



NORENE S. REDMOND
DISTRICT JUDGE

STATE OF MICHIGAN

DISTRICT COURT
THIRTY-EIGHTH JUDICIAL DISTRICT

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ROBERT J. CARDONI
COURT ADMINISTRATOR

Local Administrative Order 2004-~~9~~ 8

ORDER ADOPTING LOCAL ALTERNATIVE DISPUTE RESOLUTION PLAN**IT IS ORDERED:**

This administrative order is issued in accordance with Michigan Court Rule 2.410 Alternative Dispute Resolution, effective August 1, 2000. The purpose of this order is to adopt the Local Alternative Dispute Resolution Plan appended to this Order upon approval by the State Court Administrative Office.

Effective Date: 1-29-04

Date:


Norene S. Redmond
Chief Judge

Agreement to Provide Mediation Services

This Agreement is entered into between The Macomb County Community Dispute Resolution Center, Inc. (d/b/a The Resolution Center) and the 38th Judicial District Court for the purpose of providing mediation services for the small claims and general civil (in pro per) docket of the Court.

The parties agree to the following:

1. **The Resolution Center**

The Resolution Center will supply trained mediators to provide facilitative mediation services for litigants involved in small claims and In Pro Per General Civil matters whom the Court has referred to mediation. This agreement will apply to cases with issues that could be resolved in one day. Cases with issues that require more than 1 day may be conducted by the Center, with approval of the Court, at a reasonable cost to the parties. The Resolution Center will ensure compliance with the Court's operating procedures as well as oversee the services provided by the Center

The Resolution Center will train, maintain and rotate mediators in accordance with MCR 2.411

The Resolution Center will provide the Chief Judge and/or Court Administrator of the 38th District Court with statistical data required under MCR 2.411 quarterly or on a as needed basis.

The Resolution Center will keep all communications during the intake and mediation confidential, except to advise the mediators of the facts and issues involved. The Resolution Center, its staff and mediators, will comply with the confidentiality requirements in MCL 691.1557.

The Resolution Center will supply the appropriate number of mediators to adequately address the caseload of the small claims and general civil division of the 38th District Court

2. **38th District Court**

The 38th District Court will be responsible for all communication and scheduling with the litigants. The Court will provide the Center with copies of the "Affidavit and Claim" and any relevant disposition forms for each case scheduled for mediation. The Court will furnish the Center with the appropriate number of mediation rooms necessary for executing the monthly caseload.

3. Additional Terms of the Agreement

Either party may terminate this Agreement without cause upon a 30-day written notice. Debriefing meetings between Court staff and the Center staff will occur, as necessary, to address problems and to refine and improve the program. The 38th District Court understands that The Resolution Center will be using a facilitative mediation model rather than evaluative mediation in providing services.



Craig R. Pappas, Executive Director
The Resolution Center

3-8-04
Date



Robert Cardoni, Court Administrator
38th District Court

3-8-04
Date

Local Administrative Order # 2004-58**LOCAL ALTERNATIVE DISPUTE RESOLUTION PLAN
FOR THE 38th District Court**

This Court intends to submit cases to ADR processes under MCR 2.410 and hereby adopts the following ADR Plan.

Background

The first step in the development of the Court's ADR Plan was to identify those areas where mediation would be the most beneficial to the parties. Two major areas were identified. The first area was to better address the special needs of the *pro se* litigant. A significant and increasing percentage of a district court's civil caseload involves parties that are not represented by counsel. This includes (a) small claims cases where a significant percentage of cases are collections actions brought by companies who use a trained employee to handle the claim (b) general civil cases where both parties are not represented.

In addition to cases involving *pro se* litigants, mediation would also be appropriate in any general civil case where the judge feels it is in the parties' best interest. This might include cases where there has been a longstanding relationship or where there will be an on-going relationship between the parties.

Once the areas that would benefit from mediation were identified, the next step was to determine how to provide mediation services. There were several factors considered by the Court in the development of its ADR Plan.

