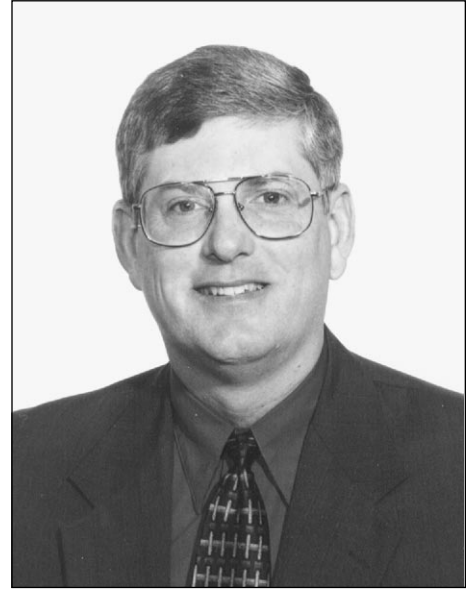


Report Card for Under \$25,000 Cases

by *Kevin M. Oeffner*
Circuit Court Administrator



The Circuit Court's pilot program to refer cases that evaluate for less than \$25,000 to Oakland Mediation Center (OMC) was recently expanded to include all civil/criminal division judges and was extended until December 31, 2007. The judges' decision to continue and enlarge the program was due to a favorable report card for cases mediated under the program in 2005.

Each year several hundred cases evaluate for less than \$25,000, the minimum jurisdictional limit for filing civil cases in circuit court. Repeal of the Remand Statute in 1996 negated the circuit court's authority to remand these cases to the district courts. The Circuit Court and the Community Dispute Resolution Office of OMC worked collaboratively to develop a mediation program aimed at under-\$25,000 cases.

Effective March 7, 2006, all circuit judges in the civil/criminal division will now participate in the program. Here's how it works. The court will order cases that evaluate for less than \$25,000 to mediation within five days of the expiration of the acceptance/rejection period for case evaluation. These cases will be referred to OMC, which shall assign a mediator to each case. The Case Management Office of Circuit Court sends notice of the order and referral to the parties.

A party who objects to the order and referral may file an objection within 14 days of the date of the order. All such objections will be referred to Judge Steven Andrews. Within that 14-day time frame, the parties may also stipulate to a mediator of their own choosing, or to an amendment of the pleadings that the amount in controversy is less than \$25,000 and for transfer of the case to the appropriate district court.

Once referral has been made, OMC will contact the parties to schedule the mediation. The mediation proceedings will adhere to the conditions stated in the court's order

for mediation. Attendance at mediation is governed by MCR 2.410(D).

Cases referred to mediation are subject to fees imposed by OMC. The current fee is \$100 per party for each case mediated. The parties are required to pay half the mediation fee within 14 days after the expiration of the time to file objections to the mediation. The balance of the mediation fee is due on or before the scheduled mediation date. Parties who fail to pay the required mediation fee may be subject to sanctions in accord with MCR 2.410(D)(3). Parties who enter an order settling a case will not be liable for the mediation fee.

After a case is ordered to mediation but before the scheduled mediation date, the parties must submit a brief summary of the disputed facts and issues to OMC. Within seven days of conclusion of the mediation, OMC will submit a written report to the court. The report will indicate the date of completion of the mediation process, the parties who participated in the mediation, and whether the case was resolved. For cases that settle, the parties must submit a stipulated order or judgment within 21 days of the mediation or trial date, whichever is first. Cases that do not settle shall be returned to the assigned judges for trial.

A few other items should be noted. The court retains the authority to order cases to other alternative dispute resolution processes pursuant to MCR 2.410. The mediators used by OMC for this program are appropriately qualified in accord with MCR 2.411(F). OMC will not accept cases for mediation if there is a conflict of interest. Mediation fees will be waived by OMC if a party is indigent and qualifies for waiver in accord with MCR 2.002(C) or (D).

Now back to the report card. In 2005, 201 cases were ordered to mediation. Many cases (85) did not go to

mediation as the parties reached settlement before the scheduled mediation date. Of those cases in which mediation did occur (67), 49 percent settled. Motions for summary disposition were granted on 14 cases (even though cases may be referred to mediation, other scheduled court events, such as hearings on SD motions, continue). At the end of 2005, 27 of the referred cases were pending. The remaining eight cases were removed from the program for various reasons.

In determining the settlement rate, we included the cases that were settled after the court order was entered referring them to mediation but before the mediation hearing (85), and the cases that were settled during the mediation (33). The denominator (152) consists of those cases that were referred to mediation (201) less those that

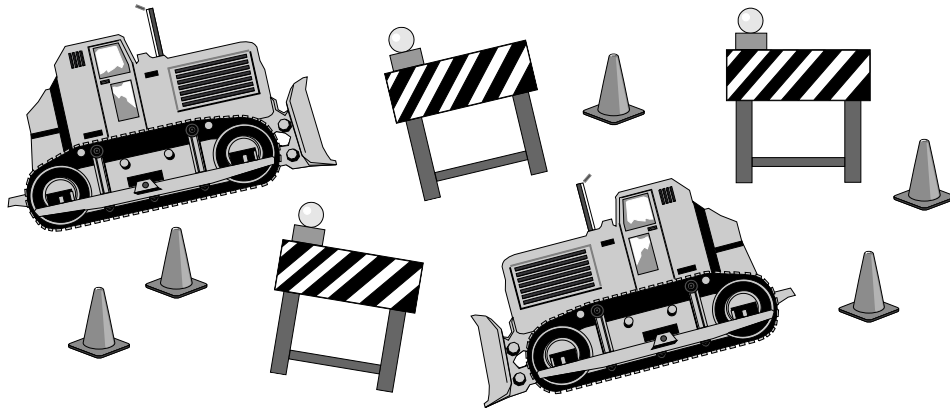
were removed for various reasons (8), those summarily disposed (14), and those pending at the end of last year (27). Simple math yields a settlement rate of 77.6 percent.

Assuming that the number of referrals in 2005 for a pilot program with a limited number of judges included holds true for 2006 with all 14 civil/criminal judges included (since March 7), we expect that more than 500 cases will be ordered to mediation. We appreciate the participation of Oakland Mediation Center in this program and look forward to continuing our relationship with them this year.

One program note: The court's Administrative Order (2006-05) governing the mediation program can be found on our Web site. Click on <http://www.oakgov.com/circuit/assets/docs/ao/06-05.pdf> for a copy of the Order.

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