

The National Agricultural
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States' Alternative Dispute Resolution Statutes
State of Michigan

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States' Alternative Dispute Resolution Statutes

STATE OF MICHIGAN

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Arbitrations

Chapter 600, Chapter 50.

Current through the 2008 Regular Session

600.5001. Arbitration agreements; parties; award

Sec. 5001. (1) Parties. All persons, except infants and persons of unsound mind, may, by an instrument in writing, submit to the decision of 1 or more arbitrators, any controversy existing between them, which might be the subject of a civil action, except as herein otherwise provided, and may, in such submission, agree that a judgment of any circuit court shall be rendered upon the award made pursuant to such submission.

(2) Enforcement; rescission. A provision in a written contract to settle by arbitration under this chapter, a controversy thereafter arising between the parties to the contract, with relation thereto, and in which it is agreed that a judgment of any circuit court may be rendered upon the award made pursuant to such agreement, shall be valid, enforceable and irrevocable save upon such grounds as exist at law or in equity for the rescission or revocation of any contract. Such an agreement shall stand as a submission to arbitration of any controversy arising under said contract not expressly exempt from arbitration by the terms of the contract. Any arbitration had in pursuance of such agreement shall proceed and the award reached thereby shall be enforced under this chapter.

(3) Collective labor contracts excepted. The provisions of this chapter shall not apply to collective contracts between employers and employees or associations of employees in respect to terms or conditions of employment.

600.5005. Arbitration agreements; real estate

Sec. 5005. A submission to arbitration shall not be made respecting the claim of any person to any estate, in fee, or for life, in real estate, except as provided in Act No. 59 of the Public Acts of 1978, as amended, being sections 559.101 to 559.272 of the Michigan Compiled Laws. However, a claim to an interest for a term of years, or for 1 year or less, in real estate, and controversies respecting the partition of lands between joint tenants or tenants in common, concerning the boundaries of lands, or concerning the admeasurement of dower, may be submitted to arbitration.

600.5011. Arbitration agreements; revocation

Sec. 5011. Neither party shall have power to revoke any agreement or submission made as provided in this chapter without the consent of the other party; and if either party neglects to appear before the arbitrators after due notice, the arbitrators may nevertheless proceed to hear and determine the matter submitted to them upon the evidence produced by the other party. The court may order the parties to proceed with arbitration.

600.5015. Arbitration agreements; appointment of arbitrators

Sec. 5015. If the arbitration agreement provides a method of appointment of arbitrators, this method shall be followed. In the absence thereof, or if the agreed method fails or for any reason cannot be followed, or when an arbitrator appointed fails or is unable to act and his successor has not been duly appointed, the court on application of a party shall appoint 1 or more arbitrators. An arbitrator so appointed has all the powers of one specifically named in the agreement.

600.5021. Arbitration agreements; conduct of arbitration

Sec. 5021. The arbitration shall be conducted in accordance with the rules of the supreme court.

600.5025. Arbitration agreements; circuit courts, enforcement, judgment on award

Sec. 5025. Upon the making of an agreement described in section 5001, the circuit courts have jurisdiction to enforce the agreement and to render judgment on an award thereunder. The court may render judgment on the award although the relief given is such that it could not or would not be granted by a court of law or equity in an ordinary civil action.

600.5031. Arbitration agreements; venue

Sec. 5031. All proceedings in court under this chapter shall be had in the circuit court of the county provided in the agreement. In the absence of such provision proceedings shall be had

(1) in the circuit court of the county where the adverse party resides or has a place of business, or

- (2) if he has no residence or place of business in this state, in the circuit court of the county where the applicant resides or has a place of business, or
- (3) if the arbitration involves real property, in the circuit court of the county in which the property, or any part thereof, is located, or
- (4) if neither (1), (2), nor (3) is applicable, in the circuit court of any county. All subsequent applications shall be made to the court hearing the initial application unless the court otherwise directs.

600.5033. Foreign arbitration awards

Sec. 5033. (1) A court of competent jurisdiction may confirm an arbitration award rendered in another state and enter judgment thereon.

