



ESTABLISHED 1934

Oakland County
Circuit Court & District Court
Case Evaluation

Guidelines

Guide for Oakland County Circuit and District Court Case Evaluators

- Q. What is the basis for Case Evaluation in Oakland County?**
- A. Case Evaluation in Oakland County is governed by MCR 2.403, MCR 2.404, and MCR 2.405 which is included in this guide and a Local Administrative Order.
- Q. What is the purpose behind Case Evaluation?**
- A. The purpose of Case Evaluation is to recommend awards that will result in the settlement of cases.
- Q. Should a Case Evaluator think like a juror in arriving at an award?**
- A. A case evaluator should view a case from the perspective of an experienced practitioner, not a juror.
- Q. What should an attorney or his or her secretary do when the Assignment Clerk telephones to establish availability to serve as a Case Evaluator?**
- A. When the Clerk sets up a three-member Case Evaluation Panel, the attorney will be called to clear the date. If the attorney cannot take the call, the attorney's secretary should tentatively confirm the proposed date. If the attorney does not confirm the date within 24 hours, the prospective Case Evaluator's name will be removed from the Panel for that date.
- Q. How frequently will an attorney be called to act as a Case Evaluator?**
- A. This is a difficult question to answer. It will depend on how many cases are ordered into Case Evaluation and the number of available qualified Case Evaluators.
- Q. Who imposes late fees or fines if a party does not comply with the case evaluation rules?**
- A. Circuit Court: Late fees and fines are handled by the ADR Clerk.
District Court: Late fees and fines are handled by the OCBA's Case Evaluation Administrator.
- Q. When are late fees or fines imposed?**
- A. Circuit Court: Fines are imposed if the Case Evaluation statements are not delivered to the ADR Clerk's office at least fourteen (14) days before the scheduled hearing date.
District Court: Fines are imposed if the case evaluation statements are not delivered to the OCBA's Case Evaluation Administrator at least fourteen (14) days before the scheduled hearing date.
- Q. Should fines be imposed if no case evaluation statements are submitted?**
- A. Yes.
- Q. When fines are imposed, how should checks be made payable?**
- A. Circuit Court: Checks should be made payable to Circuit Court Civil Case Evaluation.
District Court: Checks should be made payable to District Court Case Evaluation Service.
- Q. Should a Case Evaluator ask questions during an oral presentation?**
- A. Yes, and permit the attorney to succinctly state the case.
- Q. If an attorney brings a client into a Case Evaluation hearing, should the client be permitted to remain?**
- A. Yes, but the client may not testify.
- Q. What if only one side to a case appears for a hearing?**
- A. Instruct the attorney or party present to telephone the opposing counsel or party to ascertain the reason for the nonappearance. If the other side will not be at the hearing, the hearing shall go forward. The Case Evaluation Panel may question the attorney present as to both sides of the case and render an award.
- Q. May a Case Evaluator ask an attorney what he or she will take to settle a case?**
- A. Yes, settlement negotiations shall be disclosed at the request of the Case Evaluation Panel.
- Q. Other than recommending an award, may a Case Evaluation Panel or member make other recommendations to an attorney?**
- A. After making an award, if an attorney asks for comments, the Panel may provide its input and assistance to encourage settlement of the case.
- Q. May a Case Evaluation Panel recommend an award greater than that for which a plaintiff is willing to settle?**
- A. Yes.
- Q. What is the role of the neutral Case Evaluator?**
- A. The neutral Case Evaluator is the chairperson of the Panel and generally supervises the conduct of the Case Evaluation hearing.
- Q. If both sides to a case enter a Case Evaluation hearing and state that the case has been settled, or if the attorneys agree to a settlement during a Case Evaluation hearing, what should be done?**
- A. The Case Evaluators shall enter an award and notify the attorneys or parties to file the appropriate Order of Judgment with the Court. The Case Evaluation fees will not be refunded unless ordered by the Court.
- Q. May a Case Evaluator grant an adjournment of Case Evaluation?**
- A. No, only the judge to whom the case is assigned may grant adjournment.
- Q. What should be done with statements once a hearing has been completed?**
- A. Case Evaluation statements become the property of the Case Evaluators. They may retain or dispose of them. However, if a case is adjourned by the Court, the parties must refile statements fourteen (14) days before the new date.
- Q. How should a Case Evaluator decide a case?**
- A. A Case Evaluator must carefully read the Case Evaluation statements *before* the scheduled hearings and be attentive during oral presentations. Then, based upon his or her experience, training and legal background, the Case Evaluator is to make recommended awards independently and then

confer with the other members of the Case Evaluation Panel to reach unanimous or consensus awards. It is urged that a consensus award be reached by a Case Evaluation Panel and a single award be rendered.

