

Letting litigants know that MEDIATION really works!

(MCR 2.410, 2.411 & 3.216)

MEDIATION SETTLES CASES

- ☞ Nearly 70% of all cases sent to mediation result in settlements immediately and a substantial number which don't settle that day, do so shortly afterwards. (*Kent County, 2008 statistics for general civil and divorce mediations*) Compare this with 17% historical acceptance rates for case evaluation. (*Oakland County, 2008 article by Kevin M. Oeffner in Laches*)
- ☞ Nearly all mediated agreements are fulfilled by the parties. A 1999 SCAO study showed a voluntary compliance rate of 90% for mediated agreements vs. 53% for non-mediated judgments. (*SCAO Study of Small Claims Cases, 2001*)
- ☞ Client surveys show that over 90% of mediation participants are satisfied with mediation--even if the case is not resolved at mediation. (*Kent County Survey of Mediation Participants, 2008*)

MEDIATION PROCEDURES ARE FLEXIBLE

- ☞ Location for the mediation is flexible: lawyer conference rooms, hotels, airports, even homes!
- ☞ Timing is flexible to accommodate discovery needs.
- ☞ Relief is flexible and not limited to court imposed remedies.
- ☞ Although most are concluded in a single session, multiple mediation sessions are possible and can be scheduled at the convenience of the participants.
- ☞ Parties can jointly select a mediator or, absent agreement, the ADR Clerk can appoint one randomly from the court's roster of qualified mediators.

MEDIATION IS OFTEN EFFECTIVE WHEN USED EARLY

- ☞ Although scheduling the actual mediation session(s) should be jointly determined between the mediator and all counsel, mediation often works best when scheduled before positions harden and parties become entrenched.
- ☞ Extensive and costly formal discovery is not always necessary prior to mediation--mediators can help counsel narrow and target discovery to obtain the essential information required for mediation.
- ☞ In fact, early mediation is likely to save time and money otherwise invested in discovery.

MEDIATION SAVES TIME & MONEY

- ☞ Because mediation more often than not either leads to a settlement or narrows discovery, it saves both time and money.
- ☞ Early mediation often maximizes the savings to all parties and the mediator can help the parties tailor the process to maximize their savings while accommodating their needs for discovery.
- ☞ While parties usually pay a pro rata share of the mediator's charges (and their own counsel when they participate in the mediation), studies show they will still be saving money.

MEDIATION ALLOWS THE PARTIES TO ATTAIN THEIR OWN BEST RESOLUTION

- ☞ The parties themselves are best able to devise a settlement to meet their fundamental needs, which may include relief not available in court.
- ☞ Mediation is "party-centric," providing the only point in litigation with direct communication between the parties and informal communication directly with opposing lawyers.
- ☞ A mediated settlement may include issues and persons beyond the confines of the litigation.

MEDIATION HELPS ALL PARTICIPANTS ASSESS RISKS

- ☞ Cases often don't settle prior to trial due to limited views or positions taken by one or more parties or counsel. In mediation, such views or positions are often changed and the parties are able to proceed more realistically.
- ☞ Clients and their counsel need to confront the strengths of their opponent's case as well as the weaknesses of their own case, prior to the day of trial.
- ☞ Mediation may help parties identify such opposing strengths, inherent weaknesses and help quantify the cost of a trial, causing parties to engage in more meaningful risk assessment. Often attorneys appreciate having their OWN clients receive this reality testing from a neutral observer.

MEDIATION DOES NOT REQUIRE PARTIES TO SETTLE

- ☞ Parties ordered into mediation are not *forced* to settle. They are never compelled to accept a proposal with which they disagree. They are merely expected to discuss the case directly with their opponents.
- ☞ Even when complete resolution is not achieved, mediation may still help to resolve some of the issues and help everyone focus on the important ones.

MEDIATION WORKS!

- ☞ Working with a mediator allows attorneys and clients to control their destiny by fashioning their own resolution rather than having others do so.
- ☞ Mediation can preserve or restore relationships by eliminating fundamental misunderstandings and by improving communication between parties.