- (2) The court may modify, correct, or refuse to confirm the award as provided by law or court rule.

600.5035. Construction of chapter; equity

Sec. 5035. Nothing contained in this chapter shall be construed to impair, diminish, or in any manner to affect the equitable power and authority of any court over arbitrators, awards, or the parties thereto; nor to impair or affect any action upon any award, or upon any bond or other engagement to abide an award.

Revised Judicature Act of 1961

Chapter 600, Chapter 29.

Current through the 2008 Regular Session

600.2912g. Binding arbitration agreements, provisions; total amount of damages claimed; arbitration proceedings; hearings; enforceability of agreements; arbitration decision and award; entry of judgment, appeal

Sec. 2912g. (1) Subject to subsection (2), at any time after notice is given as required under section 2912b, if the total amount of damages claimed is \$75,000.00 or less, including interest and costs, all claimants and all health professionals or health facilities notified under section 2912b may agree in writing to submit the claim stated in the notice to binding arbitration. An arbitration agreement entered into under this subsection shall contain at least all of the following provisions:

- (a) A process for the selection of an arbitrator.
- (b) An agreement to apportion the costs of the arbitration.
- (c) A waiver of the right to trial.
- (d) A waiver of the right to appeal.

(2) The claimants giving notice and the health professionals or health facilities receiving notice under section 2912b may agree in writing to a total amount of damages greater than the limit set forth in subsection (1).

(3) Arbitration conducted under this section is binding as to all parties who have entered into the written agreement described in subsection (1). Arbitration under this section shall be summary in nature and shall be conducted as follows:

(a) The proceeding shall be conducted by a single arbitrator chosen by agreement of all parties to the claim.

(b) There shall be no live testimony of parties or witnesses.

(c) The Michigan general court rules pertaining to discovery are not applicable except that all of the following information shall be disclosed and exchanged between the parties upon written request of a party:

(i) All relevant medical records or medical authorizations sufficient to enable the procurement of all relevant medical records.

(ii) An expert witness report or statement, but only if the party procuring the expert witness report or statement intends to or does furnish the expert witness report or statement to the arbitrator for consideration.

(iii) Relevant published works, medical texts, and scientific and medical literature.

(iv) A concise written summary prepared by a party or the party's representative setting forth that party's factual and legal position on the damages claimed.

(v) Other information considered by the party making the request to be relevant to the claim or a defense to the claim.

(d) The arbitrator shall conduct 1 or more prehearing telephone conference calls or meetings with the parties or, if a party is represented by an attorney, the party's attorney, for the purpose of establishing the orderly request for and exchange of information described in this subsection, and any other advance disclosure of information considered reasonable and necessary in the arbitrator's sole discretion. The arbitrator shall set deadlines for the exchange or advance disclosure of information under this subsection including, but not limited to, the concise written summary required under subdivision (c)(iv).

(e) The arbitrator may issue his or her decision without holding a formal hearing based solely upon his or her review of the materials furnished by the parties under this section. In his or her sole discretion and whether or not requested to do so by a party, the arbitrator may hold a hearing. A hearing held under this subdivision is limited solely to the presentation of oral arguments, subject to time limitations set by the arbitrator.

(f) A written agreement to submit the claim to binding arbitration under this section is binding on each

party signing the agreement and on their representatives, insurers, and heirs. An arbitration agreement under this section signed on behalf of a minor or a person who is otherwise incompetent is enforceable and is not subject to disaffirmance or disavowal, if the minor or incompetent person was represented by an attorney at the time the written agreement was executed.

(g) The arbitrator shall issue a written decision that states at a minimum the factual basis for the decision and the dollar amount of the award. The arbitrator shall not include costs, interest, or attorney fees in an award. A party may submit an award by an arbitrator under this section to a court of competent jurisdiction for entry of judgment on and enforcement of the award.

(4) An arbitration award under this section is not subject to appeal.

Agricultural Marketing and Bargaining Act
Mich. Comp. Laws Ann. § 290.

