

State Court Administrative Office

**Guidelines for Completing the
Local Alternative Dispute Resolution Plan**

August 1, 2000

I. Introduction

The Michigan Supreme Court recently adopted new MCR 2.410 (Alternative Dispute Resolution) and amendments to MCR 3.216 (Domestic Relations Mediation). Both rules require that trial courts submitting cases to alternative dispute resolution (ADR) processes under these rules adopt an ADR plan by local administrative order. The plan must be in writing and available to the public in the ADR clerk's office. The rule changes are effective August 1, 2000.

Courts which are not submitting matters to ADR processes under MCR 2.410 or MCR 3.216 do not need to complete a local ADR plan or otherwise submit a local administrative order. Practice under MCR 2.403 (Case Evaluation) is unchanged, except for the renaming of that rule to "case evaluation."

These Guidelines identify topics which are required to be addressed in each plan and outline elements which are recommended for consideration in developing the local plan. A model local administrative order is included, as is a list of additional resources courts are encouraged to consult in creating the local ADR plan.

Standards for Mediation Training Programs, to implement MCR 2.411(F)(2)(a) and MCR 3.216(G)(1)(b), and Criteria for the Special Approval of Mediators, to implement MCR 2.411(F)(3), will be available in September, 2000.

Outline of the Guidelines

- I. Introduction
- II. Plan Contents
- III. General Considerations in Developing the Local ADR Plan
- IV. Model Local Administrative Order
- V. Recommended Additional Resources

Format

Plans must follow the numerical listing of the required elements in Section II, "Plan Contents." If the court's ADR plan is a comprehensive document structured differently than Section II, courts may simply cite the page number of the plan on which the required elements are addressed. Supporting documents deemed essential to understanding any aspect of the implementation plan should appear in an Appendix.

These Guidelines are also available in an electronic format upon request to the SCAO.

Courts are strongly encouraged to consult the resources listed in Section V in developing the local ADR plan. These resources provide a comprehensive overview of key considerations in designing and implementing ADR services.

Due Date

The local administrative order containing the local ADR plan should be submitted to the SCAO Regional Administrator for approval at least six weeks prior to the court's intended date of submitting matters to ADR processes in accordance with MCR 2.410 or MCR 3.216. This is to afford ample time for a thorough review of the local ADR plan and to permit sufficient time to make any amendment of the plan in light of comments by the State Court Administrator.

SCAO Contact Person

If you need assistance in developing the local ADR plan or have questions about these Guidelines, please contact:

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Plan Amendment

Upon the State Court Administrator's approval of a local administrative order, amendments to the local ADR plan will be effective only after rescinding the prior order and issuing a new local administrative order.

Local Administrative Order Governing MCR 2.403 Case Evaluation

If the court has in place an approved Local Administrative Order governing MCR 2.403 "Mediation" practice, as a part of submitting the Local ADR Plan, that LAO must be rescinded, and a new LAO must be approved which changes the name and references within the LAO from "mediation" to "case evaluation." This is to minimize confusion over the court's ADR processes, and to comply with the new name of the MCR 2.403 process.

II. Plan Contents

At a minimum, the following items must be addressed in each local alternative dispute resolution plan.

1. Identify the ADR Clerk. The ADR Clerk may be the clerk of the court, the court administrator, the assignment clerk, or some other person. [MCR 2.410(B)(2)(a)]

2. For courts referring cases to mediation under MCR 2.411, specify how the list of persons available to serve as mediators will be maintained and the system by which mediators will be assigned from the list under MCR 2.411(B)(3). [MCR 2.410(B)(2)(b)]
Note: The rotational system used for selecting mediators must insure that mediators are equitably used over a specific period of time.
 - a. Identify how persons will be recruited to serve on the court roster of mediators.

 - b. Identify how an annual report available to all mediators and others will reflect the number of times each mediator used in cases in which parties did not stipulate to their own mediator.

3. Identify how information about the operation of the court's ADR program will be disseminated to litigants and the public. [MCR 2.410(B)(2)(c); MCR 3.216(B)]

- a. If mediation will be ordered in domestic relations cases, indicate how information educating persons about identifying cases which are not appropriate for mediation will be disseminated. [MCR 3.216(D)(3)]
 - b. Identify how persons, and particularly indigent persons, will be made aware of their ability to object to mediation by timely motion. [MCR 2.410(E); MCR 3.216(D)(1)]
4. Identify how access to ADR processes will be provided for indigent persons. [MCR 2.410(B)(2)(d)]
 - a. Please define “indigent” for purposes of qualifying a litigant for free or low-cost services.
 - b. If low-cost (as opposed to free) dispute resolution services are to be made available, define the term “low-cost.”
5. In domestic relations mediation programs, identify how courts, mediators, and agencies (if applicable) will screen cases for domestic violence and child abuse and neglect.
6. Identify the court’s process for evaluating its ADR program and for maintaining quality control and oversight of mediators on the court roster.
7. If applicable, identify the nature of any referral relationships with local dispute resolution agencies, including those affiliated with the Community Dispute Resolution Program. MCR 2.410(B)(3)

Note: If a Community Dispute Resolution Program or other dispute resolution agencies will receive case referrals, a copy of the written agreement between the court and each agency must be attached to the local ADR plan. The written agreement with each agency must identify how the agency receiving referrals will operate in accordance with the requirements of MCR 2.411, e.g., will conduct an equitable rotation of mediators, will maintain confidentiality, maintain and enforce non-discrimination policies, etc.

