

The following list contains Michigan Court Rules and statutes that pertain to Alternate Dispute Resolution. It is prepared by the Effective Practices and Procedures Task Force of the Alternate Dispute Resolution Section Council. Although we make every effort to assure that this is accurate and up-to-date, practitioners should not rely on this for legal advice or assume that it is complete. This is meant as a reference and starting point and does not replace doing legal research. UPDATED AS OF AUGUST 16, 2006.

I Court Rules

MCR 2.401 (C) Pretrial Conference

Provision for considering at a pretrial conference whether mediation, case evaluation, or some other form of alternative dispute resolution would be appropriate for the case, and what mechanisms are available to provide such services;

MCR 2.403 Case Evaluation

Provision for submission of case to a panel of three persons; selection of cases; fees; conduct of hearing; process after evaluation; costs for rejection of evaluation.

MCR 2.404 Selection of Case Evaluation Panels

Requirement for courts using Case Evaluation to prepare and submit a plan for such use. Required terms of the plans; requirements for members of Case Evaluation Panels.

MCR 2.405 Offers to Stipulate to Entry of Judgment

Terms of written offers of settlement; costs on rejection of an offer.

MCR 2.410 Alternative Dispute Resolution

Definition of ADR; requirement for courts using ADR to prepare and submit a plan for such use. Required terms of the plans. Administration of ADR proceedings.

MCR 2.411 Mediation

Definitions; selection of mediator; scheduling and conduct of mediation; fees; rosters, qualifications of mediators; standards of conduct in civil cases.

MCR 3.216 Domestic Relations Mediation

Definitions, referral to mediation; selection of mediator; roster and qualifications of mediators; mediation procedure; evaluative mediation; fees; standards of conduct in domestic relations cases.

MCR 3.602 Arbitration

Rules governing arbitration under the Revised Judicature Act for civil cases; procedures and awards.

MCR 5.143 Probate - Alternative Dispute Resolution

Applies MCR 2.410, MCR 2.403 and 2.404 to probate cases, to the extent feasible; sanctions apply only in money damages and property division cases.

MCR 7.213(A) Court Of Appeals – Pre-Argument Conference

Provides for a conference with a mediator, as defined, to narrow issues and reach agreement on all or part of the matter.

II Statutes

The following are the MCLA citations that refer to mediation. It should be noted that at least three different meanings are given to mediation in those statutes in which it is used. In some cases, “mediator” refers to a neutral person who assists negotiations or facilitates communication; in some it refers to a neutral person who makes a recommendation for resolution; and in some, it refers to a panel of case evaluators. In several statutes, the term is not defined.

MCLA 3.692 INTERSTATE COMPACT FOR JUVENILES

ARTICLE VII

OVERSIGHT, ENFORCEMENT AND DISPUTE RESOLUTION BY THE INTERSTATE COMMISSION

Provision that The Interstate Commission shall attempt to resolve disputes among the compacting states via mediation and binding dispute resolution.

MCLA 3.1012 INTERSTATE COMPACT FOR SUPERVISION OF ADULT OFFENDERS

ARTICLE IX

OVERSIGHT, ENFORCEMENT, AND DISPUTE RESOLUTION BY THE INTERSTATE COMMISSION

Provision that The Interstate Commission shall attempt to resolve disputes among the compacting states via mediation and binding dispute resolution.

THE UNIFORM CONDEMNATION PROCEDURES ACT

213.61 Scheduling order

Appraisal report may not be used in mediation or other ADR unless provided according to terms of this section or by order of court.

DRIVER EDUCATION AND TRAINING SCHOOLS ACT

256.606 Investigations by department; denial, suspension, or revocation of driver training school license or driver training instructor license or placing probationary conditions; grounds; notice; hearing; denial of application based upon prior conviction; return of suspended or revoked license. REPEALED BY ACT 70 OF 2004 EFFECTIVE OCTOBER 1, 2006

Among powers of the department (1)(c): Mediate disputes between parties when those disputes arise from a violation of this part or a rule promulgated under this part. Sec. 6.

MOTOR VEHICLE SERVICE AND REPAIR ACT

257.1326 Public or private investigation by administrator; additional powers of administrator.

Among powers of the administrator (2)(b): Mediate disputes between parties when those disputes arise from violations of this act or an administrative rule.

AGRICULTURAL MARKETING AND BARGAINING ACT

290.714 Mediation of issues; duties of board; designation of person to act in board's behalf, fee.

Agricultural Marketing and Bargaining Board may provide mediation itself or by contract with a mediator to resolve disputes.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT

HAZARDOUS WASTE MANAGEMENT

324.11118, 324.11120

The board may appoint a mediator to assist negotiations between applicant for hazardous waste management and affected parties. Costs of mediator covered by revolving fund of site construction permit fees.

