

March 3, 2016

Office of Administrative Counsel  
Michigan Supreme Court  
P.O. Box 30052  
Lansing, MI 48909

**RE: ADM File No. 2014-28; Proposed Amendment of MCR 2.403 of the Michigan Court Rules**

To Whom It May Concern:

I am the Executive Director of the Mediation Tribunal Association, Inc. (“MTA”), a not-for-profit corporation, and the ADR Clerk of Wayne County Circuit Court. MTA has provided the case evaluation services for Wayne County Circuit Court since 1979. In 2015, MTA evaluated 6,729 cases through an approved list of over 1500 evaluators, making MTA the largest provider of court-mandated case evaluation services in the state.

There is a proposal to amend the case evaluation court rule, MCR 2.403 (G)(1), to require notice of case evaluators at the time of the case evaluation notice; to require continuing updates about replacement case evaluators; and to require the ADR Clerk to adjourn a case evaluation hearing absent a stipulation from the parties, in any instance where notice of the replacement case evaluators was not timely (two business days).

I oppose the adoption of each prong of the proposed amendment. As the state’s largest provider of case evaluation services, our county experiences scheduling and administrative challenges that are not likely experienced in smaller counties and district courts. The proposed requirements would negatively affect Wayne County disproportionately, often resulting in delayed time standards, placing an unreasonable burden on our staff, and are unnecessary, as protocols are already in place to address potential disqualifications and/or conflicts between parties and case evaluators.

**I. Notice of Case Evaluators with the Notice of Case Evaluation**

Our current system is not designed to provide the names of the case evaluators on the notice of case evaluation. The MTA computer system is designed as two separate databases; one that rotates and maintains case evaluator demographics such as contact information and payment preferences, and another for the cases themselves. Combining the two would require MTA to reprogram our systems. Additionally, MTA does not currently notice electronically. This proposed amendment seems to contemplate electronic noticing to accommodate a two business day notice, and MTA currently lacks that capacity. Redesigning our systems to fulfill this notice requirement would be expensive.

## **II. Amended Notice of Case Evaluator Replacements**

MTA utilizes the time period from the initial notice of case evaluation to the time the case evaluators pick up their summaries to consolidate the panels. To that end, a MTA clerk calls parties that have not filed summaries to ascertain if the case is still proceeding to case evaluation or if there has been some other disposition or adjournment of the matter. As cases fall off our docket, the case times and panels are continually rearranged to provide the parties and case evaluators with the most efficient day possible. There may be many changes during this period, and constantly noticing the parties of those changes would be confusing for them and onerous for staff.

## **III. Adjourning the Case Evaluation Hearing**

The proposed amendment suggests two remedies in the event that the ADR Clerk determines the amended notice of a case evaluator replacement was not sent two business days prior to the case evaluation hearing—either have the attorneys stipulate to proceed, or adjourn the hearing. MTA has no power to unilaterally adjourn a case. Doing so could affect the time standards on a case and would potentially deviate from the track set by the judge at the case management conference. A perfect example would be our medical malpractice panels. Medical malpractice panels arguably provide the greatest numbers of conflicts. The defense case evaluators typically represent large hospital systems and as hospitals continue to merge, the defense evaluators are exposed to greater numbers of conflicts. We hold these panels once a

month because of the small number of medical malpractice cases that are evaluated. An adjournment would move the case out of the month set for case evaluation pursuant to the case management scheduling order and into the following month. This could potentially cause problems with dates set for discovery, settlement conferences, and trial. Currently, if we have an unavoidable conflict, our judges determine if there should be an adjournment, as they should be the ones to direct their own dockets.

#### **IV. Vagueness**

The proposed amendment refers to sending a notice to case evaluators and attorneys with the case evaluators' names. The amendment does not contemplate pro se litigants. We often have no contact information for a pro se litigant beyond their mailing address. A two business day contact window would not provide sufficient notice for any party without an e-mail address on file for case evaluation.

Equally problematic would be the requirement that the parties stipulate to the case evaluators if they choose to waive the lack of notice, as there is no form proposed for that purpose. Absent a requirement to put the stipulation in writing, it is foreseeable that clerks would have a difficult time reaching parties and there would be no way to verify an oral agreement.

#### **V. Remedies**

It appears that this proposed amendment was designed to address potential conflicts that could result in the disqualification of case evaluators. MCR 2.403(E) already has such a provision, which directs the case evaluator to make the decision to recuse themselves in the event of a conflict. This has always worked well for us.

Also, case evaluators receive their summaries and a list of scheduled cases prior to the day of case evaluation. It is common in our county for the case evaluators to inform the staff when they see a large number of conflicts; at that time the decision may be made to switch them to sit on another panel or to be rescheduled to another date. There is a lot of conflict checking and balancing that takes place behind the scenes to allow cases to proceed smoothly on the day of case evaluation.

Finally, there is no rule that bars parties from informally getting the names of their scheduled case evaluators and then notifying us of a conflict. MTA always seeks to accommodate those necessary changes ahead of time, and that is part of the behind the scene balancing that takes place prior to case evaluation. Shifting the burden to the ADR Clerk would be a challenge in the larger counties and circuit courts.

For the foregoing reasons, I oppose the proposed amendment to the case evaluation court rule, as it would place an undue burden on our staff and resources, cause confusion among the parties (especially those attorneys with several upcoming case evaluation dates), and duplicates a system for addressing conflicts that is already in place and works well.

Sincerely,

Lisa W. Timmons