Q. How and when does a Case Evaluator receive the Case Evaluation statements?

A. Circuit Court: Case Evaluation statements should be available for pick-up at least seven (7) days before the scheduled hearing date at the Case Evaluation Office, Second Floor of the Oakland County Courthouse.

District Court: Case Evaluation statements should be available for pick-up at least seven (7) days before the scheduled hearing date at the Oakland County Bar Center, 1760 S. Telegraph, Suite 100, Bloomfield Hills.

Case Evaluation statements should not be delivered directly to any Case Evaluator by any attorney or party.

Q. What happens if during the last few days before the scheduling hearings, a Case Evaluator is unable to serve?

A. Circuit Court: Case Evaluators should immediately telephone the ADR Clerk so a replacement may be selected.

District Court: Case Evaluators should immediately telephone the Oakland County Bar Case Evaluation Administrator so a replacement may be selected.

Remember, the sooner the Clerk is contacted, the sooner a replacement may be selected.

Q. If a Case Evaluator determines there is, or may be, a conflict of interest in a particular case because of the parties, attorneys, or issues involved, what should he or she do?

A. Circuit Court: Case Evaluators should **immediately** telephone the ADR Clerk so a replacement may be selected for that specific case.

District Court: Case Evaluators should **immediately** telephone the Oakland County Bar Case Evaluation Administrator so a replacement may be selected for that specific case.

Do not wait until the last minute to contact the Clerk.

Q. How much time should Case Evaluators allow for each Case Evaluation?

A. Case Evaluations are usually scheduled every 20 minutes. Case Evaluators should advise the parties that all statements have been read and that oral presentations should be limited to provide time for questions by the Case Evaluators.

Q. How do Case Evaluators keep on schedule?

A. Case Evaluators monitor their own time and should allocate their time accordingly.

Q. How are Case Evaluation awards given to the parties?

A. The attorney for each party must sign or initial the Case Evaluation award form. The neutral case evaluator hands the Case Evaluation award form to each litigant at the end of the Case Evaluation hearing. The Case Evaluator keeps the original form and gives it to the Case Evaluation Clerk at the end of the day.

Q. If someone has comments or criticisms about the Case Evaluation program, who should be contacted?

A. Circuit Court: All comments and criticisms about Circuit Court Case Evaluation should be directed to the chairperson of the OCBA's Circuit Court Case Evaluation Committee, 1760 S. Telegraph, Suite 100, Bloomfield Hills, Michigan 48302-0181.

District Court: All comments and criticisms regarding District Court Case Evaluation should be directed to the chairperson of the OCBA's District Court Committee, 1760 S. Telegraph, Suite 100, Bloomfield Hills, Michigan 48302-0181.

Michigan Court Rules

Rule 2.403 Case Evaluation

(A) Scope and Applicability of Rule

(1) A court may submit to case evaluation any civil action in which the relief sought is primarily money damages or division of property.

(2) Case evaluation of tort cases filed in circuit court is mandatory beginning with actions filed after the effective dates of Chapters 49 and 49A of the Revised Judicature Act, as added by 1986 PA 178; however, the court may except an action from case evaluation on motion for good cause shown if it finds that case evaluation of that action would be inappropriate.

(3) Cases filed in district court may be submitted to case evaluation under this rule. The time periods set forth in subrules (B)(1), (G)(1), (L)(1) and (L)(2) may be shortened at the discretion of the district judge to whom the case is assigned.

(B) Selection of Cases

(1) The judge to whom an action is assigned or the chief judge may select it for case evaluation by written order no earlier than 91 days after the filing of the answer:

(a) on written stipulation by the parties;

(b) on written motion by a party; or

(c) on the judge's own initiative.