Current through the 2008 Regular Session

290.714. Mediation of issues, necessity, grounds; voluntary settlements; duties of board; persons designated to act on behalf of board

Sec. 14. (1) Upon the request of an accredited association or upon the request of a handler, the board shall provide for the mediation of the issues in dispute. The board shall take such steps as it deems expedient to effect a voluntary, amicable and expeditious adjustment and settlement of the differences and issues between the association and the handler which could disrupt the normal sale and purchase of the agricultural commodity between producers and the handler. The board shall:

(a) Arrange for, hold, adjourn or reconvene a conference or conferences between disputants and 1 or more of their representatives.

(b) Invite the disputants and their representatives to attend the conference and submit, orally or in writing, the differences between the disputants.

(c) Discuss the differences with the disputants or their representatives.

(d) Assist in negotiating and drafting agreements for the adjustment and settlement of differences.

(2) In implementing its duties under this section, the board may designate 1 of its members or retain a competent individual to act in its behalf and may delegate to the designee its duties, and for such purpose, the designee shall have all of the powers conferred upon the board in connection with the discharge of the duties so delegated. If the board seeks to retain an individual to mediate a dispute, it shall attempt to retain an individual who has experience in mediation and in agricultural marketing.

(3) Where an individual is retained, the board shall establish his fee in advance.

290.716. Arbitration of disputes; procedure, generally

Sec. 16. (1) If the election provided for in section 15 is not exercised by the association or the handler

involved in negotiations, and if the issues in dispute are not agreed upon through good faith bargaining by the first day of the marketing period for the agricultural commodity, the parties shall be deemed to have consented to the settlement of all issues in dispute by arbitration and the association shall agree that producers shall deliver the agricultural commodity to the handler or initiate the production of the agricultural commodity for future delivery to the handler and the handler shall accept delivery of the agricultural commodity or shall commit for the future delivery of the agricultural commodity. Where the quantity of the agricultural commodity to be marketed is in dispute, the handler shall offer to accept for delivery a reasonable quantity of the agricultural commodity. This offer shall be made in writing to the accredited association at least 7 days prior to the start of the marketing period. A copy of this offer shall be sent by registered mail to the board. The accredited association may file a claim for relief with the board if it feels that the offer is unreasonable. The board shall determine the issue of reasonableness at a hearing in accordance with Act No. 306 of the Public Acts of 1969, as amended. This determination shall have priority over all other board matters. The board shall base its determination on: (a) Projections as to the quantity of the agricultural commodity to be produced, (b) the relationship between the quantity of the commodity available and the amount of the quantity accepted by the handler, (c) the kind, grade, and quality of the commodity available, and (d) the past practices of the handler in relation to the items in subdivisions (a), (b) and (c). If, upon the preponderance of the evidence, the board is of the opinion that the quantity is unreasonable, it shall order the handler to accept the quantity which the board finds to be reasonable. The finding of the board shall be final, subject to later modification by the joint settlement committee. This finding shall be enforced in accordance with the provisions of section 5. Within 15 days following the start of the marketing period for the agricultural commodity, the board shall establish a joint settlement committee to arbitrate the issues in dispute.

(2) The committee consists of 1 committeeman selected by the association, 1 committeeman selected by the handler and 1 committeeman selected by the committeeman representing the association and the handler. This third committeeman shall be chairman of the committee. If the third committeeman cannot be agreed upon by the association and the handler committeeman, the board shall submit a list composed of the names of 5 persons knowledgeable in the marketing of the agricultural commodity from which the third committeeman shall be chosen. The selection shall be made by the association representative and the handler representative each striking 2 different names from the list. The remaining name shall be the person who serves as the third committeeman and as its chairman. The order of striking shall be determined by chance.

Michigan Court Rules of 1985 – Chapter 3, Subchapter 3.600.

Current with amendments received through January 2009

RULE 3.602 ARBITRATION

(A) Applicability of Rule. This rule governs statutory arbitration under MCL 600.5001-600.5035.

(B) Proceedings to Compel or to Stay Arbitration.

(1) A request for an order to compel or to stay arbitration or for another order under this rule must be by motion, which shall be heard in the manner and on the notice provided by these rules for motions. If

there is not a pending action between the parties, the party seeking the requested relief must first file a complaint as in other civil actions.

