



Berrien County Trial Court

Thomas E. Nelson, Chief Judge - Brian E. Ray, Administrator

Courthouse - 811 Port Street - St. Joseph, MI 49085

(269) 983-7111, Ext. 8453 - FAX (269) 982-8634

www.berriencounty.org

Administrative Order 2014- 01

This administrative order replaces and rescinds prior Berrien County Trial Court Administrative Order 2002-01D and establishes the current ADR Plan for Civil and Family cases, effective March 1, 2014.

BERRIEN COUNTY TRIAL COURT ALTERNATIVE DISPUTE RESOLUTION (“ADR”) 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.

Alternative Dispute Resolution (“ADR”) means “any process designed to resolve a legal dispute in place of court adjudication.” ADR includes settlement conferences ordered under MCR 2.401; case evaluation under MCR 2.403; mediation under MCR 2.411; domestic relations mediation under MCR 3.216; and other procedures provided by local court rule or ordered on stipulation of the parties (e.g. arbitration, summary jury trial, etc.).

All civil and family cases are subject to ADR processes unless otherwise provided by statute or court rule.

1. CIVIL ADR CLERK

The Civil/Criminal Division Administrator shall designate a staff member to be the Plan Administrator for all ADR processes utilized in the Civil Division (Civil ADR Clerk).

2. FAMILY ADR CLERK

The Administrative Assistant in the Berrien County Friend of the Court office shall be the Plan Administrator for all ADR processes utilized in the Family Division (Family ADR Clerk).

3. INFORMATION REGARDING ADR

The ADR Clerks shall be responsible for providing information about the Court's ADR Program to litigants and the general public. The court will educate and inform the public about ADR options.

4. APPLICATION

To serve as a case evaluator, a general civil mediator and/or a domestic relations mediator, qualified individuals may apply to the Civil and/or Family ADR Clerks to be placed on the list of qualified case evaluators, general civil mediators or domestic relations mediators. Application forms are available in each office of the ADR Clerks. The application form includes a certification that the applicant meets the requirements for service and that the applicant will not discriminate against parties, attorneys, other case evaluators or mediators on the basis of race, ethnic origin, gender or other protected personal characteristic. The certificate for a domestic relations mediator must also state whether the applicant is willing to provide evaluative and/or facilitative mediation and whether they are willing to mediate property issues.

5. ELIGIBILITY:

- A. To be eligible to serve as a **case evaluator**, a person must meet the following qualifications:
 1. Have been a practicing lawyer for at least five (5) years and be a member in good standing of the State Bar of Michigan.
 2. Reside, maintain an office, or actively practice in Berrien County. However, if there are insufficient numbers of case evaluator applicants, those otherwise qualified applicants who maintain an office or active practice outside of Berrien County may also be considered.
 3. Demonstrate that a substantial portion of the applicant's practice for the last five (5) years has been devoted to civil litigation matters, including investigations, discovery, motion practice, case evaluation, settlement, trial preparation and trial.
 4. Have had an active practice in the subject area of the assigned sub list for at least the last three (3) years.
 5. Must not discriminate against parties or attorneys on the basis of race, ethnic origin, gender, or other protected personal characteristic.
 6. The court may require that case evaluators attend orientation or training sessions or may provide written materials explaining the case evaluation process and the operation of the Court's Case Evaluation program. However, case evaluators may not be charged any fees or costs for such programs or materials.
 7. Case evaluators must comply with the Court's ADR Plan, orders of the court regarding cases submitted to case evaluation, and conduct themselves with honesty, integrity and impartiality.

- B. To be eligible to serve as a **general civil mediator**, a person must meet the following qualifications:

Complete a training program approved by the State Court Administrator providing the generally accepted components of mediation skills.

1. Have one or more of the following:
 - (i) Juris doctor degree or graduate degree in conflict resolution; or
 - (ii) 40 hours of mediation experience over two (2) years including mediation, co-mediation, observation, and role-playing in the context of mediation.
 2. Observe two (2) general civil mediation proceedings conducted by an approved mediator, and conduct one (1) general civil mediation to conclusion under the supervision and observation of an approved mediator.
 3. An applicant who has specialized experience or training, but does not meet the specific requirement described above, may apply to the Civil ADR Clerk for special approval. The ADR Clerk shall forward the special approval request to the Presiding Judge and a final determination shall be made on the basis of criteria provided by the State Court Administrator. Service as a case evaluator under MCR 2.403 does not constitute a qualification for serving as a mediator.
 4. Approved mediators are required to obtain eight (8) hours of advanced mediation training during each two-year period. Failure to submit documentation establishing compliance is grounds for removal from the list.
 5. General civil mediators must not discriminate against parties or attorneys on the basis of race, ethnic origin, gender, or other protected personal characteristic.
 6. General civil mediators must comply with the Court's ADR Plan, orders of the court regarding cases submitted to mediation and the Standards of Conduct for Mediators promulgated by the State Court Administrator.
- C. To be eligible to serve as a **domestic relations mediator**, a person must meet the following qualifications:
1. The applicant must
 - (i) be a licensed attorney, a licensed or limited licensed psychologist, a licensed professional counselor, or a licensed marriage or family therapist; or
 - (ii) have a master's degree in counseling, social work or marriage and family therapy; or
 - (iii) have a graduate degree in a behavioral science; or
 - (iv) have five (5) years of experience in family counseling.
 2. The applicant must have completed a training program approved by the State Court Administrator providing the generally accepted components of domestic relations mediation skills.