MENTAL HEALTH CODE

330.1754 State office of recipient rights

(6) The state office of recipient rights shall do all of the following:

..... (h) Upon receipt of a complaint, advise the complainant of the complaint process, appeal process, and mediation option.

330.1772 Definitions.

(f) "Mediation" means a private, informal dispute resolution process in which an impartial, neutral individual, in a confidential setting, assists parties in reaching their own settlement of issues in a dispute and has no authoritative decision-making power.

330.1776 Rights complaint; filing; contents; recording; acknowledgment; notice; assistance; conduct of investigation.

330.1784 Summary report; appeal.

The office shall inform the [complainant, recipient or other individual] of the option of mediation under section 786 [sic].

330.1788 Mediation

Mediation available by agreement by neutral mediator. Appeal and response times suspended during mediation. Signed agreement is binding. Notice from mediator if no agreement reached.

LOW-LEVEL RADIOACTIVE WASTE AUTHORITY ACT

333.26217 International low-level radioactive waste research and education institute;

(3) The powers and duties of the institute shall include all of the following:

a) To develop contracts with universities and other research institutions to conduct research on waste issues, including, but not limited to, all of the following:

....(vi) The use of mediation and human resource methods to facilitate positive interaction between the operators of the disposal site and the public.

OLDER MICHIGANIANS ACT

400.586g State long-term care ombudsman; ...

(h) Provide training for local and regional long-term care ombudsmen, which shall include, but not be limited to, familiarity with all of the following:

..... (vi) Interviewing, investigating, mediation, and negotiation skills.

WORKER'S DISABILITY COMPENSATION ACT OF 1969

418.222 Application for mediation or hearing

418.223 Mediation of claim; circumstances; scheduling mediation conference; duties of bureau prior to mediation conference; recommendations by mediator; application for hearing; pretrial conference; willful noncompliance.

418.847 Setting case for mediation or hearing; hearing; order and opinion

Provisions for mandatory or voluntary mediation of claims

MCLA 423.1- 1 - 423.30 EMPLOYMENT RELATIONS COMMISSION

423.1 Declaration of policy.

423.9 Prerequisites for strike or lockout; notice of dispute and statement of issues; mediation.

423.10 Steps by commission to effect settlement.

423.25 Written findings as to matters in disagreement; availability of writings to public.

423.25a Confidential information.

Other sections of this act also refer to mediation. See sections 9a, 11, & 23.

Provisions for mediation before a strike or lockout. Requirement to mediate in good faith.

MCLA 423.201-217 PUBLIC EMPLOYMENT RELATIONS

423.207 Request for mediation of grievances; powers of commission; notice of status of negotiations; appointment of mediator.

423.207a Additional mediation.

See also 423.216.

Mediation of grievances and collective bargaining disputes

COMPULSORY ARBITRATION OF LABOR DISPUTES IN POLICE AND FIRE DEPARTMENTS

423.233 Initiation of binding arbitration proceedings; request

Whenever a dispute has not been resolved to the agreement of both parties within 30 days of the submission of the dispute to mediation, or within such further additional periods to which the parties may agree, the employees or employer may initiate binding arbitration proceedings.

COMPULSORY ARBITRATION OF LABOR DISPUTES OF STATE POLICE TROOPERS AND SERGEANTS

423.273 Initiation of binding arbitration proceedings; conditions; request.

Whenever a dispute has not been resolved to the agreement of both parties within 30 days of the submission of the dispute to mediation, or within such further additional periods to which the parties may agree, the the department or the employees may initiate binding arbitration proceedings.

MICHIGAN TELECOMMUNICATIONS ACT

484.2203a Resolution of complaint by alternative means. REPEALED BY ACT 235 OF 2005
EFFECTIVE DECEMBER 31, 2009

(1) For all complaints involving a dispute of \$1,000.00 or less, a dispute under section 203(14), or upon the consent of all parties after the complaint is filed, for a period of 60 days after the date the complaint is filed under section 203, the parties shall attempt alternative means of resolving the complaint.

(2) Any alternative means that will result in a recommended settlement may be used that is agreed to by the principal parties of record, including, but not limited to, settlement conferences, mediation, and other informal dispute resolution methods. If the parties cannot agree on an alternative means within 10 days after the date the complaint is filed, the commission shall order mediation. Within the 60-day period required under subsection (1), a recommended settlement shall be made to the parties.

METROPOLITAN EXTENSION TELECOMMUNICATIONS RIGHTS-OF-WAY OVERSIGHT ACT

484.3106 Applications and permits

Public Service Commission shall appoint a mediator to make recommendations if parties do not agree on permit terms.

484.3107 Inability of provider and municipality to agree; appointment of mediator by commission; determination by commission; issuance; extension.

If a provider and municipality cannot agree resolution of dispute under the act, PSC shall appoint a mediator to make recommendations. Parties may request commission review of the mediator's recommendation.

