

MICHIGAN – WESTERN

16.2 Alternative Dispute Resolution: General provisions

(a) ADR favored – The judges of this District favor alternative dispute resolution (ADR) methods in those cases where the parties and the Court agree that ADR may help resolve the case. The ADR methods approved by these rules include Voluntary Facilitative Mediation (LcivR 16.3); Early Neutral Evaluation (LcivR 16.4); Case Evaluation (LcivR 16.5); Court-Annexed Arbitration (LcivR 16.6); Summary Jury Trials, Summary Bench Trials (LcivR 16.7); and Settlement Conferences (LcivR 16.8). In addition, the Court will consider other ADR methods proposed by the parties.

(b) Court administration of the ADR program

(i) Program Description and Administration – Each ADR program is governed by these rules and the provisions of a Program Description, which is incorporated into these rules by reference. The Program Description for each ADR method is available on the Court’s website and is published in a form suitable for reference by attorneys and their clients. The ADR program is administered by the Clerk’s Office. Problems are initially handled by the ADR Administrator.

(ii) Evaluation of the program – In an effort to gather information, the Court may develop questionnaires for participants, counsel and neutrals, to be completed and returned at the close of the ADR process. Responses will be kept confidential and not divulged to the Court, the attorneys or the parties. Only aggregate information about the program will be reported.

(c) Consideration of ADR in appropriate cases – In connection with the conference held pursuant to Rule 26(f) of the Federal Rules of Civil Procedure, all litigants and counsel must consider and discuss the use of an appropriate ADR process at a suitable stage of the litigation.

(d) Confidentiality – All ADR proceedings are considered to be compromise negotiations within the meaning of Fed. R. Evid. 408.

(e) Status of discovery, motions and trial during the ADR process – Any case referred to ADR continues to be subject to management by the Judge to whom it is assigned. Parties may file motions and engage in discovery. Selection of a case for ADR has no effect on the normal progress of the case toward trial. Referral of a case to ADR is not grounds to avoid or postpone any deadline or obligation imposed by the case management order unless so ordered by the Court.

(f) Qualifications for neutrals – To be qualified to act as a neutral (i.e., facilitative mediator, early neutral evaluator, case evaluator, or arbitrator), an attorney must have at least ten (10) years of experience in the practice of law and must satisfy any special requirements applicable to a particular ADR program. No person may serve as a neutral in any action in which any of the circumstances specified in 28 U.S.C. § 455 exist or in good faith are believed to exist. An attorney shall accept the neutral’s role only if he or she can be fair and impartial and can avoid a conflict of interest or the appearance of a conflict of interest. For example, see the Model Standards Of Conduct For Mediators, jointly adopted in 2005 by the American Bar Association, the American Arbitration Association and the Association For Conflict Resolution. \

(g) Attorneys’ responsibility for payment of fees – The attorney or law firm representing a party participating in ADR is directly responsible for fees payable to the Court or to neutrals. Pro se parties are personally responsible for fees. To the extent consistent with ethical rules, the attorney or firm may seek reimbursement from the client. If any attorney or pro se party is delinquent in paying any fee required to be paid to a neutral under these rules, the neutral may petition the Court for an order directing payment, and any judge or magistrate judge assigned to the case may order payment, upon pain of contempt.

(h) Pro bono service – In cases in which one or more parties cannot afford the fees of a neutral, the Court may request that the neutral serve pro bono, by waiving or reducing the fee for the indigent party. All other parties are expected to pay the full fee.

16.3 Voluntary Facilitative Mediation

(a) Definition – Voluntary Facilitative Mediation (VFM) is a flexible, nonbinding dispute resolution process in which an impartial third party – the mediator – facilitates negotiations among the parties to help them reach settlement. VFM seeks to expand traditional settlement discussions and broaden resolution options, often by going beyond the issues in controversy. The mediator, who may meet jointly and separately with the parties, serves as a facilitator only and does not decide issues or make findings of fact. Cases will be assigned to VFM only if the district or magistrate judge is satisfied that the selection of VFM is purely voluntary and with full approval of all parties.

(b) Qualification, certification and removal of mediators – The Clerk’s Office maintains a current list of certified mediators. Criteria for training, certification, retention and removal of mediators are governed by the VFM Program Description.

(c) Mediation assessment – The Court shall assess a fee per referral in accordance with the VFM procedures adopted by the Court. The monies are deposited into the Voluntary Facilitative Mediation Training Fund. In a pro bono mediation, the assessment is waived for any indigent party.

