



ALTERNATIVE DISPUTE RESOLUTION

Best Practices for Judges

Consider ADR in all cases.

- Effective use of ADR allows parties to resolve their conflict in the least amount of time and at the lowest cost. Use of ADR is also consistent with, and enhances, the key performance measures of public satisfaction and timeliness.

Consult with parties as early as possible about the best process for their case.

- In an early case or scheduling conference, discuss which ADR processes may be most appropriate for the case, when it should occur, and who the neutral service provider will be. Issue an order focusing the parties' initial discovery on the base information necessary for an early ADR event and specifying the court's expectations regarding ADR.
- Key questions to ask to help parties determine the most helpful process:
 - Would parties like an opportunity to develop their own solution in a confidential setting? Try mediation.
 - Would parties benefit from an independent assessment of the value of their case? Try case evaluation or another nonbinding process such as Early Neutral Expert Evaluation.
 - Would parties like a trial, but also avoid the cost of a full trial? Try a summary jury trial. [See MSC Administrative Order 2015-1]

Have parties identify a mediator early in the case.

- Parties' reaching agreement on who their mediator will be establishes maximum mediator credibility. Selected early in the litigation, a mediator may be able to help parties remove obstacles to reaching a later full settlement of the case, for example, by helping parties negotiate discovery disputes. Note: judges are not to be involved in the selection of the neutral unless requested by the parties in writing or on the record. MCR 2.411(B)(4)

Schedule mediation to take place before case evaluation.

- Mediation can be expected to dispose of approximately 75% of cases referred, significantly reducing the number of cases required to be set for case evaluation. Note that by statute, case evaluation is only required for tort and medical malpractice cases.

For additional information, see the "Michigan Judges Guide to ADR Practice and Procedure," SCAO.

<http://courts.mi.gov/Administration/SCAO/OfficesPrograms/ODR/Documents/ADR%20Guide%2004092015.pdf>



TOP REASONS TO CONSIDER ADR IN EACH CASE



- ADR gives parties a meaningful process for coming up with a solution to the conflict that maximizes their interests and best meets their needs.
- Parties are more likely to keep agreements reached through mediation than they are to fulfill judgments.
- Where parties are likely to have an ongoing relationship, there is a greater chance that the parties can maintain a positive relationship following mediation because mediation can: (a) resolve underlying issues that could not be considered by a court; and (b) provide for a future dispute resolution mechanism that parties can use should a future problem arise.
- Disputes can be resolved earlier and at less cost to the parties than traditional adversarial litigation.
- Court costs and time associated with scheduling subsequent case evaluation, settlement conferences, and trial preparation can be avoided because mediation typically results in a 75% disposition rate (taking into account “at the table” settlement rates and cases settled without a subsequent court event).
- A judge’s asking about ADR removes the fear many lawyers have in appearing to have a weak case if they are the first to suggest ADR to opposing counsel.
- Even if parties don’t reach an agreement “at the table,” mediation can help narrow or focus attention on the legal and factual issues truly in dispute.
- Mediation, particularly if held early, can help reduce litigation costs associated with protracted litigation.
- In contested probate proceedings, mediation can help family members resolve historical family conflicts and develop a communications plan for the future.
- In domestic relations cases, mediation can help reduce the level of conflict children may be otherwise exposed to through the traditional adversarial process.

