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LAO 2013-03
Rescinds LAO 2006-03

13TH JUDICIAL CIRCUIT COURT ALTERNATIVE DISPUTE RESOLUTION (“ADR”) PLAN (Amended as of 11/23/2010)

Pursuant to MCR 2.410 and local administrative order 2000-1, the 13th Judicial Circuit Court adopts the following ADR Plan, effective immediately:

Alternative Dispute Resolution (“ADR”) means “any process designed to resolve a legal dispute in the place of court adjudication.” ADR includes settlement conferences ordered under MCR 2.401, case evaluation under MCR 2.403, mediation under MCR 2.411, domestic relations mediation under MCR 3.216, and other procedures provided by local court rule or ordered on stipulation of the parties; e.g. arbitration, summary jury trial.

All civil cases are subject to ADR processes unless otherwise provided by statute or court rule.

ADR CLERK

The Court shall employ a full time ADR Clerk. The ADR Clerk is Julie A. Arends. The ADR Clerk shall maintain all records pertaining to the Court’s ADR Program, including applications for and lists of case evaluators, general civil mediators, and domestic relations mediators. The ADR Clerk shall be responsible for coordinating the referral of cases to ADR and tracking the progress of cases through ADR processes.

DISSEMINATION OF INFORMATION REGARDING ADR

The ADR Clerk shall be responsible for disseminating information about the Court’s ADR Program to litigants and the general public. Court-annexed ADR is not new to the 13th Circuit. Since 1991, the Court has referred appropriate cases to facilitative mediation and has disseminated information about this initiative via newspaper articles, bar journal articles and training seminars. The Court will continue these efforts in the future and, with the assistance of the local bar association’s ADR Committee, will develop a form letter inviting anyone interested in providing mediation services to complete an application and a general public information brochure which will be widely disseminated throughout the community. This brochure will include, among other things, information regarding the voluntary nature of ADR and a litigant’s right to object to mediation by timely motion, as well as the provisions being made for indigent litigants. The Court’s annual ADR report will also be made available to the public.

**CASE EVALUATION,
GENERAL CIVIL MEDIATION
and
DOMESTIC RELATIONS MEDIATION**

Since the implementation of facilitative mediation in the 13th Circuit, the Court has found its positive impact on the settlement of cases to be significant and, based on statistics, the failure of the case evaluation process to resolve disputes has caused case evaluation to be removed from the Court's Civil Scheduling Conference Order. Parties who wish to pursue the case evaluation process may arrange the proceeding themselves or may choose to use the offer of judgment provision pursuant to MCR 2.405. The Courthouse may be available as a location for the hearing, and the case evaluation panels established for 2010 will remain on file with the ADR Clerk.

Under MCR 2.411, the Court may refer any civil action to mediation. Under MCR 3.216, the Court may refer any contested issue in a domestic relations action to mediation. "Mediation" is a process in which a neutral third party facilitates communication between parties, assists in identifying issues, and helps explore solutions to promote a mutually acceptable settlement. A mediator has no authoritative decision-making power and the process itself does not trigger a subsequent exposure to monetary sanctions.

(1) CASE SCREENING: In most civil and domestic relations cases, before issuing its Scheduling Conference Order, the Court shall determine whether the case is appropriate for mediation. The ADR Clerk shall routinely check the Court's records to determine whether the parties are subject to a personal protection order or are involved in a child abuse and neglect proceeding. Such cases may not be referred to mediation without a hearing to determine whether mediation is appropriate.

(2) APPLICATION: An eligible person desiring to serve as a general civil mediator and/or a domestic relations mediator may apply to the ADR Clerk to be placed on the list of qualified general civil mediators or domestic relations mediators. Application forms are available in the office of the ADR Clerk or on the Court's website at www.13thcircuitcourt.org. The application form includes a certification that the applicant meets the requirements for service and that the applicant will not discriminate against parties, attorneys, other mediators on the basis of race, ethnic origin, gender or other protected personal characteristic.