(2) Selection of an action for case evaluation has no effect on the normal progress of the action toward trial.

(C) Objections to Case Evaluation

(1) To object to case evaluation, a party must file a written motion to remove from case evaluation and a notice of hearing of the motion and serve a copy on the attorneys of record and the ADR clerk within 14 days after notice of the order assigning the action to case evaluation. The motion must be set for hearing within 14 days after it is filed, unless the court orders otherwise.

(2) A timely motion must be heard before the case is submitted to case evaluation.

(D) Case Evaluation Panel

(1) Case evaluation panels shall be composed of 3 persons.

(2) The procedure for selecting case evaluation panels is provided in MCR 2.404.

(3) A judge may be selected as a member of a case evaluation panel, but may not preside at the trial of any action in which he or she served as a case evaluator.

(4) A case evaluator may not be called as a witness at a trial.

(E) Disqualification of Case Evaluators. The rule for disqualification of a case evaluator is the same as that provided in MCR 2.003 for the disqualification of a judge.

(F) ADR Clerk. The court shall designate the ADR clerk specified under MCR 2.410, or some other person, to administer the case evaluation program. In this rule and MCR 2.404, "ADR clerk" refers to the person so designated.

(G) Scheduling Case Evaluation Hearing

(1) The ADR clerk shall set a time and place for the hearing and send notice to the case evaluators and the attorneys at least 42 days before the date set.

(2) Adjournments may be granted only for good cause, in accordance with MCR 2.503.

(H) Fees

(1) Within 14 days after the mailing of the notice of the case evaluation hearing, unless otherwise ordered by the court, each party must send to the ADR clerk a check for \$75 made payable in the manner specified in the notice of the case evaluation hearing. However, if a judge is a member of the panel, the fee is \$50. The ADR clerk shall arrange payment to the case evaluators. Except by stipulation and court order, the parties may not make any other payment of fees or expenses to the case evaluators than that provided in this subrule.

(2) Only a single fee is required of each party, even where there are counterclaims, cross-claims, or third-party claims.

(3) If one claim is derivative of another (e.g., husband-wife, parent-child) they must be treated as a single claim, with one fee to be paid and a single award made by the case evaluators.

(4) In the case of multiple injuries to members of a single family, the plaintiffs may elect to treat the action as involving one claim, with the payment of one fee and the rendering of one lump sum award to be accepted or rejected. If no such election is made, a separate fee must be paid for each plaintiff, and the case evaluation panel will then make separate awards for each claim, which may be individually accepted or rejected.

(5) Fees paid pursuant to subrule (H) shall be refunded to the parties if

(a) the court sets aside the order submitting the case to case evaluation or on its own initiative adjourns the case evaluation hearing, or

(b) the parties notify the ADR clerk in writing at least 14 days before the case evaluation hearing of the settlement, dismissal, or entry of judgment disposing of the action, or of an order of adjournment on stipulation or the motion of a party.

In the case of an adjournment, the fees shall not be refunded if the adjournment order sets a new date for case evaluation. If case evaluation is rescheduled at a later time, the fee provisions of subrule (H) apply regardless of whether previously paid fees have been refunded. Penalties for late filing of papers under subrule (I)(2) are not to be refunded.

(I) Submission of Documents

(1) At least 14 days before the hearing, each party shall file with the ADR clerk 3 copies of documents pertaining to the

issues to be mediated and 3 copies of a concise summary setting forth that party's factual and legal position on issues presented by the action, and shall serve one copy of the documents and summary on each attorney of record. A copy of a proof of service must be attached to the copies filed with the ADR clerk.

(2) Failure to file the required materials with the ADR clerk or to serve copies on each attorney of record by the required date subjects the offending attorney or party to a \$150 penalty to be paid in the manner specified in the notice of the case evaluation hearing. An offending attorney shall not charge the penalty to the client, unless the client agreed in writing to be responsible for the penalty.

(J) Conduct of Hearing

(1) A party has the right, but is not required, to attend a case evaluation hearing. If scars, disfigurement, or other unusual conditions exist, they may be demonstrated to the panel by a personal appearance; however, no testimony will be taken or permitted of any party

(2) The rules of evidence do not apply before the case evaluation panel. Factual information having a bearing on damages or liability must be supported by documentary evidence, if possible.