FRIEND OF THE COURT ACT

552.502 Definitions; B to I.

(m) "Domestic relations mediation" means a process by which the parties are assisted by a domestic relations mediator in voluntarily formulating an agreement to resolve a dispute concerning child custody or parenting time that arises from a domestic relations matter.

552.504b Information and records to be provided to citizen advisory committee.

(4) A citizen advisory committee has access to records of a mediation session only if the court determines, after notice to the parties and an opportunity for a response, that access would not impair the rights of a party to the case or the well-being of a child involved in the case.

552.505 Duties of friend of the court; failure of party to attend scheduled meeting.

(c) To provide an informational pamphlet ... [which] shall explain the ... availability of and procedures used in domestic relations mediation;...

(e) To inform the parties of the availability of domestic relations mediation if there is a dispute as to child custody or parenting time.

552.513 Domestic relations mediation; services; agreement; consent order; confidentiality of communications; minimum qualifications of mediator.

Qualifications of mediators and Friend of Court mediation program

Updated August 16, 2006

552.515 Performance by mediator of certain functions involving party prohibited.

Friend of Court employee mediator may not perform referee, investigation and recommendation, or enforcement functions for party of the mediation.

See also section 519 –oversight of State Friend of the Court Bureau

SUPPORT AND PARENTING TIME ENFORCEMENT ACT

552.641 Complaint alleging custody or parenting time order violation; duties of friend of court; declining to respond to violation; circumstances; compliance with § 552.519

Scheduling mediation is one of actions Friend of Court may take in response to custody or parenting time violation.

REVISED JUDICATURE ACT OF 1961

600.4901 et seq. Mediation of medical malpractice cases.

This section describes the process of referral of medical malpractice cases to a panel of 5 evaluators (now defined as “case evaluation” under MCR).

600.4951 et seq. Mediation of civil actions based on tort

This section describes the process of referral of other civil cases to a panel of 3 evaluators (now defined as “case evaluation” under MCR).

COMMUNITY DISPUTE RESOLUTION ACT

691.1551 et seq; Community dispute resolution program; creation; purpose.

The community dispute resolution program is created to provide conciliation, mediation, or other forms and techniques of voluntary dispute resolution to persons as an alternative to the judicial process. Act describes the funding and operation of the program.

691.1552 Definitions.

(f) “Mediator” means an impartial, neutral person who assists parties in voluntarily reaching their own settlement of issues in a dispute and who has no authoritative decision-making power.

691.1557 Confidentiality.

(1) The work product and case files of a mediator or center and communications relating to the subject matter of the dispute made during the dispute resolution process by a party, mediator, or other person are confidential and not subject to disclosure in a judicial or administrative proceeding except for either of the following:

(a) Work product, case files, or communications for which all parties to the dispute resolution process agree in writing to waive confidentiality.

(b) Work product, case files, or communications which are used in a subsequent action between the mediator and a party to the dispute resolution process for damages arising out of the dispute resolution process.

(2) Subsection (1) does not apply to statements, memoranda, materials, and other tangible evidence, otherwise subject to discovery, that were not prepared specifically for use in the dispute resolution process.

691.1557a Civil liability.

A mediator of a community dispute resolution center shall not be held liable for civil damages for any act or omission in the scope of his or her employment or function as a

mediator, unless he or she acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of the rights, safety, or property of another.

ESTATES AND PROTECTED INDIVIDUALS CODE

700.5305 Duties of guardian ad litem.

(1) The duties of a guardian ad litem appointed for an individual alleged to be incapacitated include all of the following:

.....(e) Making determinations, and informing the court of those determinations, on all of the following:

.....(ii) Whether a disagreement or dispute related to the guardianship petition might be resolved through court ordered mediation

722.27b Order for grandparenting time in child custody dispute

(7) If the court has determined that a grandparent has met the standard for rebutting the presumption described in subsection (4), the court may refer that grandparent's complaint or motion for grandparenting time filed under subsection (3) to domestic relations mediation as provided by supreme court rule. If the complaint or motion is referred to the friend of the court mediation service and no settlement is reached through friend of the court mediation within a reasonable time after the date of referral, the complaint or motion shall be heard by the court as provided in this section.

CHILD CARE ORGANIZATIONS

722.112c Personal restraint and seclusion; use in child caring institution contracting with community mental health services program or prepaid inpatient health plan; education, training, and knowledge. (Act 531, 2004, Imd. Eff. Jan. 3, 2005)

(2) Not later than 180 days after the effective date of the amendatory act that added this section, a child caring institution shall require its staff to have ongoing education, training, and demonstrated knowledge of all of the following:

(a)

(b) The use of nonphysical intervention skills, such as de-escalation, mediation conflict resolution, active listening, and verbal and observational methods to prevent emergency safety situations.