(3) ELIGIBILITY: To be eligible to serve as a **general civil mediator**, a person must meet the following qualifications:

- a. Complete a training program approved by the State Court Administrator providing the generally accepted components of mediation skills;

- b. Have one or more of the following:
 - (i) Juris doctor degree or graduate degree in conflict resolution; or
 - (ii) 40 hours of mediation experience over two years, including mediation, co-mediation, observation, and role-playing in the context of mediation.
- c. Observe two general civil mediation proceedings conducted by an approved mediator, and conduct one general civil mediation to conclusion under the supervision and observation of an approved mediator.
- d. An applicant who has specialized experience or training, but does not meet the specific requirement described above, may apply to the ADR Clerk for special approval. The ADR Clerk shall make the determination on the basis of criteria provided by the State Court Administrator. Service as a case evaluator under MCR 2.403 does not constitute a qualification for serving as a mediator.
- e. Approved mediators are required to obtain eight hours of advanced mediation training during each two-year period. Failure to submit documentation establishing compliance is grounds for removal from the list.
- f. General civil mediators must not discriminate against parties or attorneys on the basis of race, ethnic origin, gender, or other protected personal characteristic.
- g. General civil mediators must comply with the Court's ADR Plan, orders of the Court regarding cases submitted to mediation and the Standards of Conduct for Mediators promulgated by the State Court Administrator.

To be eligible to serve as a **domestic relations mediator**, a person must meet the following qualifications:

The applicant must

- a.
 - (i) be a licensed attorney, a licensed or limited licensed psychologist, a licensed professional counselor, or a licensed marriage or family therapist;
 - (ii) have a master's degree in counseling, social work, or marriage and family therapy;
 - (iii) have a graduate degree in a behavioral science; or
 - (iv) have five years experience in family counseling.
- b. The applicant must have completed a training program approved by the State Court Administrator providing the generally accepted components of domestic relations mediation skills.
- c. The applicant must have observed two domestic relations mediation proceedings conducted by an approved mediator, and have conducted one domestic relations mediation to conclusion under the supervision and observation of an approved mediator.

- d. An applicant who has specialized experience or training, but does not meet the specific requirements described above, may apply to the ADR Clerk for special approval. The ADR Clerk shall make the determination on the basis of criteria provided by the State Court Administrator. Service as a case evaluator under MCR 2.403 does not constitute a qualification for serving as a domestic relations mediator.
- e. Approved mediators are required to obtain eight hours of advanced mediation training during each two-year period. Failure to submit documentation establishing compliance is grounds for removal from the list.
- f. Domestic relations mediators must not discriminate against parties or attorneys on the basis of race, ethnic origin, gender, or other protected personal characteristic.
- g. Domestic relations mediators must comply with the Court's ADR Plan, orders of the Court regarding cases submitted to mediation, and the Standards of Conduct for Mediators promulgated by the State Court Administrator.

Applications to serve as a general civil or domestic relations mediator shall include a certification that the applicant agrees to fulfill the mediator's responsibilities in an impartial manner consistent with the rules and practices of the Court. The certificate for mediators will also state the fee that will be charged or the basis on which the applicant agrees to have the fee determined. The certificate for a domestic relations mediator must also state whether the applicant is willing to provide evaluative mediation.

(4) REVIEW OF APPLICATIONS: The Court will disseminate information to potentially interested persons that the review process is approaching. Any person interested in providing mediation services is invited to submit an application to the ADR Clerk, who will distribute all applications received since the last review process to the local bar association's ADR Committee for review. The ADR Committee or a subcommittee thereof will meet at least annually to review applications and compile a list of qualified general civil mediators and domestic relations mediators. Persons meeting the qualifications specified in #3 above shall be placed on ~~all lists~~ either list for which they are qualified. The ADR Committee or a subcommittee thereof will also review all requests for special approval and make recommendations regarding approval to the Court. The relevant bar committee shall submit all lists to the 13th Circuit Court Judges for final review and approval. Selections shall be made without regard to race, ethnic origin, or gender. Except for the ADR Clerk, no person may serve on any committee reviewing applications more than three years in any nine-year period. No review committee or subcommittee may have less than three members.

Applicants who are not found qualified for placement on the list(s) shall be notified of that decision by the ADR Committee. Applicants will have 21 days to apply for reconsideration by the Circuit Court Judges. Any documents considered in the initial review process shall be retained for at least the 21 days described above. The appeal and all related documents must be

filed with the ADR Clerk, with a copy to the Circuit Court Judges, and received within 21 days of the date the Committee decision was originally mailed.

(5) SPECIALIZED LISTS: Separate lists are maintained by the ADR Clerk for general civil mediators or domestic relations mediators for child related issues only and domestic relations mediators for property issues only or for both, with appropriate designations for each mediator as evaluative and non-evaluative; and mediation services.