(2) On motion of a party showing an agreement to arbitrate that conforms to the arbitration statute, and the opposing party's refusal to arbitrate, the court may order the parties to proceed with arbitration and to take other steps necessary to carry out the arbitration agreement and the arbitration statute. If the opposing party denies the existence of an agreement to arbitrate, the court shall summarily determine the issues and may order arbitration or deny the motion.

(3) On motion, the court may stay an arbitration proceeding commenced or threatened on a showing that there is no agreement to arbitrate. If there is a substantial and good-faith dispute, the court shall summarily try the issue and may enter a stay or direct the parties to proceed to arbitration.

(4) A motion to compel arbitration may not be denied on the ground that the claim sought to be arbitrated lacks merit or is not filed in good faith, or because fault or grounds for the claim have not been shown.

(C) Action Involving Issues Subject to Arbitration; Stay. Subject to MCR 3.310(E), an action or proceeding involving an issue subject to arbitration must be stayed if an order for arbitration or a motion for such an order has been made under this rule. If the issue subject to arbitration is severable, the stay may be limited to that issue. If a motion for an order compelling arbitration is made in the action or proceeding in which the issue is raised, an order for arbitration must include a stay.

(D) Hearing; Time; Place; Adjournment.

(1) The arbitrator shall set the time and place for the hearing, and may adjourn it as necessary.

(2) On a party's request for good cause, the arbitrator may postpone the hearing to a time not later than the day set for rendering the award.

(E) Oath of Arbitrator and Witnesses.

(1) Before hearing testimony, the arbitrator must be sworn to hear and fairly consider the matters submitted and to make a just award according to his or her best understanding.

(2) The arbitrator has the power to administer oaths to the witnesses.

(F) Subpoena; Depositions.

(1) MCR 2.506 applies to arbitration hearings.

(2) On a party's request, the arbitrator may permit the taking of a deposition, for use as evidence, of a witness who cannot be subpoenaed or is unable to attend the hearing. The arbitrator may designate the manner of and the terms for taking the deposition.

(G) Representation by Attorney. A party has the right to be represented by an attorney at a proceeding or hearing under this rule. A waiver of the right before the proceeding or hearing is ineffective.

(H) Award by Majority; Absence of Arbitrator. If the arbitration is by a panel of arbitrators, the hearing shall be conducted by all of them, but a majority may decide any question and render a final award unless the concurrence of all of the arbitrators is expressly required by the agreement to submit to arbitration. If, during the course of the hearing, an arbitrator ceases to act for any reason, the remaining arbitrator or arbitrators may continue with the hearing and determine the controversy.

(I) Award; Confirmation by Court. An arbitration award filed with the clerk of the court designated in the agreement or statute within one year after the award was rendered may be confirmed by the court, unless it is vacated, corrected, or modified, or a decision is postponed, as provided in this rule.

(J) Vacating Award.

(1) A request for an order to vacate an arbitration award under this rule must be made by motion. If there is not a pending action between the parties, the party seeking the requested relief must first file a complaint as in other civil actions. A complaint to vacate an arbitration award must be filed no later than 21 days after the date of the arbitration award.

(2) On motion of a party, the court shall vacate an award if:

(a) the award was procured by corruption, fraud, or other undue means;

(b) there was evident partiality by an arbitrator appointed as a neutral, corruption of an arbitrator, or misconduct prejudicing a party's rights;

(c) the arbitrator exceeded his or her powers; or

(d) the arbitrator refused to postpone the hearing on a showing of sufficient cause, refused to hear evidence material to the controversy, or otherwise conducted the hearing to prejudice substantially a party's rights.

The fact that the relief could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award.

(3) A motion to vacate an award must be filed within 91 days after the date of the award. However, if the motion is predicated on corruption, fraud, or other undue means, it must be filed within 21 days after the grounds are known or should have been known. A motion to vacate an award in a domestic relations case must be filed within 21 days after the date of the award.