(d) Selection and compensation of mediator

(i) Selection of mediator – Within fourteen (14) days of the issuance of the case management order, the parties jointly select one mediator from the list of court certified mediators. The plaintiff is responsible for notifying the ADR Administrator of the name of the selected mediator by electronically filing a Notice of Selection of Facilitative Mediator. If the parties are unable to agree on a mediator, the ADR Administrator selects the mediator for them. The proposed mediator will then check for conflicts of interest. Once the selection of a mediator is finalized, the ADR Administrator electronically files a Notice of Appointment of Facilitative Mediator.

(ii) Compensation of mediator – The mediator is paid his or her normal hourly rate, assessed in as many equal parts as there are separately represented parties, unless otherwise agreed in writing. The mediator is responsible for billing counsel and pro se parties.

(e) The mediation process

(i) The details of the VFM process, including establishment and timing of VFM sessions and submissions by the parties to the mediator, are set forth in general in the VFM Program Description, and, with regard to each specific case, in the Notice of Appointment of Facilitative Mediator.

(ii) Party responsibilities – Individual parties and representatives of corporate or government parties with settlement authority are required to attend the mediation session(s) in person. In cases involving insurance carriers, the insurer representative with settlement authority must attend in person. Each party must be accompanied at the VFM session by the lawyer expected to be primarily responsible for handling the trial of the matter. A party or lawyer will be excused from attending the mediation session in person only after approval by the Court upon showing extraordinary circumstances to excuse attendance.

(f) Filing of outcome – Within fourteen (14) days of the completion of the mediation process, the mediator will electronically file a Facilitative Mediation Report with the Court. The report will indicate only who participated in the mediation session and whether settlement was reached. If settlement is reached, the mediator will help the parties draft a settlement agreement. The settlement agreement, absent unusual circumstances, must be completed and signed by the parties within fourteen (14) days. The parties shall file a stipulation and proposed order to dismiss with the Court within twenty-eight (28) days of reaching a settlement. If settlement is not reached, the parties have seven (7) days following the mediation session to inform the mediator whether they desire to continue with the mediation process.

16.4 Early Neutral Evaluation

(a) Definition – Early Neutral Evaluation (ENE) is a flexible, nonbinding dispute resolution process in which an experienced neutral attorney meets with the parties early in the case to evaluate its strengths and weaknesses and the value that it may have, and also attempts to negotiate a settlement.

(b) Selection and compensation of evaluator

(i) Selection of evaluator – Counsel for the parties jointly select an evaluator who meets the criteria for neutrals under this rule. If the parties are unable to agree on an evaluator, the ADR Administrator selects the evaluator for them. No listing of evaluators is maintained by the Court or the Clerk. The proposed evaluator will check for conflicts of interest. Once the selection process is finalized, the judge issues an order of referral.

(ii) Compensation of evaluator – The evaluator is paid his or her normal hourly rate, assessed in as many equal parts as there are separately represented parties, unless otherwise agreed in writing. The evaluator is responsible for billing counsel and pro se parties.

(c) The early neutral evaluation process

(i) Program description – The details of the ENE process, including the duties of the evaluator, the establishment and timing of ENE sessions, and submissions of the parties to the evaluator, are set forth in the ENE Program Description. Parties participating in ENE must follow the requirements of the Program Description, including the special requirements applying to patent, copyright and trademark cases.

(ii) Party responsibilities – Individual parties and representatives of corporate or government parties with ultimate settlement authority are required to attend the ENE session(s). In cases involving insurance carriers, the insurer representative with ultimate settlement authority must attend. Each party must be accompanied at the ENE session by the lawyer expected to be primarily responsible for handling the trial of the matter.

(d) Filing of outcome – Within fourteen (14) days following the conclusion of ENE, if settlement is reached, the evaluator, if requested, helps the parties draft a settlement agreement along with a stipulation and proposed order to dismiss, which when executed is filed with the Court. If settlement is not reached, the parties have seven (7) days to inform the evaluator whether they desire to continue with the ENE process. Within fourteen (14) days of the completion of the ENE process, the evaluator files a brief report with the ADR Administrator, with copies to all parties. The report indicates only who participated in the ENE session and whether issues were narrowed or settlement was reached.

16.5 Case Evaluation

(a) Definition – The case evaluation program affords litigants an ADR process patterned

after that extensively used in the courts of the State of Michigan. See Mich. Comp. Laws §§ 600.4951-.4969; Mich. Ct. R. 2.403. Case evaluation principally involves establishment of the settlement value of a case by a three-member panel of attorneys. The court may order that any civil case in which damages are sought be submitted to case evaluation; certain tort cases in which the rule of decision is supplied by Michigan law must be submitted to case evaluation, unless the parties unanimously agree to submit the case to Voluntary Facilitation Mediation.