(6) REAPPLICATION: Persons shall be placed on all lists for which they are qualified for a fixed period of time, not to exceed five years, and must reapply at the end of that period in the same manner as persons seeking to be added to the list.

(7) ADVANCED TRAINING: Every mediator on a Court-approved list must notify the ADR Clerk and provide written proof of having completed the requisite eight hours of advanced mediation training during each two-year period following appointment to a list. Failure to do so will be automatic grounds for removal from the list.

Domestic relations mediators must complete an in-service training program on how to identify cases which are not appropriate for mediation before being assigned to a domestic relations case.

(8) AVAILABILITY OF LISTS: The lists of mediators and mediation services are available to the public. Copies may be obtained from the ADR Clerk in the office of the Circuit Court Administrator.

(9) REMOVAL FROM LISTS: Quarterly meetings may be scheduled so that the ADR Committee, the Circuit Court Judges and the ADR Clerk may review cases of potential disqualification based upon incompetency, bias, consistent unavailability or other just cause. Persons so notified of their disqualification can appeal the decision consistent with the procedure described in #4 above.

(10) ASSIGNMENT OF GENERAL CIVIL MEDIATORS: The Court will refer cases to general civil mediation by an order of referral which may be contained within the Court's Civil Scheduling Conference Order. A list of Court-approved mediators and mediation services will be provided to the parties. Except for good cause shown, the parties' attorneys or the parties, if unrepresented, shall confer and select a mediator or mediation service within 14 days of the date of the order and notify the ADR Clerk. Within 21 days of the date of the order, the mediator or mediation service shall advise the ADR Clerk and all parties, in writing, who will be conducting the mediation and the date and time set for the mediation. The parties will provide the mediator with a copy of the Civil Scheduling Conference Order.

In the event that the parties do not notify the ADR Clerk of their selection within the 14 days allowed, the ADR Clerk will select a mediator without notice to the parties and advise the parties or their attorneys who will be conducting the mediation. The ADR Clerk will select a mediator in a random or rotating manner that assures, as nearly as possible, that each mediator on the list is assigned approximately the same number of cases over a period of one year. If a substitute

mediator must be assigned, the same or similar assignment procedure shall be used to select the substitute, whenever possible. Once the ADR Clerk selects a mediator, the parties are responsible for any fees generated by that mediator or service.

Any party, by timely motion, may object to the referral of their case to mediation. The Court's referral order makes this right clear to counsel and parties.

(11) ASSIGNMENT OF DOMESTIC RELATIONS MEDIATORS: The Court will refer contested issues in domestic relations cases to mediators by an order of referral which may be contained within the Domestic Relations Scheduling Conference Order. A list of Court-approved domestic relations mediators and mediation services will be provided to the parties. Except for good cause shown, the parties' attorneys, or the parties, if unrepresented, shall select a mediator or mediation service within 14 days of the date of the order. Within 21 days of the date of the order, the mediator or mediation service shall advise the ADR Clerk and all parties, in writing, who will be conducting the mediation and the date and time set for the mediation. The parties will provide the mediator with a copy of the Domestic Relations Scheduling Conference Order.

In the event that the parties do not notify the ADR Clerk of their selection within the 14 days allowed, the ADR Clerk will select a mediator without notice to the parties and advise the parties and/or their attorneys who will be conducting the mediation. The ADR Clerk will select a mediator in a random or rotating manner that assures, as nearly as possible, that each mediator on the list is assigned approximately the same number of cases over a period of one year. If a substitute mediator must be assigned, the same or similar assignment procedure shall be used to select the substitute, whenever possible. Once the ADR Clerk selects a mediator, the parties are responsible for any fees generated by that mediator.

Any party, by timely motion, may object to the referral of their case to mediation. The Court's referral order makes this right clear to counsel and parties.

(12) EVALUATIVE MEDIATION IN DOMESTIC RELATIONS CASES: The ADR Clerk shall note on the list of qualified domestic relations mediators which mediators are willing to provide evaluative mediation. If the parties seek evaluative mediation, the mediator must be so advised and, after the mediation, the mediator shall, within seven (7) days of completion of the mediation, prepare a written report to the parties setting forth the mediator's proposed recommendation for settlement purposes only and send a proof of service to the ADR Clerk. The parties shall, within seven (7) days of the date of service, accept or reject the recommendation and notify the mediator in writing. If both parties accept the recommendation in full, the attorneys or the parties, if unrepresented, shall proceed to request a final hearing for entry of a judgment of divorce. If either party rejects the recommendation, the mediator shall report the results of the mediation to the ADR Clerk as provided in MCR 3.216(H)(6), and the case shall proceed toward trial.