(4) In vacating the award, the court may order a rehearing before a new arbitrator chosen as provided in the agreement, or, if there is no such provision, by the court. If the award is vacated on grounds stated in subrule (J)(1)(c) or (d), the court may order a rehearing before the arbitrator who made the award. The time within which the agreement requires the award to be made is applicable to the rehearing and commences from the date of the order.

(5) If the motion to vacate is denied and there is no motion to modify or correct the award pending, the court shall confirm the award.

(K) Modification or Correction of Award.

(1) A request for an order to modify or correct an arbitration award under this rule must be made by motion. If there is not a pending action between the parties, the party seeking the requested relief must

first file a complaint as in other civil actions. A complaint to correct or modify an arbitration award must be filed no later than 21 days after the date of the arbitration award.

(2) On motion of a party filed within 91 days after the date of the award, the court shall modify or correct the award if:

(a) there is an evident miscalculation of figures or an evident mistake in the description of a person, a thing, or property referred to in the award;

(b) the arbitrator has awarded on a matter not submitted to the arbitrator, and the award may be corrected without affecting the merits of the decision on the issues submitted; or

(c) the award is imperfect in a matter of form, not affecting the merits of the controversy.

(3) If the motion is granted, the court shall modify and correct the award to effect its intent and shall confirm the award as modified and corrected. Otherwise, the court shall confirm the award as made.

(4) A motion to modify or correct an award may be joined in the alternative with a motion to vacate the award.

(L) Judgment. The court shall render judgment giving effect to the award as corrected, confirmed, or modified. The judgment has the same force and effect, and may be enforced in the same manner, as other judgments.

(M) Costs. The costs of the proceedings may be taxed as in civil actions, and, if provision for the fees and expenses of the arbitrator has not been made in the award, the court may allow compensation for the arbitrator's services as it deems just. The arbitrator's compensation is a taxable cost in the action.

(N) Appeals. Appeals may be taken as from order or judgments in other civil actions.

Michigan Court Rules of 1985. Chapter 2, Subchapter 2.400

Current with amendments received through December 2009

RULE 2.410 ALTERNATIVE DISPUTE RESOLUTION

(A) Scope and Applicability of Rule; Definitions.

(1) All civil cases are subject to alternative dispute resolution processes unless otherwise provided by statute or court rule.

(2) For the purposes of this rule, alternative dispute resolution (ADR) means any process designed to resolve a legal dispute in the place of court adjudication, and 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.

(B) ADR Plan.

(1) Each trial court that submits cases to ADR processes under this rule shall adopt an ADR plan by local administrative order. The plan must be in writing and available to the public in the ADR clerk's

office.

(2) At a minimum, the ADR plan must:

(a) designate an ADR clerk, who may be the clerk of the court, the court administrator, the assignment clerk, or some other person;

(b) if the court refers cases to mediation under MCR 2.411, specify how the list of persons available to serve as mediators will be maintained and the system by which mediators will be assigned from the list under MCR 2.411(B)(3);

(c) include provisions for disseminating information about the operation of the court's ADR program to litigants and the public; and

(d) specify how access to ADR processes will be provided for indigent persons. If a party qualifies for waiver of filing fees under MCR 2.002 or the court determines on other grounds that the party is unable to pay the full cost of an ADR provider's services, and free or low-cost dispute resolution services are not available, the court shall not order that party to participate in an ADR process.

(3) The plan may also provide for referral relationships with local dispute resolution centers, including those affiliated with the Community Dispute Resolution Program.

(4) Courts in adjoining circuits or districts may jointly adopt and administer an ADR plan.

(C) Order for ADR.

(1) At any time, after consultation with the parties, the court may order that a case be submitted to an appropriate ADR process. More than one such order may be entered in a case.

(2) Unless the specific rule under which the case is referred provides otherwise, in addition to other provisions the court considers appropriate, the order shall

(a) specify, or make provision for selection of, the ADR provider;

(b) provide time limits for initiation and completion of the ADR process; and

(c) make provision for the payment of the ADR provider.

(3) The order may require attendance at ADR proceedings as provided in subrule (D).