(3) Oral presentation shall be limited to 15 minutes per side unless multiple parties or unusual circumstances warrant additional time. Information on applicable insurance policy limits and settlement negotiations shall be disclosed at the request of the case evaluation panel.

(4) Statements by the attorneys and the briefs or summaries are not admissible in any court or evidentiary proceeding.

(5) Counsel or the parties may not engage in ex parte communications with the case evaluators concerning the action prior to the hearing. After the evaluation, the case evaluators need not respond to inquiries by the parties or counsel regarding the proceeding or the evaluation.

(K) Decision

(1) Within 14 days after the hearing, the panel will make an evaluation and notify the attorney for each party of its evaluation in writing. If an award is not unanimous, the evaluation must so indicate.

(2) The evaluation must include a separate award as to the plaintiff's claim against each defendant and as to each cross-claim, counterclaim, or third-party claim that has been filed in the action. For the purpose of this subrule, all such claims filed by any one party against any other party shall be treated as a single claim.

(3) The evaluation may not include a separate award on any claim for equitable relief, but the panel may consider such claims in determining the amount of an award.

(4) In a tort case to which MCL 600.4915(2); MSA 27A.4915(2) or MCL 600.4963(2); MSA 27A.4963(2) applies, if the panel unanimously finds that a party's action or defense as to any other party is frivolous, the panel shall so indicate on the evaluation. For the purpose of this rule, an action or defense is "frivolous" if, as to all of a plaintiff's claims or all of a defendant's defenses to liability, at least 1 of the following conditions is met:

(a) The party's primary purpose in initiating the action or asserting the defense was to harass, embarrass, or injure the opposing party.

(b) The party had no reasonable basis to believe that the facts underlying that party's legal position were in fact true.

(c) The party's legal position was devoid of arguable legal merit.

(5) In an action alleging medical malpractice to which MCL 600.4915; MSA 27A.4915 applies, the evaluation must include a specific finding that

- (a) there has been a breach of the applicable standard of care,
- (b) there has not been a breach of the applicable standard of care, or
- (c) reasonable minds could differ as to whether there has been a breach of the applicable standard of care.

(L) Acceptance or Rejection of Evaluation

(1) Each party shall file a written acceptance or rejection of the panel's evaluation with the ADR clerk within 28 days after service of the panel's evaluation. Even if there are separate awards on multiple claims, the party must either accept or reject the evaluation in its entirety as to a particular opposing party. The failure to file a written acceptance or rejection within 28 days constitutes rejection.

(2) There may be no disclosure of a party's acceptance or rejection of the panel's evaluation until the expiration of the 28-day period, at which time the ADR clerk shall send a notice indicating each party's acceptance or rejection of the panel's evaluation.

(3) In case evaluations involving multiple parties, the following rules apply:

- (a) Each party has the option of accepting all of the awards covering the claims by or against that party or of accepting some and rejecting others. However, as to any particular opposing party, the party must either accept or reject the evaluation in its entirety.
- (b) A party who accepts all of the awards may specifically indicate that he or she intends the acceptance to be effective only if
 - (i) all opposing parties accept, and/or
 - (ii) the opposing parties accept as to specified coparties.

If such a limitation is not included in the acceptance, an accepting party is deemed to have agreed to entry of judgment, or dismissal as provided in subrule (M)(1), as to that party and those of the opposing parties who accept, with the action to continue between the accepting party and those opposing parties who reject.

- (c) If a party makes a limited acceptance under subrule (L)(3)(b) and some of the opposing parties accept and others reject, for the purposes of the cost provisions of subrule (O) the party who made the limited acceptance is deemed to have rejected as to those opposing parties who accept.

(M) Effect of Acceptance of Evaluation

(1) If all the parties accept the panel's evaluation, judgment will be entered in accordance with the evaluation, unless the amount of the award is paid within 28 days after notification of the acceptances, in which case the court shall dismiss the action with prejudice. The judgment or dismissal shall be deemed to dispose of all claims in the action and includes all fees, costs, and interest to the date it is entered.

(2) In a case involving multiple parties, judgment, or dismissal as provided in subrule (1), shall be entered as to those opposing parties who have accepted the portions of the evaluation that apply to them.