1. ***Pro se* litigants are unfamiliar with the legal process-** It is highly unlikely that *pro se* litigants would have a basis to determine whether mediation would be in their best interest or to select a mediator on their own. Therefore, while parties should be advised of their procedural options and given the opportunity to select a mediator, the burden for scheduling mediation and selecting mediators would primarily be the Court's responsibility.
2. **The vast majority of litigants in district court are unable and/or unwilling to pay for the mediation services-** Given the lower jurisdictional limits of the district courts and lower amounts in controversy combined with the high percentage of unrepresented parties, the vast majority would be unable and/or unwilling to pay for mediation services. Therefore, it is important that the Court develop a Plan that provided, to the greatest extent possible, free access to mediation services for the types of cases previously identified by the Court.
3. **Caseload management procedures had to ensure that mediation did not add unnecessary delay-** Scheduling of Mediation services should be consistent with the expedited processing of small claims and general civil cases. Rather than

scheduling a consultation with the parties prior to referral, it was felt that notice could be provided in the form of an informational brochure that clearly explains the process and the procedural options.

4. **The mediation process needed to be straightforward and streamlined so parties were not unnecessarily confused by the process-** Once again, given the high percentage of pro se litigants and their unfamiliarity with legal terminology and court procedures, mediation procedures needed to be developed that did not unnecessarily confuse the parties. To the extent possible the need for orders, motions, objections, etc., would be kept to a minimum.

Based on the above, the Court must assume the primary responsibility for identifying cases that could benefit from mediation and for providing mediation services. The Plan developed by the Court simplifies procedures to the greatest extent possible while still providing parties with procedural options to select and pay for their own mediator or to opt out of the process.

Program Description

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

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 shall notify the parties of the mediation date and shall provide them with an information sheet that explains the mediation process, describes the court process and informs parties of their procedural options. Specifically, parties shall be advised that: (a) Mediation services will be provided by trained mediators from the Resolution Center at no charge to the parties (b) Parties may select their own mediator if the Court is notified in writing prior to the scheduled mediation date that both parties have agreed to a mediator who will mediate the case on or before the date set by the Court and the parties have agreed to pay any and all fees requested by the mediator. The Resolution Center roster of mediators will be available at the district court and may be used by the parties to select a mediator. (c) Parties may request that mediation be waived for good cause by making a written request prior to the scheduled date.

General Civil In Pro Per Cases- There shall be a standing order pursuant to this local administrative order that the Court may mediate general civil cases where both parties are unrepresented and have not settled or had a default judgment, consent judgment or dismissal entered.

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

The Court shall notify the parties of the mediation date and shall provide them with an information sheet that explains the mediation process, describes the court process and informs parties of their procedural options. Specifically, parties shall be advised that: (a) Mediation services will be provided by trained mediators from the Resolution Center at no charge to the parties (b) parties may select their own mediator if the Court is notified in writing prior to the scheduled mediation date that both parties have agreed to a mediator who will mediate the case on or before the date set by the Court and the parties have agreed to pay any and all fees requested by the mediator. The Resolution Center roster of mediators will be available at the district court and may be used by parties to select a mediator and (c) Parties may request that mediation be waived for good cause by making a written request prior to the scheduled date of mediation.

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) if a mediator is immediately available. An Order for Mediation (MC 274) shall be completed and signed by the judge.

The judge shall inform the parties of the following options: (a) Mediation services will be provided, at no charge, to the parties, by the Resolution Center as provided in the attached Referral Agreement (b) Parties may select their own mediator if both parties agree to same mediator and agree to pay all related fees. The Resolution Center roster of mediators will be available at the district court and may be used by parties to select a mediator (c) Parties may request that mediation be waived for good cause and proceed directly to trial.

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

General Civil Cases where both parties are represented- A judge may order any general civil case where one or both parties are represented to mediation, 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.

Parties shall be advised of the following options: Parties may either (a) Stipulate to the selection of a mediator provided the mediator is willing to serve within a period that would not interfere with the Court's scheduling of the case for trial. The Resolution Center roster of mediators will be available at the district court and may be used by parties to select a mediator. (b) Be referred to the Resolution Center who shall assign a mediator in a rotational manner as provided in this Plan and in accordance with MCR 2.411 or (c) Parties may request that mediation be waived for good cause by making a written request prior to the scheduled mediation date.