(D) Attendance at ADR Proceedings.

(1) Appearance of Counsel. The attorneys attending an ADR proceeding shall be thoroughly familiar with the case and have the authority necessary to fully participate in the proceeding. The court may direct that the attorneys who intend to try the case attend ADR proceedings.

(2) Presence of Parties. The court may direct that the parties to the action, agents of parties, representatives of lienholders, representatives of insurance carriers, or other persons:

(a) be present at the ADR proceeding or be immediately available at the time of the proceeding; and

(b) have information and authority adequate for responsible and effective participation in the conference for all purposes, including settlement.

The court's order may specify whether the availability is to be in person or by telephone.

(3) Failure to Attend.

- (a) Failure of a party or the party's attorney or other representative to attend a scheduled ADR proceeding, as directed by the court, may constitute a default to which MCR 2.603 is applicable or a ground for dismissal under MCR 2.504(B).
- (b) The court shall excuse a failure to attend an ADR proceeding, and shall enter a just order other than one of default or dismissal, if the court finds that
- (i) entry of an order of default or dismissal would cause manifest injustice; or
 - (ii) the failure to attend was not due to the culpable negligence of the party or the party's attorney.
- The court may condition the order on the payment by the offending party or attorney of reasonable expenses as provided in MCR 2.313(B)(2).

(E) Objections to ADR. Within 14 days after entry of an order referring a case to an ADR process, a party may move to set aside or modify the order. A timely motion must be decided before the case is submitted to the ADR process.

(F) Supervision of ADR Plan. The chief judge shall exercise general supervision over the implementation of this rule and shall review the operation of the court's ADR plan at least annually to assure compliance with this rule. In the event of noncompliance, the court shall take such action as is needed. This action may include recruiting persons to serve as ADR providers or changing the court's ADR plan.

RULE 2.411 MEDIATION

(A) Scope and Applicability of Rule; Definitions.

(1) This rule applies to cases that the court refers to mediation as provided in MCR 2.410. MCR 3.216 governs mediation of domestic relations cases.

(2) "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.

(B) Selection of Mediator.

(1) The parties may stipulate to the selection of a mediator. A mediator selected by agreement of the parties need not meet the qualifications set forth in subrule (F). The court must appoint a mediator stipulated to by the parties, provided the mediator is willing to serve within a period that would not interfere with the court's scheduling of the case for trial.

(2) If the order referring the case to mediation does not specify a mediator, the order shall set the date by which the parties are to have conferred on the selection of a mediator. If the parties do not advise the ADR clerk of the mediator agreed upon by that date, the court shall appoint one as provided in subrule (B)(3).

(3) The procedure for selecting a mediator from the approved list of mediators must be established by local ADR plan adopted under MCR 2.410(B). The ADR clerk shall assign mediators in a rotational 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 time. If a substitute mediator must be assigned, the same or similar assignment procedure shall be used to select the substitute.

(4) The rule for disqualification of a mediator is the same as that provided in MCR 2.003 for the disqualification of a judge. The mediator must promptly disclose any potential basis for disqualification.

(C) Scheduling and Conduct of Mediation.

(1) Scheduling. The order referring the case for mediation shall specify the time within which the mediation is to be completed. The ADR clerk shall send a copy of the order to each party and the mediator selected. Upon receipt of the court's order, the mediator shall promptly confer with the parties to schedule mediation in accordance with the order. Factors that may be considered in arranging the process may include the need for limited discovery before mediation, the number of parties and issues, and the necessity for multiple sessions. The mediator may direct the parties to submit in advance, or bring to the mediation, documents or summaries providing information about the case.

(2) Conduct of Mediation. The mediator shall meet with counsel and the parties, explain the mediation process, and then proceed with the process. The mediator shall discuss with the parties and counsel, if any, the facts and issues involved. The mediation will continue until a settlement is reached, the mediator determines that a settlement is not likely to be reached, the end of the first mediation session, or until a time agreed to by the parties. Additional sessions may be held as long as it appears that the process may result in settlement of the case.