3. The applicant must have observed two domestic relations mediation proceedings conducted by an approved mediator and have conducted one (1) domestic relations mediation to conclusion under the supervision and observation of an approved mediator.
4. An applicant who has specialized experience or training but does not meet the specific requirements described above, may apply to the ADR Clerk for special approval. The ADR Clerk shall forward the special approval request to the Presiding Judge and a final determination shall be made on the basis of criteria provided by the State Court Administrator. Service as a case evaluator under MCR 2.403 does not constitute a qualification for serving as a domestic relations mediator.
5. Approved mediators are required to obtain eight (8) hours of advanced mediation training during each two-year period. Failure to submit documentation establishing compliance is cause for removal from the list. On or about January 1 of each year, the Family ADR Clerk will notify all approved mediators of this obligation and include the deadline for each mediator to comply with his/her training requirement.
6. Domestic relations mediators must complete an in-service training program on how to identify cases which are not appropriate for mediation before being assigned to a domestic relations case.
7. Domestic relations mediators must not discriminate against parties or attorneys on the basis of race, ethnic origin, gender, or other protected personal characteristic.
8. Domestic relations mediators must comply with the Court's ADR Plan, orders of the court regarding cases submitted to mediation and the Standards of Conduct for Mediators promulgated by the State Court Administrator.

Applications to serve as case evaluator or as a general civil or domestic relations mediator shall include a certification that the applicant agrees to fulfill the mediator's responsibilities in an impartial manner consistent with the rules and practices of the court.

The certificate for domestic relations mediators will also state the fee that will be charged or the basis on which the applicant agrees to have the fee determined.

A mediator is entitled to reasonable compensation based on an hourly rate commensurate with the mediator's experience and usual charges for services performed. Before mediation, the parties shall agree in writing on the amount of the fee, as well as the time and manner of payment in accordance with MCR 2.411(J).

The court encourages court approved domestic relations mediators who receive assignments from the court to provide a portion of their services on a suggested fee basis. Domestic relations mediators who agree to limit their fees for mediation of temporary issues to \$150/hour will be eligible to receive funding from the Circuit Court Counseling Fund if the parties qualify for a reduced hourly rate based on the sliding fee scale in effect at the time the service is rendered (Appendix 1). Any compensation not covered by the parties' obligation would be paid for by the Circuit Court Counseling Fund. Compensation from the Circuit Court Counseling Fund is limited to 6 hours of total service, per case, unless prior approval is obtained by the

assigned Judge. If a domestic relations mediator's hourly rate exceeds \$150/hour, the mediator will not receive any funding from the Circuit Court Counseling Fund and the parties will be responsible for the mediator's full hourly rate. The court also encourages domestic relations mediators to annually provide \$360 of their mediation services on a pro bono basis.

The fees to be charged by a domestic relations mediator selected by the parties or assigned to the parties for facilitative or evaluative mediation (under paragraphs #15-16 infra) will be based on the fee stated in the mediator's certificate.

If parties in a domestic relations case select a mediator not on the court-approved list, the parties will be responsible for the mediator's total fee. The court will not provide any compensation from the Circuit Court Counseling Fund to a mediator not on the court-approved list of mediators.

6. LISTS OF EVALUATORS AND MEDIATORS

The Civil and Family ADR Clerks shall maintain a list of currently approved ADR providers for each ADR method (ADR Roster), which shall be available for public inspection in each ADR Clerk's office and the Trial Court Administrator's office at any time during business hours. In addition, at no charge, any litigant or attorney may request a copy of the current ADR Roster, which includes explanations of and qualifications necessary for each ADR method. Information about the various ADR methods and the ADR Roster will be available to the public and bar on the court's web page at <http://www.berriencounty.org/justice>

7. SPECIALIZED LISTS

Separate lists are maintained by the Civil ADR Clerk for personal injury case evaluation panels, with appropriate designations for each case evaluator as plaintiff, defense or neutral; general civil case evaluation panels, with no designation; general civil mediators; domestic relations mediators for child related issues only and domestic relations mediators for property issues only or for both, with appropriate designations for each mediator as evaluative and non-evaluative; and mediation services.

