

Order

Michigan Supreme Court
Lansing, Michigan

September 16, 2015

Robert P. Young, Jr.,
Chief Justice

ADM File No. 2015-02

Stephen J. Markman
Mary Beth Kelly
Brian K. Zahra

Administrative Order No. 2015-8

Bridget M. McCormack
David F. Viviano
Richard H. Bernstein,
Justices

Authorization of Pilot Project to Study
Feasibility and Effectiveness of
Mediation in the Court of Appeals

On order of the Court, the Court of Appeals is authorized to implement a mediation pilot project. As provided below, selection for mediation before an outside mediator would be by order of the Court of Appeals and parties could request to have their appeal included in the program or removed from the program. The program is intended to afford parties an efficient and economical means of resolving their appeal. This pilot project is established to study the feasibility and effectiveness of appellate mediation. The program shall begin October 1, 2015, and shall remain in effect for 12 months. The Court of Appeals will track participation in, and effectiveness of, the program and shall report to, and make such findings available to, the Michigan Supreme Court.

(A) Selection for Mediation.

- (1) At any time during the pendency of an appeal before the Court of Appeals, the chief judge or another designated judge may order an appeal submitted to mediation. When a case is selected for mediation, participation is mandatory, however, the chief judge or another designated judge may remove the case on finding that mediation would be inappropriate.
- (2) To identify cases for mediation, the Court of Appeals will review civil appeals to determine if mediation would be of assistance to the court or the parties. At any time, a party to a pending civil appeal may file a written request that the appeal be submitted to mediation. Such a request may be made without formal motion and shall be confidential.
- (3) A party to a case that has been selected for mediation may file a request to have the case removed from mediation. Such a request may be made without formal motion and shall be confidential. If the request to remove is

premised on a desire to avoid the cost of mediation, it is not necessary to demonstrate an inability to pay such costs.

- (4) The submission of an appeal to mediation will not toll any filing deadlines in the appeal unless the court orders otherwise.

(B) Mediation Procedure.

- (1) Mediation shall be conducted by a mediator selected by stipulation of the parties or designated by the court. A mediator designated by the court shall be an attorney, licensed in Michigan, who has met the qualifications of mediators provided in MCR 2.411(F).
- (2) Mediation shall consider the possibility of settlement, the simplification of the issues, and any other matters which the mediator determines may aid in the handling or disposition of the appeal.
- (3) The order referring the case to mediation shall specify the time within which the mediation is to be completed. Within the time stated in the order, the mediator shall file a notice with the clerk stating only the date of completion of mediation, who participated in the mediation, whether settlement was reached, and whether any further mediation is warranted.
- (4) If mediation results in full or partial settlement of the case, within 21 days after the filing of the notice by the mediator, the parties shall file a stipulation to dismiss pursuant to MCR 7.218(B).
- (5) The mediator may charge a reasonable fee, which shall be divided and borne equally by the parties unless agreed otherwise and paid by the parties directly to the mediator. If a party does not agree upon the fee requested by the mediator, upon motion of the party, the chief judge or another designated judge shall set a reasonable fee. In all other respects, mediator fees shall be governed by MCR 2.411(D).
- (6) The statements and comments made during mediation are confidential as provided in MCR 2.412 and may not be disclosed in the notice filed by the mediator under (B)(3) of this order or by the participants in briefs or in argument.
- (7) Upon failure by a party or attorney to comply with a provision of this order or the order submitting the case to mediation, the chief judge or another designated judge may assess reasonable expenses, including attorney's fees,

caused by the failure, may assess all or a portion of appellate costs, or may dismiss the appeal.

(C) Selection of Mediator.

- (1) Except as otherwise provided in this order, the selection of a mediator shall be governed by MCR 2.411(B).
- (2) Within the time provided in the order referring a case to mediation, the parties may stipulate to the selection of a mediator. Such stipulation shall be filed with the clerk of the court. If the parties do not file a stipulation agreeing to a mediator within the time provided, the court shall appoint a mediator from the roster of approved mediators maintained by the circuit court in which the case originated.



I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

September 16, 2015

A handwritten signature in black ink, appearing to read "Larry S. Royster", written over a horizontal line.

Clerk