(N) Proceedings After Rejection

(1) If all or part of the evaluation of the case evaluation panel is rejected, the action proceeds to trial in the normal fashion.

(2) If a party's claim or defense was found to be frivolous under subrule (K)(4), that party may request that the court review the panel's finding by filing a motion within 14 days after the ADR clerk sends notice of the rejection of the case evaluation award.

(a) The motion shall be submitted to the court on the case evaluation summaries and documents that were considered by the case evaluation panel. No other exhibits or testimony may be submitted. However, oral argument on the motion shall be permitted.

(b) After reviewing the materials submitted, the court shall determine whether the action or defense is frivolous.

(c) If the court agrees with the panel's determination, the provisions of subrule (N)(3) apply, except that the bond must be filed within 28 days after the entry of the court's order determining the action or defense to be frivolous.

(d) The judge who hears a motion under this subrule may not preside at a nonjury trial of the action.

(3) Except as provided in subrule (2), if a party's claim or defense was found to be frivolous under subrule (K)(4), that party shall post a cash or surety bond, pursuant to MCR 3.604, in the amount of \$5,000 for each party against whom the action or defense was determined to be frivolous.

(a) The bond must be posted within 56 days after the case evaluation hearing or at least 14 days before trial, whichever is earlier.

(b) If a surety bond is filed, an insurance company that insures the defendant against a claim made in the action may not act as the surety.

(c) If the bond is not posted as required by this rule, the court shall dismiss a claim found to have been frivolous, and enter the default of a defendant whose defense was found to be frivolous. The action shall proceed to trial as to the remaining claims and parties, and as to the amount of damages against a defendant in default.

(d) If judgment is entered against the party who posted the bond, the bond shall be used to pay any costs awarded against that party by the court under any applicable law or court rule. MCR 3.604 applies to proceedings to enforce the bond.

(4) The ADR clerk shall place a copy of the case evaluation and the parties' acceptances and rejections in a sealed envelope for filing with the clerk of the court. In a nonjury action, the envelope may not be opened and the parties may not reveal the amount of the evaluation until the judge has rendered judgment.

(O) Rejecting Party's Liability for Costs

(1) If a party has rejected an evaluation and the action proceeds to verdict, that party must pay the opposing party's actual costs unless the verdict is more favorable to the rejecting party than the case evaluation. However, if the opposing party has also rejected the evaluation, a party is entitled to costs only if the verdict is more favorable to that party than the case evaluation.

- (2) For the purpose of this rule, "verdict" includes,
 - (a) a jury verdict,
 - (b) a judgment by the court after a nonjury trial,
 - (c) a judgment entered as a result of a ruling on a motion after rejection of the case evaluation.

(3) For the purpose of subrule (O)(1), a verdict must be adjusted by adding to it assessable costs and interest on the amount of the verdict from the filing of the complaint to the date of the case evaluation, and if applicable, by making the adjustment of future damages as provided by MCL 600.6306; MSA 27A.6306. After this adjustment, the verdict is considered more favorable to a defendant if it is more than 10 percent below the evaluation, and is considered more favorable to the plaintiff if it

is more than 10 percent above the evaluation. If the evaluation was zero, a verdict finding that a defendant is not liable to the plaintiff shall be deemed more favorable to the defendant.

(4) In cases involving multiple parties, the following rules apply:

- (a) Except as provided in subrule (O)(4)(b), in determining whether the verdict is more favorable to a party than the case evaluation, the court shall consider only the amount of the evaluation and verdict as to the particular pair of parties, rather than the aggregate evaluation or verdict as to all parties. However, costs may not be imposed on a plaintiff who obtains an aggregate verdict more favorable to the plaintiff than the aggregate evaluation.
- (b) If the verdict against more than one defendant is based on their joint and several liability, the plaintiff may not recover costs unless the verdict is more favorable to the plaintiff than the total case evaluation as to those defendants, and a defendant may not recover costs unless the verdict is more favorable to that defendant than the case evaluation as to that defendant.
- (c) Except as provided by subrule (O)(10), in a personal injury action, for the purpose of subrule (O)(1), the verdict against a particular defendant shall not be adjusted by applying that defendant's proportion of fault as determined under MCL 600.6304(1)-(2); MSA 27A.6304(1)-(2).

