

# ADR Menu

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This edition of LACHES is dedicated to Alternative Dispute Resolution so it seems appropriate to include a summary of this circuit court's ADR programs. Also provided is a report on the recent performance of each program.

Let's begin with case evaluation. Michigan Court Rule 2.403 requires tort cases in which the requested relief is money damages or the division of property to be subjected to case evaluation, typically no sooner than 91 days after the filing of the answer to the original complaint.

The case evaluation hearing is conducted by a panel of three attorneys who review case summaries and meet with the lawyers on the case. The panel's mission is to assign a dollar value to the case and to inform the parties of the amount within 14 days of the hearing. The parties must file a written acceptance or rejection of the amount within 28 days after service of the panel's determination of the dollar amount.

In 2007, 16.5 percent of the cases evaluated were accepted by the parties. The acceptance rate for 2007 is very close to the average annual acceptance rate since 1995 – 16.7 percent.

The Civil Early Intervention Conference (EIC) program provides a forum in which a volunteer attorney meets with the litigants in a case to define and narrow the issues and identify the ADR program(s) that would most likely lead to settlement. Sometimes the facilitating attorney is successful in generating a settlement. This program is a cooperative effort between the Oakland County Bar Association and the court.

Ten of the 14 civil/criminal division judges participate at the moment. Cases included in the program are housing (CH), contracts (CK) and general civil (CZ). The parties in cases targeted for EIC receive notice of the EIC session shortly after the scheduling order is generated. The parties do not pay for the volunteer attorney's services. Sessions last about 30 minutes.

A total of 748 cases were submitted to the EIC program in 2007, of which 242 settled as measured within 60 days of the EIC. The settlement rate in 2007 was 32.4 percent. This program continues to generate high marks by the litigants

who experience the EIC program. We appreciate the efforts made by many OCBA members who so willingly give of their time and talents to make this program so successful.

The circuit court operates two mediation programs – civil, and domestic relations. For both programs a neutral mediator facilitates communications between parties, assists in identifying and narrowing the issues, and assists the parties in reaching a mutually acceptable resolution to their dispute. Fees for civil and domestic relations mediation are charged directly to the parties by the applicable mediators.

The court maintains a list of civil and domestic relations mediators who possess the qualifications required by Michigan Court Rules 2.411 (Civil Mediation) and 3.216 (Domestic Relations). In most cases mediators are mutually agreed to by the parties. The court may appoint a mediator through random rotation if the parties are not able to select one within 14 days of the order for mediation.

In 2007, 346 civil cases were ordered to mediation. Of those cases ordered to mediation that settled during 2007 (some of the 346 cases ordered to mediation were pending at year-end), 53 percent were settled.

For domestic relations mediation, 1,441 cases were ordered to mediation in 2007. Some of these cases were pending at year-end, but of those for which mediation was completed during the year, 69 percent settled.

Civil cases evaluated for less than \$25,000 and rejected by one or more of the parties are referred by court order to the Oakland Mediation Center under a pilot program authorized by Local Administrative Order 2007-04. OMC assigns cases to mediators who meet the qualifications listed in Michigan Court Rule 2.411(F).

Fees associated with the referral of a case are paid directly to the Oakland Mediation Center. Within seven days of the completion of the mediation, the Oakland Mediation Center submits a report to the court indicating the date of the mediation, who participated in it, and whether the case was resolved or further proceedings are necessary. The parties submit a stipulated order or judg-

ment to the court if the case is resolved; if not, the case returns to the court for trial or submission to other ADR programs as deemed appropriate.

In 2007, 448 cases were referred to the Oakland Mediation Center. Of those referred cases in which mediation was completed in 2007, 46 percent were settled.

The Case Conference Pilot Program began in mid-January 2008. The purpose of the program is to determine whether requiring legal counsel to participate in early case conferences in certain civil cases will result in the issuance of more effective scheduling orders and greater efficiency and resolution in the processing of these cases.

The Case Conference program is patterned after Rule 26(f) of the Federal Rules of Civil Procedure. Our pilot program seeks to apply the case management techniques embodied in Rule 26(f) to the processing of cases involving business claims (CB), condemnation (CC), employment discrimination (CD), environment (CE), labor relations (CL), medical malpractice (NH), and products liability (NP). From the inception of the program through April 1, a total of 43 cases have been referred to this program. It is too soon to have any meaningful data on the performance of this program.

Local Administrative Order 2006-07 provides for a pilot program wherein certain domestic relations matters involving child custody and parenting time disputes may be referred to the Oakland Mediation Center. OMC provides domestic relations mediation services conducted by a

neutral third party who facilitates communication between the parties on the case in an effort to promote a mutually acceptable resolution to the dispute.

The Friend of the Court is permitted to refer cases to the Oakland Mediation Center that it deems suitable for mediation. Upon receiving a written parenting time complaint, the Friend of the Court must send notice to the parties that parenting time was wrongfully denied and that the make-up parenting time policy established by the court will be applied in the matter. In cases in which a party contests the make-up of parenting time, the Friend of the Court may refer them to mediation. A total of 77 cases were referred to the Oakland Mediation Center in 2007 as part of the parenting time mediation program. Of those that mediated, 72 percent reached a successful resolution of the disputes in question.

These programs make up the court's formal menu of ADR programs. They are highly effective in reducing and narrowing disputes and engendering settlements. These programs assist the court in managing its docket and ensuring that disputes are resolved in a timely and cost-effective manner.

The authority for these programs is founded in the Michigan/Federal Court Rules and/or the court's Local Administrative Orders. For more information about these ADR programs, please contact the Case Management Office at 248-858-8088 or view our full listing of Local Administrative Orders at [http://www.oakgov.com/circuit/info\\_pub/](http://www.oakgov.com/circuit/info_pub/).

Until next time...



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