained and mediators are being assigned in rotational manner.
 - c. Review of complaints from mediators or potential mediators. The ADR Clerk shall be notified of any complaints regarding assignment procedures in a timely manner. A summary shall be reviewed on an annual basis, or as necessary.
 - d. Review of complaints received about assigned mediators. The ADR Clerk shall be notified of any complaints regarding an assigned mediator in a timely manner. A summary shall be reviewed on an annual basis, or as necessary.
 - e. Recommendations for program improvement. The ADR Clerk will make recommendations for program improvement including the quality of the mediation process.

An annual report summarizing the activity of the ADR Program will be made available to SCAO, the Center, mediators and the public upon request.

6. **Referral Relationships.** Pursuant to MCR 2.405, the Court has entered into a referral relationship with The Resolution Center. A copy of the agreement between the Court and The Center is attached. The ADR Clerk is responsible for ensuring that The Center maintains a list of qualified mediators, assigns mediators in a rotational manner, maintains confidentiality, and enforces non-discrimination policies.

Date: February 18, 2005



Cynthia S. Platzer
Chief Judge