(5) If the verdict awards equitable relief, costs may be awarded if the court determines that

- (a) taking into account both monetary relief (adjusted as provided in subrule (O)(3)) and equitable relief, the verdict is not more favorable to the rejecting party than the evaluation, and
- (b) it is fair to award costs under all of the circumstances.

(6) For the purpose of this rule, actual costs are

- (a) those costs taxable in any civil action, and

- (b) a reasonable attorney fee based on a reasonable hourly or daily rate as determined by the trial judge for services necessitated by the rejection of the case evaluation.

For the purpose of determining taxable costs under this subrule and under MCR 2.625, the party entitled to recover actual costs under this rule shall be considered the prevailing party.

(7) Costs shall not be awarded if the case evaluation award was not unanimous.

(8) A request for costs under this subrule must be filed and served within 28 days after the entry of the judgment or entry of an order denying a timely motion for a new trial or to set aside the judgment.

(9) In an action under MCL 436.22; MSA 18.993, if the plaintiff rejects the award against the minor or alleged intoxicated person, or is deemed to have rejected such an award under subrule (L)(3)(c), the court shall not award costs against the plaintiff in favor of the minor or alleged intoxicated person unless it finds that the rejection was not motivated by the need to comply with MCL 436.22(6); MSA 18.993(6).

(10) In an action filed on or after March 28, 1996, for the purpose of subrule (O)(1) a verdict awarding damages for personal injury, property damage or wrongful death shall be adjusted for relative fault as provided by MCL 600.6304; MSA 27A.6304.

(11) If the "verdict" is the result of a motion as provided by subrule (O)(2)(c), the court may, in the interest of justice, refuse to award actual costs.

[Amended January 25, 1985, effective March 1, 1985, 421 Mich.; January 22, 1987, applicable to mediation hearings conducted and removal orders entered on or after April 1, 1987, 428 Mich.; as adopted September 25, 1987, effective December 1, 1987; October 23, 1987, effective January 1, 1988, 429 Mich.; December 21, 1989, effective March 31, 1990, 434 Mich.; July 2, 1991, effective immediately, 437 Mich.; December 1, 1994, effective February 1, 1995, 447 Mich.; November 6, 1996, effective February 1, 1997, 453 Mich.; February 28, 1997, effective March 7, 1997, 454 Mich.; May 8, 1997, effective October 1, 1997, 454 Mich.]

Michigan Court Rules

Rule 2.404 Selection of Case Evaluation Panels

(A) Case Evaluator Selection Plans.

(1) Requirement. Each trial court that submits cases to case evaluation under MCR 2.403 shall adopt by local administrative order a plan to maintain a list of persons available to serve as case evaluators and to assign case evaluators from the list of panels. The plan must be in writing and available to the public in the ADR clerk's office.

(2) Alternative Plans.

- (a) A plan adopted by a district or probate court may use the list of case evaluators and appointment procedure of the circuit court for the circuit in which the court is located.
- (b) Courts in adjoining circuits or districts may jointly adopt and administer a case evaluation plan.
- (c) If it is not feasible for a court to adopt its own plan because of the low volume of cases to be submitted or because of inadequate numbers of available case evaluators, the court may enter into an agreement with a neighboring court to refer cases for case evaluation under the other court's system. The agreement may provide for payment by the refer-

ring court to cover the cost of administering case evaluation. However, fees and costs may not be assessed against the parties to actions evaluated except as provided by MCR 2.403.

- (d) Other alternative plans must be submitted as local court rules under MCR 8.112(A).

(B) Lists of Case Evaluators.

(1) Application. An eligible person desiring to serve as a case evaluator may apply to the ADR clerk to be placed on the list of case evaluators. Application forms shall be available in the office of the ADR clerk. The form shall include an optional section identifying the applicant's gender and racial/ethnic background. The form shall include a certification that

- (a) the case evaluator meets the requirements for service under the court's selection plan, and
- (b) the case evaluator will not discriminate against parties, attorneys, or other case evaluators on the basis of race, ethnic origin, gender, or other protected personal characteristic.