8. COMPLAINTS

Complaints regarding an ADR provider shall be governed by the Complaint Procedure regarding ADR Providers on the Berrien County ADR Roster included as Appendix 2 and incorporated herein by reference.

9. REVIEW OF APPLICATIONS

The ADR Clerks will promptly distribute all applications received to the Presiding Judge of the Civil Division and/or the Presiding Judge of the Family Division for review based on the type of application received (case evaluator, general civil mediator, domestic relations mediator). The respective Presiding Judge shall review applications and, if approved, add those applicants to the lists of qualified case evaluators, general civil mediators and domestic relations mediators. In reviewing applications, the Presiding Judge of the Civil Division may seek input from a committee of approved case evaluators/general civil mediators appointed by the Berrien County Bench-Bar Committee before adding applicants to the applicable list.

Likewise, the Presiding Judge of the Family Division may seek input from a committee of currently approved domestic relations mediators appointed by the Berrien County Bench-Bar Committee. Persons meeting the qualifications specified above shall be placed on all lists for which they are qualified. The Presiding Judges shall also review all requests for special approval and, if approved, add those applicants to the lists of qualified case evaluators, general civil mediators and domestic relations mediators. The Presiding Judge of the Civil Division shall review the case evaluator list and designate each applicant as plaintiff, defense or neutral for use in assigning case evaluators to case evaluation panels. Selections shall be made without regard to race, ethnic origin, gender or other protected personal characteristic.

10. REJECTED APPLICANTS

Applicants who are not qualified for placement on the list(s) shall be notified of that decision by the rejecting Presiding Judge. Applicants will have 21 days to apply for reconsideration by the Berrien County Trial Court Judicial Council. Any documents considered in the initial review process shall be retained for at least nine (9) months. The appeal and all related documents must be filed with the applicable ADR Clerk within 21 days of the date the rejection was originally mailed and will, thereafter, be reviewed and reconsidered by the Berrien Court Trial Court Judicial Council promptly.

11. TERM OF PLACEMENT ON LIST

Case Evaluators, general civil mediators and domestic relations mediators will be kept on the list for a period of seven (7) years unless removed for cause or by request prior to the expiration of the term. Thereafter, each evaluator and mediator shall reapply in order to be recertified.

12. SELECTION OF ADR METHOD

A. Circuit-Classified Cases.

1. When the last party defendant has filed an answer or has defaulted, the judge to whom the case is assigned shall issue a Case Management and Scheduling Order (CMSO) including a directive that the parties agree to engage in an appropriate alternative dispute resolution method by a specified date. Court-ordered ADR methods may include: pretrial and settlement conferences per MCR 2.401; case evaluation per MCR 2.403; mediation from the Court's ADR roster per MCR 2.411; early neutral evaluation; and/or mediation through the Local Community Dispute Resolution Program (CDRP) Citizens Mediation Services, pursuant to MCR 2.410.
2. Thereafter, the parties shall jointly submit a proposed order designating the alternative dispute resolution method agreed upon.

B. District-Classified General Civil Cases.

The judge to whom the case is assigned will issue a Case Management and Scheduling Order (CMSO) when the case is at issue (i.e., when the last party defendant has filed an answer or has been defaulted). When, in the judgment of the court, the case is one which would benefit from the mediation process, the court may refer the parties to the local Community Dispute Resolution Program

(CDRP) through Citizens Mediation Service (CMS) or other court approved ADR provider from the Court's ADR Roster within 14 days of the date of entry of the Order. In the alternative, the Judge may set the matter for case evaluation pursuant to MCR 2.403.

- C. The CMSO shall advise the parties that any objection to the Order for ADR must be filed within 14 days after the entry of the order and set for prompt hearing in accordance with MCR 2.410(E). The court will dispense with oral argument unless specifically requested by a party. The court may waive the ADR requirement for good cause shown.
- D. The CMSO shall advise the parties that if one or more parties are indigent, the parties may stipulate that costs of the ADR be allocated by some method other than an equal splitting of costs. The parties shall be informed that in cases in which one or more parties are indigent, or the amount in dispute is relatively small, they may wish to select mediation with the Citizens Mediation Services as their ADR method.
- E. In the Small Claims Division of the court, the court shall not order mandatory ADR but shall, in all cases, distribute to the public and parties an informational letter and brochure explaining the benefits of ADR and the Citizens Mediation Services (CMS), which shall be available at no cost to the parties prior to the scheduled Small Claims hearing date. A current copy of the letter and brochure are attached as Appendix 3 to this Plan. CMS provides Small Claims mediation services free of charge.