Plan Contents

1. **ADR Clerk-** The ADR Clerk is Robert J. Cardoni, Court Administrator, 38th District Court

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 on 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 this Court's jurisdiction.
- b. All parties will be notified in the brochure or documents that they may object to mediation by making a 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 in pro per 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 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 mediators assignments. Procedures will be reviewed to ensure that the list 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 assignments 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 Court's 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 written 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.
7. **Joint Administration-** Not applicable.

38th District Court Mediation Program Program Description

Your case has been ordered to mediation on the date specified in the attached Notice of Hearing pursuant to 38th District Court Local Administrative Order 2004-9. Mediation is an effective method of resolving disputes that provides parties with the opportunity to reach mutually satisfactory agreements in a non-adversarial manner.

Please read the following information about the 38th District Court's Mediation Program, including a description of the mediation process, a procedural overview and a summary of your procedural options.

What is Mediation?

The Michigan Court Rules define "mediation" as a process in which a neutral third party (mediator) facilitates communication between parties, assists in identifying issues, and helps to explore solutions to promote a mutually acceptable settlement. Unlike litigation, where one party wins and one loses, mediation helps parties reach their own mutually satisfactory resolution in a non-adversarial manner.

Benefits of Mediation

The decision-making process belongs to you. You decide how to best resolve your dispute; unlike going to court, no one judges your problem and tells you what to do.

It works. Thousands of cases have been successfully mediated to all parties' satisfaction. Mediation is a "win/win" rather than a "win/lose" solution. In court, someone wins and someone loses.

It's effective. The majority of all mediated cases end in agreement. In fact, the likelihood of settling a dispute to both parties' satisfaction through mediation is much higher than in small claims court. Mediation also reduces the likelihood that the problem will occur again.

Who Will Mediate My Case?

The 38th District Court has a referral agreement with the Resolution Center to conduct mediation. There is **no charge** to the parties for mediation conducted by the Center. The Resolution Center is a Community Resolution Program funded in part by the State of Michigan. All mediators used by the Center meet or exceed the qualifications required under the Michigan Court Rules. Small claims mediators have completed a 40-hour training program and a 10-hour internship. General civil mediators have completed a training program approved by the State Court Administrative Office and either are attorneys or have a graduate degree in conflict resolution or have 40-hours of mediation experience over a two-year period.

Parties have the option of selecting their own mediator. However (a) both parties must agree to the same mediator (b) both parties must agree to pay any and all fees requested by the mediator (c) the case must be mediated on or before the date set by the Court for mediation and (d) the Court must be notified in writing, prior to the scheduled mediation date, of the name of the mutually agreed upon mediator and the date of the mediation. The Resolution Center roster of mediators will be available and may be used by parties to select their own mediator.

Parties may request that mediation be waived for good cause by making a written request prior to the scheduled date of mediation. Some examples of good cause include: the parties have already tried mediation, there is an outstanding personal protection order involving the parties or there are issues of domestic violence between the parties.

What Happens at Mediation?

On the date scheduled for hearing, the mediator will review the case with you. Both sides will have an opportunity to discuss their views about the case. The mediator will assist in negotiations to find solution that satisfies the needs of all parties. Mediators may speak with each party privately to explore alternatives, if it is reasonable or necessary.

Mediation is confidential and mediators can neither be called as witnesses nor have their records subpoenaed if the case is not resolved at mediation.

Parties appearing on this date must have authority to settle the case. If the parties agree to a settlement, the mediator will write the terms of the settlement on a judgment form and ask both sides to sign it. Later, the judge will review the judgment and sign it, thereby making the agreement binding upon both parties.

If both sides do not agree to a settlement, the case will be heard by a judge as soon as possible that day or be scheduled for a future trial date before the judge.

Please note: If the plaintiff fails to appear for the mediation, the case may be dismissed. If the defendant fails to appear, a default judgment may be entered.

If you have any questions about the 38th District Court Mediation Program,
Please contact the Civil Division at 586-445-5023