(b) Standard case evaluation

(i) Adoption of Michigan state-court procedures; exceptions – The procedures governing standard case evaluation are generally set forth in Rule 2.403 of the Michigan Rules of Court. Unless modified by these rules, the Program Description, or order of court in a particular case, the provisions of Mich. Ct. R. 2.403, as amended from time to time, will govern in cases referred to standard case evaluation, except as follows:

(A) Panel selection – The ADR Administrator selects all three case evaluators.

(B) Fees – Each party must send each evaluator a check for \$100.00, for a total fee of \$300 per party. Promptly thereafter, a proof of payment must be filed with the ADR Administrator. Failure to submit a proof showing timely payment subjects the offending attorney to a \$150.00 penalty, which may not be charged to the client. The rules set forth in Mich. Ct. R. 2.403 for allocation of fees among multiple parties or claims apply. Once paid, the fee is not subject to refund.

(C) Submission of documents – The rules for submission of documents set forth in Mich. Ct. R. 2.403 apply, except that case evaluation summaries are limited to 20 pages and attachments must not exceed 20 pages. Documents must be submitted directly to the evaluators, with a proof of service filed with the ADR Administrator. Failure to file or serve such documents in a timely manner subjects the offending party to a \$150.00 penalty, which may not be charged to the client.

(D) Time limit at hearing – Each side's presentation at the case evaluation hearing is limited to 30 minutes.

(E) Time in which award must be rendered – The evaluators render a written evaluation at the close of the hearing and serve it personally on the parties at that time.

(F) Rejecting party's liability for costs

(1) In diversity tort cases where Michigan law provides the rule of

decision, this Court has determined that the state statute and court rules requiring case evaluation form a part of state substantive law. Such tort cases will be referred to mandatory case evaluation, unless the parties unanimously agree to Voluntary Facilitative Mediation. In all tort cases ordered to mandatory case evaluation, the provisions of Rule 2.403 governing liability for costs, including taxation of a reasonable attorney fee for rejection of a case evaluation award, apply.

(2) In cases in which case evaluation is not mandatory, the provisions of Mich. Ct. R. 2.403 governing liability for costs apply, except that attorneys' fees will not be taxed for rejection of a case evaluation award.

(3) In any case referred to case evaluation, the parties may stipulate in writing to the assessment of attorneys' fees in accordance with Mich. Ct. R. 2.403.

(c) Blue Ribbon case evaluation – Blue Ribbon case evaluation allows the parties to choose their own evaluators and to request that the evaluators devote substantial time to the evaluation process. A case may be referred to Blue Ribbon case evaluation only with the unanimous and voluntary consent of the parties. All procedures applicable to standard case evaluation apply, except:

(i) Selection of evaluators – The parties jointly select the evaluators, who need not be members of the Court's certified list.

(ii) Fees – Evaluators are compensated at their customary hourly rate, to be assessed in as many equal parts as there are separately represented parties, or as otherwise agreed by the parties at the time case evaluation is ordered. No late fees are imposed for untimely submissions.

(iii) Mediation briefs and hearings – No limits apply to length of Blue Ribbon case evaluation hearings or to the length of case evaluation briefs, unless agreed to in writing by the parties.

(iv) Time for rendering award – In an extraordinary case, where the award cannot reasonably be rendered at the conclusion of the hearing, the evaluators may render their written evaluation no later than seven days after the hearing.

16.6 Court-Annexed Arbitration – [Repealed]

16.7 Summary jury trials; summary bench trials

(a) Summary jury trial - The summary jury trial is an abbreviated proceeding during which the parties' attorneys summarize their case before a six-person jury. Unless the parties stipulate otherwise, the verdict is advisory only.

(b) Summary bench trial - A summary bench trial is an abbreviated proceeding during which the parties' attorneys summarize their case before a judge or magistrate judge. Unless the parties stipulate otherwise, the verdict is advisory only.

16.8 Settlement conferences

The Court may order a settlement conference to be held before a district judge or a magistrate judge. All parties may be required to be present. For parties that are not natural persons, a natural person representing that party who possesses ultimate settlement authority may be required to attend the settlement conference. In cases where an insured party does not have full settlement authority, an official of the insurer with ultimate authority to negotiate a settlement may also be required to attend.