

Order

**Michigan Supreme Court
Lansing, Michigan**

March 25, 2015

Robert P. Young, Jr.,
Chief Justice

ADM File No. 2014-24

Stephen J. Markman
Mary Beth Kelly
Brian K. Zahra

Administrative Order No. 2015-1

Bridget M. McCormack
David F. Viviano
Richard H. Bernstein,
Justices

Authorization of Pilot Project for
Summary Jury Trials in the
16th Circuit Court and for Pilot Projects
Testing Summary Jury Trials in Other
Courts Approved by the Michigan
Supreme Court

On order of the Court, the 16th Circuit Court and other courts approved by the Michigan Supreme Court are authorized to implement summary jury trial pilot projects. A summary jury trial is a voluntary, binding jury trial, typically conducted in a single day before a panel of six jurors and presided over by the assigned judge, a judge appointed by the court, or a special hearing officer selected jointly by the parties. The summary jury trial process is intended to afford parties an efficient and economical means of resolving their dispute. The pilot projects are established to study the effectiveness of the summary jury trial process in resolving civil cases without adjudication by the trial court. The pilot projects shall begin as soon as possible after the approval by the Court, and shall remain in effect for 24 months. The 16th Circuit Court and other pilot courts will track participation in and the effectiveness of their pilot programs and shall report to, and make such findings available to, the Michigan Supreme Court.

(A) Applicability.

This administrative order governs summary jury trial practice in the pilot projects conducted in the 16th Circuit Court and other pilot courts. The pilot projects are intended to include cases that can be presented on a summary basis, including those tort, no-fault and business proceedings that do not involve complex facts or numerous witnesses, but each pilot site will establish its own standards for identifying eligible cases. Parties who agree to participate in the summary jury trial pilot projects must participate in the scheduled summary jury trial unless the parties reach a resolution before the summary jury trial.

(B) Procedure.

(1) Stipulation: At any time after the filing of a complaint, parties who agree to participate in a summary jury trial shall file with the court a Consent Order for Summary Jury Trial. The attorneys and/or parties may stipulate to any high/low parameters, which shall not be disclosed to the jury.

- (2) **Presiding Officer:** The parties shall agree on who shall preside over the summary jury trial. The presiding officer may be the assigned trial court judge, a retired judge appointed to preside over the proceeding, or a special hearing officer. The trial court shall not appoint, recommend, direct or otherwise influence a party's or attorney's selection of a special hearing officer. If the parties agree that a retired judge should be assigned or a special hearing officer should preside, the court shall enter an order naming the presiding officer.
- (3) **Appointment and Qualification of Special Hearing Officer:** The special hearing officer must be licensed to practice law in the State of Michigan. A special hearing officer is not authorized to enter judicial orders but must present them to the court's assigned judge for entry. The parties and the special hearing officer, by agreement, shall determine the compensation, if any, of the special hearing officer and how that cost will be allocated between the parties.
- (4) **Mediation and Case Evaluation:** Upon entry of a Consent Order for Summary Jury Trial, the trial court shall not require that mediation under MCR 2.411 or case evaluation under MCR 2.403 take place prior to the summary jury trial. However, the parties may voluntarily engage in any ADR processes following the entry of the consent order and before the summary jury trial.
- (5) **Scheduling:** The clerk of the court, in consultation with the parties, shall schedule the summary jury trial and provide notice of the scheduled summary jury trial to the parties and attorneys at least 56 days before the trial's date. The clerk of the court shall allocate such space or staff as may be available and suitable to conduct the summary jury trial. Once scheduled, the summary jury trial will be adjourned only upon written stipulation of the parties with approval of the presiding officer or upon good cause shown.
- (6) **Pretrial Submissions:**
 - (a) **Documentary Evidence:** Any party intending to offer evidence at the summary jury trial shall serve copies of any proposed exhibits and a witness list upon all parties not less than 28 days before the scheduled date of the summary jury trial. Unless otherwise agreed by all parties, exhibits that are not served upon all parties as required under this provision are not admissible. Witnesses who have not been listed shall not be called at trial.