13. CASE EVALUATION

A. Conduct of Case Evaluation Hearings

Immediately after the hearing, the case evaluation panel will evaluate the case and notify counsel for each party of its evaluation in writing.

B. Limitation of Time for Acceptance/Rejection of Award

Upon the request and stipulation of the parties, due to an impending trial date, the court may shorten the period for acceptance or rejection of the case evaluation award provided in MCR 2.403 (L) to a period not less than seven (7) days from the date of service of the evaluation.

C. Case Evaluation Disclosure

The ADR Clerk shall only disclose the case evaluation result to attorneys/*pro se* parties except when requested to appear in open court on a motion for entry of judgment based upon acceptance of the case evaluation, or on a motion for attorney's fees and costs based upon a rejection of the case evaluation.

D. Payment of Case Evaluator Fees

Case Evaluation fees are due and payable at the time the case evaluation briefs are delivered to the evaluators; **but no later than two weeks before the case evaluation date, or late fees shall be assessed.** Checks should be made payable to the individual case evaluators but delivered to the court.

Cancellation or adjournment of the case evaluation after a brief is delivered shall not avoid the liability for paying case evaluator fees.

E. Adjournment of Case Evaluation Hearing

The parties will be permitted to adjourn a case evaluation only once without leave of court. Thereafter, adjournments will only be granted upon motion filed and good cause shown.

14. DOMESTIC RELATIONS CASES – MEDIATION OF TEMPORARY ISSUES

Parties in Family Court are provided the opportunity to resolve through Facilitative Mediation the issues confronting them in their divorce or other family matters. Mediation has proven to be a more satisfactory way for families to resolve disputes and obtain divorces. Studies have shown that parents who mediate are less likely to file post-judgment motions. Mediation has also been shown to be an affordable option for most people since mediation, on average, costs parties less than traditional attorney negotiation and representation. Perhaps most importantly, parents are better prepared to co-parent their children together following divorce, if they have avoided the stress and ill will which litigation can exacerbate.

A. Referral to Mediation

In an effort to help parties address temporary issues, the court will refer parties in domestic relations cases to mediation, unless the court determines a case is inappropriate for mediation.

The Family ADR Clerk will be responsible for monitoring the Register of Action (ROA) for proof of service. After service of a complaint for divorce and/or custody is obtained on the defendant, the Family ADR Clerk shall check for domestic violence cases, pending child protection cases or issued Personal Protection Orders between the parties that are less than five (5) years old. If such cases are found, the pending domestic matter shall not be assigned to mediation absent a motion filed and heard as provided by MCR 3.216(C)(3). If the case is determined to be appropriate for mediation, the Family ADR Clerk will send parties an Order of Referral (Temporary Issues) referring the case to mediation. A list of court-approved domestic relations mediators and mediation services will also be provided to the parties.

If a case is not referred to mediation, either party or his/her attorney may contact the scheduling clerk for a hearing date.

B. Objections to Referral to Mediation

To object to mediation, a party must file a written motion to remove the case from mediation together with a notice of hearing of the motion, and serve a copy of both on the attorneys of record or the parties, if unrepresented, within 14 days after receiving notice of the order assigning the action to mediation. The motion must be set for hearing within 14 days after it is filed, unless the hearing is adjourned by agreement of counsel or unless the court orders otherwise. A timely motion must be heard before the case is mediated.

C. Selection of Mediators

1. Selected Mediators: Except for good cause shown, the parties' attorneys, or the parties, if unrepresented, may stipulate to a mediator within seven (7) days of the date of the Order of Referral (Temporary Issues). The parties shall notify the Family ADR Clerk, in writing, of the name of the mediator as well as the date and time set for the mediation. The selected mediator must be willing and able to serve within a period that would not interfere with the court's scheduling of the case for further hearing. The Family ADR Clerk will then schedule a Recall Hearing approximately one to two weeks from the date of the scheduled mediation. Parties and their attorneys will be sent an Order for SMILE Program, Mediation & Recall Hearing following the Family ADR Clerk's receipt of the identity of the selected mediation and the date the mediation of temporary issues is to be heard.

A mediator selected by agreement of the parties need not meet the qualifications of court-approved mediators set forth in paragraph 5(C) above.

If parties select a mediator not on the court-approved list, the parties will be responsible for the mediator's fee. The court will not provide any compensation from the Circuit Court Counseling Fund to a mediator not on the list of court-approved mediators.