8. If applicable, identify how adjoining circuits or districts will jointly administer the local ADR plan. MCR 2.410(B)(4)

III. General Considerations in Developing the Local ADR Plan

The following recommendations were offered by the SCAO-convened Local ADR Plan Work Group to assist courts in developing a comprehensive and effective ADR system. Any number of these considerations may also be addressed in the court's local ADR plan.

1. ADR clerk should be required to attend training in the new rules and in ADR issues.
2. The rotational selection system:
 - a. To avoid any appearance of favoritism/impropriety, courts should maintain a strict rotational system. When parties cannot chose a mediator on their own, they should receive the next person on the court's roster.
 - b. There may be exceptional circumstances where, again in cases where the parties cannot agree on a mediator, the court might appoint a specific mediator from the roster who the court believes is better suited to the type of case. This must remain the rare exception, however.
 - c. Courts might consider permitting parties to reject the next mediator identified on the roster, at which time parties may again be offered the opportunity to agree on their own mediator, or to accept the next person on the roster.
 - d. Courts might also consider allowing parties who cannot initially agree on a mediator the opportunity to receive the next three names from the roster and to select from those names.
3. Public education materials. The public education materials made available by courts should include the various types of ADR available in that jurisdiction. Information about the services could be made available not only to those ordered to attempt an ADR process, but to all litigants, both before and after filing.
4. Access to Justice. Each jurisdiction has different resources available to ensure that persons desiring to use ADR have access to ADR. Recognizing the variation in resources available across the state, the court rules purposely require that courts locally identify how access to ADR processes will be made available.
 - a. Consider referrals to local Community Dispute Resolution Program (CDRP) centers and other dispute resolution agencies, bearing in mind that not all cases may be appropriate for service through a CDRP center.

- b. Consider requiring that individual mediators and organizations on the roster provide a certain number of pro-bono cases each year.
- c. Consider local funding possibilities to pay for ADR for indigent persons.
- d. If one party can pay for the mediator and the other party cannot, the court might consider requiring that only one side pay for the entire cost of ADR. Caution: with this approach, where the parties are aware that only one party is paying, there could be a resulting perception that the mediator might not be neutral.
- e. The following constituent groups could be consulted in determining how to define “indigent” and “low-cost” services and how to provide access for indigent persons:

- Legal assistance organizations
- Community Dispute Resolution Program centers
- Local bar associations
- Local funding unit
- Local foundations
- Advocacy groups, e.g., Michigan Protection and Advocacy

5. In domestic relations matters, during screening for domestic violence and child abuse/neglect, courts should check for Personal Protection Orders, domestic violence convictions (both state and city), and child abuse/neglect convictions. The process for screening might be a questionnaire and/or an interview.

In designing a plan for screening cases for domestic violence and child abuse/neglect, the court should consider contacting:

- Domestic Violence Coordinating Council
- Local domestic violence shelter programs
- Prosecutor
- Michigan Coalition Against Domestic Violence and Sexual Assault
- Legal assistance organizations
- Michigan Judicial Institute training materials
- Family Independence Agency Domestic Violence Prevention and Treatment Board
- Community Mental Health

6. Mediator management.

a. Courts are encouraged to appoint a committee to assist the ADR clerk in processing mediator applications.

b. To maintain quality and oversee mediators' work, courts are encouraged to convene a mediator training and oversight committee. This committee could have multiple duties, such as: helping to recruit mediators; establishing a grievance procedure; identifying training needs and addressing them through the ongoing educational requirement; and review and support of mediators.

7. Program monitoring. To assess the implementation of courts' ADR programs, courts are encouraged to track agreement rates of cases in which parties voluntarily agree to use mediation versus cases in which parties are ordered to attend mediation over their objection. Agreement rates may be further assessed by examining cases in which parties selected their own mediators versus cases in which the court's rotation system was used. For additional information on program monitoring and evaluation, see "Monitoring and Evaluating Court-Based Dispute Resolution Programs: A Guide for Judges and Court Managers," National Center for State Courts, 1997 [Available from the SCAO].

-- End --

IV. Model Local Administrative Order

[Local Court Letterhead]

Administrative Order [year]-[number]
[insert when applicable]

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:

Date:

Chief Judge Signature:

V. Recommended Resources for Designing an ADR Program

1. "Court ADR: Elements of Program Design," Center for Public Resources, 1992 [Available from the SCAO]
2. "Monitoring and Evaluating Court-Based Dispute Resolution Programs: A Guide for Judges and Court Managers," National Center for State Courts, 1997 [Available from the SCAO]
3. "National Standards for Court-Connected Mediation Programs," Center for Dispute Settlement/The Institute for Judicial Administration [Available from the SCAO]

For copies of these publications, please contact:

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