(2) Eligibility. To be eligible to serve as a case evaluator, a person must meet the qualifications provided by this subrule.

- (a) The applicant must have been a practicing lawyer for at least 5 years and be a member in good standing of the State Bar of Michigan. The plan may not require membership in any other organization as a qualification for service as a case evaluator.
- (b) An applicant must reside, maintain an office, or have an active practice in the jurisdiction for which the list of case evaluators is compiled.
- (c) An applicant must demonstrate that a substantial portion of the applicant's practice for the last 5 years has been devoted to civil litigation matters, including investigation, discovery, motion practice, case evaluation, settlement, trial preparation, and/or trial.
- (d) If separate subsists are maintained for specific types of cases, the applicant must have had an active practice in the practice area for which the case evaluator is listed for at least the last 3 years.

If there are insufficient numbers of potential case evaluators meeting the qualifications stated in this rule, the plan may provide for consideration of alternative qualifications.

(3) Review of Applications. The plan shall provide for a person or committee to review applications annually, or more frequently if appropriate, and compile one or more lists of qualified case evaluators. Persons meeting the qualifications specified in this rule shall be placed on the list of approved case evaluators. Selections shall be made without regard to race, ethnic origin, or gender.

- (a) If an individual performs this review function, the person must be an employee of the court.
- (b) If a committee performs this review function, the following provisions apply.
 - (i) The committee must have at least three members.
 - (ii) The selection of committee members shall be designed to assure that the goals stated in subrule (D)(2) will be met.
 - (iii) A person may not serve on the committee more than 3 years in any 9-year period.

- (c) Applicants who are not placed on the case evaluator list or lists shall be notified of that decision. The plan shall provide a procedure by which such an applicant may seek reconsideration of the decision by some other person or committee. The plan need not provide for a hearing of any kind as part of the reconsideration process. Documents considered in the initial review process shall be retained for at least the period of time during which the applicant can seek reconsideration of the original decision.

(4) Specialized Lists. If the number and qualifications of available case evaluators makes it practicable to do so, the ADR clerk shall maintain

- (a) separate lists for various types of cases, and,
- (b) where appropriate for the type of cases, separate sublists of case evaluators who primarily represent plaintiffs, primarily represent defendants, and neutral case evaluators whose practices are not identifiable as representing primarily plaintiffs or defendants.

(5) Reapplication. Persons shall be placed on the list of case evaluators for a fixed period of time, not to exceed 5 years, and must reapply at the end of that time in the same

manner as persons seeking to be added to the list.

(6) Availability of Lists. The list of case evaluators must be available to the public in the ADR clerk's office.

(7) Removal from List. The plan must include a procedure for removal from the list of case evaluators who have demonstrated incompetency, bias, made themselves consistently unavailable to serve as a case evaluator, or for other just cause.

(8) The court may require case evaluators to attend orientation or training sessions or provide written materials explaining the case evaluation process and the operation of the court's case evaluation program. However, case evaluators may not be charged any fees or costs for such programs or materials.

(C) Assignments to Panels.

(1) Method of Assignment. The ADR clerk shall assign case evaluators to panels in a random or rotating manner that assures as nearly as possible that each case evaluator on a list or sublist is assigned approximately the same number of cases over a period of time. If a substitute case evaluator must be assigned, the same or similar assignment procedure shall be used to select the substitute. The ADR clerk shall maintain records of service of case evaluators on panels and shall make those records available on request.

(2) Assignment from sublists. If sublists of plaintiff, defense, and neutral case evaluators are maintained for a particular type of case, the panel shall include one case evaluator who primarily represents plaintiffs, one case evaluator who primarily represents defendants, and one neutral case evaluator. If a judge is assigned to a panel as permitted by MCR 2.403(D)(3), the judge shall serve as the neutral case evaluator if sublists are maintained for that class of cases.

(3) Special Panels. On stipulation of the parties, the court may appoint a panel selected by the parties. In such a case, the qualification requirements of subrule (B)(2) do not apply, and the parties may agree to modification of the procedures for conduct of case evaluation. Nothing in this rule or MCR 2.403 precludes parties from stipulating to other ADR procedures that may aid in resolution of the case.

(D) Supervision of Selection Process.