2. Assigned Mediators: In the event that the parties do not notify the Family ADR Clerk of their selection within the seven (7) days allowed, the Family ADR Clerk shall select a mediator without notice to the parties and advise the parties and their attorneys, if represented, of the name of the mediator as well as the date and time of that mediation session. Parties and their attorneys will be sent an Order for SMILE Program, Mediation & Recall Hearing. **Parties are required to attend as ordered and if they fail to attend, sanctions may be assessed.** Once a mediator is selected, the parties are responsible for any fees generated by that mediator subject to the Circuit Court Counseling Fund assistance provisions of paragraph 5(C).

The Family ADR Clerk shall assign mediators on a rotating basis.

If the court assigns a mediator for mediation, the assigned mediator will conduct domestic violence screening with each of the parties. If a party raises concerns about domestic violence and the mediator feels mediation is inappropriate, the mediator will notify the Family ADR Clerk via the Facilitative Mediator Report that the case is inappropriate for mediation and they are unable to accept the referral. The mediator will also indicate on the Facilitative Mediator Report that the Recall Hearing is necessary.

Immediately following attendance at the mediation, the mediator will file with the Family ADR Clerk a Facilitative Mediator Report and Mediation Invoice indicating whether attendance by the parties is necessary at the Recall Hearing.

15. DOMESTIC RELATION CASES – FURTHER MEDIATION

In domestic relations cases, at any stage in the proceedings, the court shall determine whether further facilitative or evaluative mediation is appropriate. The court may refer contested issues in domestic relations cases for mandatory facilitative or evaluative mediation by an Order of Referral (Further Mediation).

A list of court-approved domestic relations mediators and mediation services will be provided to the parties. Except for good cause shown, the parties' attorneys or the parties, if unrepresented, shall select a mediator within 14 days of the date of the order and notify the Family ADR Clerk of the mediator selected. The court will provide the mediator with a copy of the Domestic Relations Scheduling Order along with a copy of the Order of Referral.

In the event that the parties do not notify the Family ADR Clerk of their selection within the 14 days allowed, the ADR Clerk shall select a mediator without notice to the parties and advise the parties and their attorneys, if represented, of the name of the mediator as well as the date and time of that mediation session. The initial further mediation session will be scheduled for four (4) hours and the parties will be responsible to pay the fees to the mediator as provided by paragraph #5 supra. The Family ADR Clerk will select a mediator (based on geographic location of the defendant) in a manner that assures, as nearly as possible, that each mediator on the list is assigned approximately the same number of cases over a period of one year. Once the Family ADR Clerk selects a mediator, the parties are responsible for any fees generated by that mediator.

Within 21 days of the date of the Order of Referral (Further Mediation), the mediator shall advise the Family ADR Clerk and all parties in writing of the date and time set for the further mediation.

Any party, by timely motion, may object to the referral of their case to mediation. The court's Order of Referral (Further Mediation) shall make this right clear to counsel and parties.

16. EVALUATIVE MEDIATION IN DOMESTIC RELATIONS CASES:

- A. This paragraph applies if the parties request evaluative mediation at the pretrial or settlement conference and the mediator is willing to provide an evaluation.
- B. The Family ADR Clerk shall note on the list of qualified domestic relations mediators who are willing to provide evaluative mediation.
- C. Parties seeking evaluative mediation may contact the mediator to schedule the evaluative mediation sessions. Within seven (7) days after the evaluative mediation and subject to the limitations noted in paragraph 16(E), the mediator shall prepare and send a written report to the parties setting forth the mediator's proposed recommendation for settlement purposes and send a proof of service to the ADR Clerk. The parties shall, within seven (7) days of the date of service, accept or reject the recommendation of the mediator. If both parties accept the recommendation in full, the attorneys or the parties, if unrepresented, shall schedule a final hearing for entry of a judgment of divorce. If either party rejects the recommendation, the mediator shall report the results of the mediation to the Family ADR Clerk as provided in MCR 3.216(H)(6), and the case shall proceed toward trial.
- D. The court may not impose sanctions against either party for rejecting the mediator's recommendation. The court may not inquire and neither parties, the mediator nor the Family ADR Clerk may inform the court of the identity of the party or parties who rejected the mediator's recommendations.

- E. Pursuant to MCR 3.216 H (6) and (8) the mediator's report and recommendation may not be read by the court and may not be admitted into evidence or relied upon by the court as evidence of any of the information contained in it without the consent of both parties. The court shall not request the parties consent to read the mediator's recommendation.

17. REPORT TO SCAO

The ADR Clerk will prepare an annual report for filing with the State Court Administrative Office, which shall include information as to which ADR providers were assigned for all cases utilizing court-directed ADR, and to the extent determinable, whether ADR directly resulted in the settlement of the case or shortened the pendency of the action. The Berrien County Trial Court Civil Division monitoring form is attached as Appendix 4. This annual report shall be available for public inspection in the offices of each ADR Clerk and the Trial Court Administrator during business hours and will also be posted on the court's web page.