- (b) Pretrial Conference: No later than 14 days before the scheduled date of the summary jury trial, the judge or special hearing officer assigned to the case shall conduct a pretrial conference, at which time the special hearing officer or judge shall address:
 - (i) objections to any evidence, including proposed redactions, motions in limine, and other evidentiary issues;
 - (ii) juror questionnaires and proposed voir dire questions;
 - (iii) whether the jury shall be permitted to take notes;
 - (iv) jury instructions and the jury verdict form; and,
 - (v) any other matters the judge, special hearing officer, or parties consider important in governing the summary jury trial process.
- (7) Record: The summary jury trial shall not be recorded by the court's court reporter. However, any party may record or transcribe the proceedings at that party's expense.
- (8) Jury Composition: The jury of a summary jury trial shall be comprised of six jurors, selected for examination in the regular term of court. Ten potential jurors shall be seated, and after questioning, plaintiff(s) shall strike one juror, defendant(s) shall strike one juror, plaintiff(s) shall strike a second juror and defendant(s) shall strike a second juror until six jurors remain and have been impaneled. Challenges for cause are not permitted.
- (9) Time Allocations: It is expected that a summary jury trial shall last no longer than one day. Unless otherwise agreed to by the parties and the court under subrule (17) below, the summary jury trial shall be conducted within the following time allocations:
 - (a) Jury Selection: Jury selection shall take no longer than 30 minutes, which includes 10 minutes allocated to the special hearing officer or judge for an introduction and general questions to be given to all potential jurors agreed to by the parties, and 10 minutes for questions by each side.
 - (b) Opening Statements: Each side shall have 15 minutes for opening statements.

- (c) Presentation of Proofs: Each side shall have up to 2 hours for presentation of proofs. This time allocation shall include the party's direct examination of witnesses, cross-examination of the other party's witnesses, admission of exhibits, and any time spent directing the jury's attention to specific aspects of documents that have been admitted.
 - (d) Closing Argument: Each side shall have up to 15 minutes for closing argument, and plaintiff shall have an additional 3 minutes for rebuttal.
 - (e) Jury Instruction: The parties shall make efforts to limit the number of instructions read to allow the instructions to be presented in 10 minutes or less.
- (10) Rules of Evidence: The parties may offer evidence that is relevant and material to the dispute. The judge or hearing officer shall not require authentication of documentary evidence for purposes of admissibility. As part of the Consent Order for Summary Jury Trial, the parties may agree to modify the rules of evidence. The parties are encouraged to stipulate to modes and methods of presentation that will expedite the process, such as an agreement regarding the admissibility of video or written depositions, affidavits, written reports and ex parte depositions with any agreed upon redactions.
- (11) Jury Verdict: The verdict of the jury shall be returned on a written verdict form and is binding, subject to any written high/low limitations agreed upon by the parties. A verdict will be received when five of the six jurors agree on a disposition.
- (12) Inconsistent Verdict: In the case of an inconsistent verdict, the judge or special hearing officer shall recharge the jury as appropriate and require it to return to deliberation to resolve any inconsistency.
- (13) Posttrial Motions: The only posttrial motion available to the parties shall be a motion for new trial, which must be filed with the trial court and served on the judge or special hearing officer as well as the other parties within seven days after entry of the jury's verdict. The judge or special hearing officer shall grant a new trial only under the following circumstances:
- (a) an irregularity in the proceedings of the court, jury, or prevailing

party, or an order of the court or abuse of discretion that denied the moving party a fair trial;

- (b) misconduct of the jury or of the prevailing party during the trial;
 - (c) error of law occurring in the proceedings; or
 - (d) fraud (intrinsic or extrinsic) of an adverse party.
- (14) **Order of Judgment:** The nonprevailing party shall pay the prevailing party the judgment amount within 28 days after the jury renders a verdict, subject to any high/low parameters established before the trial. After payment, the prevailing party shall submit an Order of Dismissal with Prejudice for entry by the court.
- If payment is not made within 28 days after entry of the verdict, an Order of Judgment based upon the jury verdict, subject to any high/low agreement, shall be entered by the circuit court consistent with MCR 2.602.
- (15) **Waiver of Costs and Sanctions:** Except in the case of fraud, the parties agree to waive taxation of costs and sanctions.
- (16) **No Right to Appeal and Costs:** Except in the case of fraud, the parties agree to waive the right to appeal the jury's verdict. Any appeals shall be taken in accordance with the Appellate Rules found at MCR 7.201- 7.219.
- (17) **Modification of Procedures:** Any of the above described procedures may be modified by stipulation of the parties with approval of the judge or special hearing officer.



I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

March 25, 2015

A handwritten signature in black ink, appearing to read "Larry S. Royster".

Clerk