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I write to encourage a more liberal approach to recommendations of mediators.

Proposed rules 2.411(B)(4) and 3.216(B)(3) and (4) are well-intentioned but not completely practical.

As my signature line indicates, I serve as Judicial Attorney to Judge Nancy C. Francis, a domestic relations judge in Washtenaw County.

In that capacity, I hold all pretrial and settlement conferences, and routinely talk with parties about mediation. I would say that the vast majority of all DO, DC and DM cases assigned to Judge Francis (and also Judge O'Brien) are ordered to mediation.

Because I have become familiar with the results of many mediations, and hear much feedback about which mediators obtained good results, I have concluded that the success of any mediation rests in large part on matching the parties and their problems with a mediator who has a track record with such parties and problems.

This does not preclude "new kids on the block". A couple of mediators have established a solid track record very quickly, mostly by offering low-cost services and thus getting a lot of practice in a short time. I ask parties/attorneys for feedback about their satisfaction regularly.

And so – because I deal with these cases on a daily basis -- I know which mediators are all-around good on most issues, which are stronger in financial/property issues, and which are better at handling the more-than-usually-thorny custody/parenting time cases.

I know who can deal with emotionally distraught or delicate people, who need a lot more time and patience, and who are best at handling bullish attorneys.

I know who is willing to mediate cases evenings and Saturdays to accommodate work schedules.

I know who will consider early mediation for interim issues and later sessions for final issues (as opposed to those who, early or late, favor an all-in-one approach which may not work in the parties' favor if they try it too soon).

I know who is comfortable with – and effective – mediating cases in which there have been allegations of domestic violence but both parties want to mediate.

And, this is what the parties and/or attorneys will ask me, especially if they don't know anyone on the list.

Because -- they are paying for services that need to be effective in order to serve their needs, as well as ours. With very few exceptions, the going rate for mediation is \$150-\$225 per hour. Under such circumstances, it's important that their choice of mediators not be random.

Especially since in many cases, the attorneys will attend some or all of the mediation sessions. The costs can really mount up if the mediator isn't properly matched to the case.

And, people who have mediated unsuccessfully, for whatever reason, lose hope of resolution.

Sometimes what happens at a settlement conference is that we all realize that a different mediator would be a better choice. Oftentimes, that's what it takes to resolve what looked like an impasse until then.

But it takes a full and frank discussion of what worked, what didn't work, and who might be out there to pick up where the unsuccessful mediator left off.

A few additional matters.

It's worth knowing that our most current list of mediators is old and includes people who have decided they don't want to mediate domestic cases even though that's what they trained and signed up for, or who haven't mediated a domestic case in eons.

It's also worth knowing that several of the most popular mediators are not on the ADR clerk's list. (This is not to say that they are the most effective, just a common choice by attorneys who count the cost of fee-sharing with a third party.)

The ADR clerk knows none of this.

The fear that a Judge (or her staff) will influence the process or favor one or another mediator should not force people into consulting someone (the ADR clerk) who is essentially selecting an appropriate mediator by donning a blindfold and throwing a dart at a list of unknowns.

It may be that we can meet the strictures of the proposed rule by incorporating another line into the standard Pretrial and Scheduling Order, signaling that the parties have asked for a recommendation on mediators.

But all in all, I favor a less fearful approach to recommendations. Certainly, when I offer my thoughts at a pretrial or settlement conference, no one is bound by them, and that may make all the difference; Judge Francis has rarely, if ever, recommended a mediator.

But I think it does a disservice to the settlement process to be too protective of the recommendation process.

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