18. MEDIATOR COMPENSATION

A mediator is entitled to reasonable compensation based on an hourly rate commensurate with the mediator's experience and usual charges for services performed. Before mediation, the parties shall agree in writing on the amount of the fee, as well as the time and manner of payment in accordance with MCR 2.411(J).

19. FINAL SETTLEMENT CONFERENCE

A final settlement conference may be scheduled in every case after discovery has been completed, all motions have been heard and other ADR options have been explored, MCR 2.401. The purpose of the final settlement conference is to give the parties and their counsel one last, court-assisted opportunity before trial to settle the case or to narrow the disputed issues and discuss how the trial will proceed. Each party, as well as the attorney who will be trying the case, are required to attend.

20. ARBITRATION AND OTHER ADR PROCESSES

Nothing in this ADR Plan shall preclude the parties from stipulating to an ADR process of their choice so long as the schedule for completing same does not interfere with the court's scheduling and the orderly progression of the case. Parties are encouraged to pursue any form of ADR which they believe will assist them in resolving their disputes. Arbitration may be pursued through a private arbitrator or arbitration service or through the American Arbitration Association. Information regarding private arbitrators, local arbitration services and arbitration through the American Arbitration Association is available through the Civil ADR Clerk.

21. SUPERVISION

The Chief Judge shall exercise general supervision over the implementation of this Plan, the case evaluator and mediator selection process and shall review the operation of the Court's ADR Plan at least annually to assure compliance. In the event of noncompliance, the court shall take such action as needed. This action may

include recruiting persons to serve as case evaluators and mediators or changing the Court's ADR Plan.

IT IS SO ORDERED

2/18/14
Dated


Thomas E. Nelson, Trial Court Chief Judge

**BERRIEN COUNTY
DOMESTIC RELATIONS MEDIATION
SLIDING FEE SCALE**
Reimbursement rate per hour of mediation

APPENDIX 1

Weekly Income	Annual Income	Children <18 years of age						
		1	2	3	4	5	6	7
\$289.67	\$15,063.00	5	5	5	5	5	5	5
\$338.37	\$17,595.00	15	5	5	5	5	5	5
\$446.17	\$23,201.00	30	15	5	5	5	5	5
\$538.06	\$27,979.00	45	30	15	5	5	5	5
\$618.87	\$32,181.00	60	45	30	15	5	5	5
\$712.10	\$37,029.00	75	75	60	45	15	5	5
\$796.42	\$41,414.00	75	75	75	60	30	15	5
\$958.04	\$49,818.00	75	75	75	75	45	30	15

07/12

APPENDIX 2

Procedure for Complaints Regarding ADR Providers

1. Complaints regarding an ADR Provider must be submitted in writing and sent to the ADR Clerk within 28 days of the alleged incident.
2. An ADR Provider against whom a complaint has been filed will be notified by the ADR Clerk of the complaint and may respond in writing within 28 days after notice of the complaint is mailed to the ADR Provider.
3. The complaint and the ADR Provider's response will be forwarded to the Presiding Judge for review. The Presiding Judge of the Civil division may seek input from a committee of approved case evaluators/general civil mediators appointed by the Berrien County Bench-Bar Committee before responding. Likewise, the Presiding Judge of the Family Division may seek input from the committee of the currently approved domestic relations mediators appointed by the Berrien County Bench-Bar Committee prior to responding.
4. Notification of the Presiding Judge's decision will be provided in writing to the ADR Clerk, the individual whom filed the complaint and the ADR Provider within 28 days of receiving the complaint and response (if any response is provided).
5. If the Presiding Judge decides to remove the ADR Provider from the list of approved mediators or case evaluators, the ADR Provider may appeal to the Chief Judge, in writing, within 21 days after the notice of the removal decision is mailed to the provider. The removal will be reviewed and reconsidered by the Chief Judge who will inform the provider in writing of the determination.

Procedure Regarding Other Complaints

Complaints regarding the mediation or case evaluations processes, the administration of the ADR Plan, or any part of the ADR Plan shall be submitted in writing to the ADR Clerk. The ADR Clerk shall, within 14 days, acknowledge receipt of the complaint and forward it to the Presiding Judge for response.



Berrien County Trial Court

Thomas E. Nelson, Chief Judge - Brian E. Ray, Administrator

Courthouse - 811 Port Street - St. Joseph, MI 49085

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APPENDIX 3

You have recently either sued, or been sued, in Small Claims Court. While you have the right to have your dispute heard and decided by one of our magistrates or judges, a court hearing does not always offer the best forum for settling disputes. Parties who negotiate their own settlement have a very good chance of reaching an agreement that is fair and acceptable to both sides. Therefore, we are asking you to consider using the Citizens Mediation Service to assist you in reaching a prompt and fair resolution of your dispute.