(13) ROTATION REPORT: The ADR Clerk shall maintain records that reflect the number of times each mediator was used in a case in which the parties did not stipulate to their own

mediator. The ADR Clerk shall prepare an annual report of this information. The annual report shall be made available to all mediators and the general public.

(14) MEDIATOR COMPENSATION: A mediator is entitled to reasonable compensation based on an hourly rate commensurate with the mediator's experience and usual charges for services performed. Before mediation, the parties shall agree in writing on the fee, when it will be paid and by whom in accordance with MCR 2.411(D).

FINAL SETTLEMENT CONFERENCE

A final settlement conference will be scheduled in every case after discovery has been completed, all motions have been heard and other ADR options have been explored. MCR 2.401. The purpose of the final settlement conference is to give the parties and their counsel one last, Court-assisted opportunity before trial to settle the case or to narrow the disputed issues and discuss how the trial will proceed. Each party and person(s) with authority to settle the case, as well as the attorney who will be trying the case, are required to attend. At the conference, the parties will tender a trial brief and marked exhibits to the Court. If the case is scheduled for a non-jury trial, they will also tender stipulated facts and proposed findings of fact and conclusions of law. If the case is scheduled for a jury trial, they will also tender written full text jury instructions and a proposed verdict form.

ARBITRATION AND OTHER ADR PROCESSES

Nothing in this ADR Plan shall preclude the parties from stipulating to an ADR process of their choice so long as the schedule for completing same does not interfere with the Court's scheduling and the orderly progression of the case. Parties are encouraged to pursue any form of ADR which they believe will assist them in resolving their disputes. Arbitration may be pursued through a private arbitrator or arbitration service or through the American Arbitration Association. Information regarding private arbitrators, local arbitration services and arbitration through the American Arbitration Association is available through the ADR Clerk.

ADR FOR INDIGENT LITIGANTS

The Court shall take steps to make mediation available to indigent litigants. A litigant is "indigent" if he or she qualifies for the waiver or suspension of fees or costs in accordance with MCR 2.002(C) or (D).

The Court shall encourage mediators who receive referrals from the Court to provide a portion of their services on a free or reduced fee basis. The Court may also refer indigent cases to the Community Dispute Resolution Service and this service has agreed to accept such referrals for a modest fee to be paid by the Court.

SUPERVISION

The Chief Judge shall exercise general supervision over the implementation of this Plan and the mediator selection process and shall review the operation of the Court's ADR Plan at least annually to assure compliance. In the event of non-compliance, the Court shall take such action as is needed. This action may include recruiting persons to serve as mediators or changing the

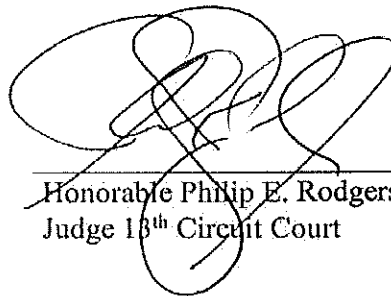
Court's ADR Plan. The Court shall develop a set of quality assurance questionnaires to be completed by the mediator, attorneys and litigants that will be distributed by the mediator at every mediation. The ADR Clerk will review the questionnaires and notify the Chief Judge of any concerns. The Court shall take such action as is needed to investigate and resolve any problems. The Court shall submit an annual report to the State Court Administrator on the operation of the Court's ADR program on a form provided by the State Court Administrator.

In implementing the ADR Plan, the Court, Court employees, members of bar committees, and any other person involved in the application review procedure shall take all steps necessary to assure that as far as reasonably possible, the list of case evaluators fairly reflects the racial, ethnic and gender diversity of the members of the state bar in the jurisdiction for which the list is compiled who are eligible to serve as case evaluators. They shall also take all steps necessary to assure that as far as reasonably possible, the lists of mediators reflects the racial, ethnic, and gender diversity of the members of the community who are eligible to serve as mediators.

Dated: December 18, 2000.
Revised: April 3, 2006.
Revised: November 23, 2010.



Honorable Thomas G. Power
Judge 13th Circuit Court



Honorable Philip E. Rodgers, Jr.
Judge 13th Circuit Court



Julie A. Arends, ADR Clerk

APPENDIX A

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