(1) The chief judge shall exercise general supervision over the implementation of this rule and shall review the operation of the court's case evaluation plan at least annually to assure compliance with this rule. In the event of non-compliance, the court shall take such action as is needed. This action may include recruiting persons to serve as case evaluators or changing the court's case evaluation plan. The court shall submit an annual report to the State Court Administrator on the operation of the court's case evaluation program on a form provided by the State Court Administrator.

(2) In implementing the selection plan, the court, court employees, and attorneys involved in the 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.

(Adopted May 8, 1997, effective October 1, 1997, 454 Mich.)

Note

The order of May 8, 1997, postpones the effective date of MCR 2.404, affecting mediation procedure, to October 1, 1997. The text of MCR 2.404 is the same as that adopted in the Court's March 5, 1997 order dealing with those rules.

Michigan Court Rules

Rule 2.405 Offers to Stipulate to Entry of Judgment

(A) Definitions. As used in this rule:

(1) "Offer" means a written notification to an adverse party of the offeror's willingness to stipulate to the entry of a judgment in a sum certain, which is deemed to include all costs and interest then accrued. If a party has made more than one offer, the most recent offer controls for the purposes of this rule.

(2) "Counteroffer" means a written reply to an offer, served within 21 days after service of the offer, in which a party rejects an offer of the adverse party and makes his or her own offer.

(3) "Average offer" means the sum of an offer and a counteroffer, divided by two. If no counteroffer is made, the offer shall be used as the average offer.

(4) "Verdict" includes,

(a) a jury verdict,

(b) a judgement by the court after a nonjury trial,

(c) a judgement entered as a result of a ruling on a motion after rejection of the offer of judgment.

(5) "Adjusted verdict" means the verdict plus interest and costs from the filing of the complaint through the date of the offer.

(6) "Actual costs" means the costs and fees taxable in a civil action and a reasonable attorney fee for services necessitated by the failure to stipulate to the entry of judgment.

(B) Offer. Until 28 days before trial, a party may serve on the adverse party a written offer to stipulate to the entry of a judgment for the whole or part of the claim including interest and costs then accrued.

(C) Acceptance or Rejection of Offer.

(1) To accept, the adverse party, within 21 days after service of the offer, must serve on the other parties a written notice of agreement to stipulate to the entry of the judgment offered, and file the offer, the notice of acceptance, and proof of service of the notice with the court. The court shall enter a judgment according to the terms of the stipulation.

(2) An offer is rejected if the offeree

(a) expressly rejects it in writing, or

(b) does not accept it as provided by subrule (C)(1).

A rejection does not preclude a later offer by either party.

(3) A counteroffer may be accepted or rejected in the same manner as an offer.

(D) Imposition of Costs Following Rejection of Offer. If an offer is rejected, costs are payable as follows:

(1) If the adjusted verdict is more favorable to the offeror than the average offer, the offeree must pay to the offeror the offeror's actual costs incurred in the prosecution or defense of the action.

(2) If the adjusted verdict is more favorable to the offeree than the average offer, the offeror must pay to the offeree the offeree's actual costs incurred in the prosecution or defense of the action. However, an offeree who has not made a counteroffer may not recover actual costs unless the offer was made less than 42 days before trial.

(3) The court shall determine the actual costs incurred. The court may, in the interest of justice, refuse to award an attorney fee under this rule.

(4) Evidence of an offer is admissible only in a proceeding to determine costs.

(5) Proceedings under this rule do not affect a contract or relationship between a party and his or her attorney.

A request for costs under this subrule must be filed and served within 28 days after the entry of the judgment or entry of an order denying a timely motion for a new trial or to set aside the judgment.

(E) Relationship to Case Evaluation. Cost may not be awarded under this rule in a case that has been submitted to case evaluation under MCR 2.403 unless the case evaluation award was not unanimous. (Amended December 21, 1989, effective March 31, 1990, 434 Mich.; May 8, 1997, effective October 1, 1997, 454 Mich.)

For Notes, see *Michigan Rules of Court, State, 2000*



ESTABLISHED 1934

1760 S. Telegraph Road, Suite 100
Bloomfield Hills, MI 48302-0181

(248) 334-3400 • Fax (248) 334-7757
www.ocba.org