There are several advantages to using the Citizens Mediation Service (CMS):

1. CMS uses trained, neutral mediators to assist people in reaching their own settlement.
2. There is no additional cost for using CMS's services.
3. If you settle your dispute during the mediation process, CMS will furnish the Court with a copy of your settlement agreement (Consent Judgment or Dismissal) and you will not have to appear in court on the day your hearing is scheduled.
4. If your dispute is NOT settled, you still have the right to have the Court hear your case on the day your case has been scheduled for hearing.

The mediators at CMS have helped hundreds of people settle their disputes since they opened in 1992. We believe they can help you, too. Please contact the **Citizens Mediation Service at (269) 982-7898 or 1-800-873-7658** for more information or to begin the mediation process.

Sincerely,

Thomas E. Nelson
Trial Court Chief Judge

**HOW TO GET A MONEY JUDGMENT IN
SMALL CLAIMS COURT
Form DC 84 Affidavit and Claim**

**South County Building
1205 N. Front St.
Niles, MI 49120-1699
269 684-5274**

**Berrien County Courthouse
811 Port Street
St. Joseph, MI 49085-1188
269 684-5274**

For additional help see:

http://courts.michigan.gov/scao/selfhelp/collection/collect_help.htm

Use this form if you want to bring a lawsuit against someone who owes you money or who has caused damage to your property or possessions and you cannot resolve the dispute through mediation or other means. If your damage is the result of an intentional wrongdoing, such as fraud, libel, slander, malicious destruction of property, or assault and battery, you cannot bring your action in the small claims division of the district court unless the wrongdoing is for a dishonored check, consumer protection violation, or recreational trespass.

You cannot use the small claims division of the trial court if:

- 1) Your case is against the State of Michigan or a state agency.
- 2) Your case is against a local governmental unit that involves issues of governmental immunity.
- 3) You are an assignee or third party beneficiary of the obligation, or
- 4) You have filed more than five small claims cases in the same week.

The maximum you can collect through a judgment in the small claims division of the trial court is \$5,000. If your claim is for more than \$5,000, you can still use the small claims division but your judgment award cannot exceed \$5,000 and you permanently waive the right to collect the rest of your claim.

CLAIM CHECKLIST

Use the following checklist to make sure you have done all the steps that are needed.

DID YOU.....

1. Fill out all requested information on the form?
2. Make all necessary copies of the form?
3. File the form and filing fee with the clerk of the court?
4. Have the form served on the defendant?
5. Keep one copy of the form for yourself?

If you cannot answer "yes" to all the above steps, a trial on your claim may be delayed or your claim may be dismissed.

By using this form packet you are representing yourself or an employer, a business, or other organization in a small claims court action. In order to receive the action you seek, you must follow the instructions in this packet. If you fail to do even one of the required steps, the court may not be able to give you the result you want.

If you have any questions about any steps in the process, refer to pages 3 through 6 of this booklet for details and review the information in the Self-Help Center at

http://courts.michigan.gov/scao/selfhelp/smallclaims/sc_help.htm.

INSTRUCTIONS FOR USING FORM DC 84 FILING AND SERVING A CLAIM

>>WHO CAN FILE A CLAIM

An affidavit and claim can be signed and filed by someone other than the plaintiff. The plaintiff can be yourself if you are suing as an individual or a sole proprietor (sole owner of a business). Or, the plaintiff can be someone who files a claim for a business, corporation, or other organization. **If you are not the plaintiff, but you are filing the claim for a sole proprietorship (a business owned by one person), corporation, or other organization, you must meet the following conditions:**

- If you are filing for an individual and you are not that individual, you must be a guardian, conservator, or next friend.
- If you are filing for a sole proprietor (sole owner of a business) and you are not the owner, you must be a full-time salaried employee of the sole Proprietor and you must have knowledge of the facts in the claim.
- If you are filing for a partnership, you must be either one of the partners or You must be a full-time salaried employee of the partnership and you must have knowledge of the facts in the claim.
- If you are filing for a corporation, you must be a full-time salaried employee of the corporation and you must have knowledge of the facts in the claim.
- If you a filing for a county, city, village, township, or local or intermediate School district, you must be an elected or appointed officer or employee of the county, city, village, township, or local or intermediate school district who has knowledge of the facts surrounding the claim and who is authorized by the governing body of the county, city, village, township, Or local or intermediate school district to file the claim.

>>FILING A CLAIM

1. Can I have an attorney?

If you decide to file a claim in the small claims division of the district court, an attorney cannot represent you. However, if the defendant wants an attorney, the defendant can demand that the claim be removed to the general civil division of the district court.

2. What does it cost?

The fee for filing a claim in the small claims division of the trial court is:

- \$25 for damage claims up to \$600**
- \$45 for damage claims for \$600 to \$1,750**
- \$65 for damage claims over \$1,750 to \$5,000**

The plaintiff is responsible for paying the filing fee and other fees. If the judge rules in favor of the plaintiff, the fees may be added to the judgment amount against the defendant.

3. Signing the Affidavit Under Oath

The Affidavit and Claim form must be signed under oath in front of a Notary public (you can find one at a bank) or the clerk of the court. The person signing the form must show photo identification to the notary public or clerk of the court before signing the Affidavit and Claim. The form can only be signed by the person who can file a claim, as stated under **Who Can File a Claim**.

Before you complete the form, you should decide whether you want to sign the Affidavit and Claim in front of a notary public or in front of the clerk of the court. If you decide to sign the Affidavit and Claim in front of a notary public, you only need to print out one copy of the form after completing it. You can make three additional copies afterward. If you go to the court in person, print all four copies of the form after completing it.

4. Fill out the Affidavit and Claim form.

Fill out form DC 84 (Affidavit and Claim, Small Claims) you may get a copy of the form from the court to fill out.

5. File the Affidavit and Claim with the court and make arrangements for service.

You can file the Affidavit and Claim with the court in person or by mail. You must pay the filing fee at the same time you file the Affidavit and Claim. The process server will bill you separately after the claim is served. If you can't afford to pay the filing fee, ask the clerk of the court for an Affidavit and Order, Suspension of Fees/Costs (form MC20) to fill out. Service fees can cost as little as \$5.00 for certified mail or as much as \$21.00 plus mileage for personal service for each defendant.

When the filing is received, the clerk will record the filing of the claim, assign a case number, complete the Notice of Hearing and seal the claim.

The clerk will keep the original of the Affidavit and Claim for the court file, make arrangements to serve a copy on each defendant as instructed by you and return the remaining copy of the form to you.

6. Filing proof of service with the court.

After the Affidavit and Claim is served on the defendant by the process server, the process server will complete the proof of service and file it with The court. If the court serves the Affidavit and Claim by Certified mail, the clerk of the court will complete the proof of service.

If the process server is unable to serve the Affidavit and Claim on the defendant by personal service, the process server may serve the form by one of the other methods stated in Michigan Court Rule 2.105. It may be necessary for the court to reschedule the appearance date if it appears a defendant will not receive notice of hearing at least 7 days before the appearance date. See MCR 4.3003© and MCL 600.8406.

7. Prepare for the trial.

To prepare for the trial, gather the evidence you need to prove your case. A letter or affidavit from a witness will be accepted as evidence by the court without the witness being physical present at the trial, but it is better if you have the witness come to court. If a witness is unwilling to appear, you can ask the clerk of the court to issue an order to appear (subpoena) requiring the witness to appear at the trial. The order to appear must be served on the witness (along with any witness fee) no later than two days before the trial.

>>INFORMATION ABOUT ATTENDING THE HEARING

Bring your copy of the Affidavit and Claim with you to the hearing. Also, bring with you all the evidence you gathered and any witnesses who are willing to testify. If you received a written answer or counterclaim from the defendant, bring that also. The trial will take place at the location stated in the notice to appear. It is important for you to arrive to court on time. If you file a claim and not in court when your case is called, the case will probably be dismissed.

1. You are expected to conduct yourself in a courteous manner and to follow the court's directions.
2. Make a list of information you think is important for the judge or attorney magistrate to know. You can use this list as a reminder to bring up the points you think are important.
3. Go to the room on the scheduled day and time. Dress neatly. Arrive 10 to 15 minutes early. Bring any witnesses with you.
4. Take a seat and wait for your case to be called. Do not interrupt any hearing in progress.
5. The court clerk will call the case. If both parties appear, you will be asked to try one more time to come to an agreement. If you do, you will sign the Consent Judgment and after the Judgment is signed by the Judge, a copy will be sent to both parties. If the parties cannot come to an agreement, you may go before an attorney magistrate. An attorney magistrate's decision may be appealed by either party. If the parties cannot come to an agreement, you may choose to go before a Judge. A Judge's decision is final and may not be appealed.

>>COLLECTING A MONEY JUDGMENT

If the court enters a money judgment in your favor and it is not paid when ordered, additional papers must be filed with the court to collect on the judgment. You may choose to have a garnishment against wages, bank accounts and State income tax return and/or property seized. This cannot occur until 21 days after the judgment is entered. The court may ask that information be provided for these collection efforts and fees be paid.