(3) Completion of Mediation. Within 7 days after the completion of the ADR process, the mediator shall so advise the court, stating only the date of completion of the process, who participated in the mediation, whether settlement was reached, and whether further ADR proceedings are contemplated.

(4) Settlement. If the case is settled through mediation, within 21 days the attorneys shall prepare and submit to the court the appropriate documents to conclude the case.

(5) Confidentiality. Statements made during the mediation, including statements made in written submissions, may not be used in any other proceedings, including trial. Any communications between the parties or counsel and the mediator relating to a mediation are confidential and shall not be disclosed without the written consent of all parties. This prohibition does not apply to

- (a) the report of the mediator under subrule (C)(3),
 - (b) information reasonably required by court personnel to administer and evaluate the mediation program,
 - (c) information necessary for the court to resolve disputes regarding the mediator's fee, or
 - (d) information necessary for the court to consider issues raised under MCR 2.410(D)(3).
- (D) Fees.

(1) A mediator is entitled to reasonable compensation based on an hourly rate commensurate with the mediator's experience and usual charges for services performed.

(2) The costs of mediation shall be divided between the parties on a pro-rata basis unless otherwise agreed by the parties or ordered by the court. The mediator's fee shall be paid no later than

- (a) 42 days after the mediation process is concluded, or
- (b) the entry of judgment, or

(c) the dismissal of the action, whichever occurs first.

(3) If acceptable to the mediator, the court may order an arrangement for the payment of the mediator's fee other than that provided in subrule (D)(2).

(4) The mediator's fee is deemed a cost of the action, and the court may make an appropriate order to enforce the payment of the fee.

(5) If a party objects to the total fee of the mediator, the matter may be scheduled before the trial judge for determination of the reasonableness of the fee.

(E) List of Mediators.

(1) Application. An eligible person desiring to serve as a mediator may apply to the ADR clerk to be placed on the court's list of mediators. Application forms shall be available in the office of the ADR clerk.

(a) The form shall include a certification that

(i) the applicant meets the requirements for service under the court's selection plan;

(ii) the applicant will not discriminate against parties or attorneys on the basis of race, ethnic origin, gender, or other protected personal characteristic; and

(iii) the mediator will comply with the court's ADR plan, orders of the court regarding cases submitted to mediation, and the standards of conduct adopted by the State Court Administrator under subrule (G).

(b) On the form the applicant shall indicate the applicant's hourly rate for providing mediation services.

(c) The form shall include an optional section identifying the applicant's gender and racial/ethnic background.

(2) Review of Applications. The court's ADR plan shall provide for a person or committee to review applications annually, or more frequently if appropriate, and compile a list of qualified mediators.

(a) Persons meeting the qualifications specified in this rule shall be placed on the list of approved mediators. Approved mediators shall be placed on the list for a fixed period, 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.

(b) Selections shall be made without regard to race, ethnic origin, or gender. Residency or principal place of business may not be a qualification.

(c) The approved list and the applications of approved mediators, except for the optional section identifying the applicant's gender and racial/ethnic background, shall be available to the public in the office of the ADR clerk.

(3) Rejection; Reconsideration. Applicants who are not placed on the list shall be notified of that decision. Within 21 days of notification of the decision to reject an application, the applicant may seek reconsideration of the ADR clerk's decision by the Chief Judge. The court does not need to provide a hearing. Documents considered in the initial review process shall be retained for at least the period during which the applicant can seek reconsideration of the original decision.

(4) Removal from List. The ADR clerk may remove from the list mediators who have demonstrated incompetence, bias, made themselves consistently unavailable to serve as a mediator, or for other just cause. Within 21 days of notification of the decision to remove a mediator from the list, the mediator may seek reconsideration of the ADR clerk's decision by the Chief Judge. The court does not need to provide a hearing.

(F) Qualification of Mediators.

(1) Small Claims Mediation. District courts may develop individual plans to establish qualifications for persons serving as mediators in small claims cases.

(2) General Civil Mediation. To be eligible to serve as a general civil mediator, a person must meet the following minimum 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.

(3) An applicant who has specialized experience or training, but does not meet the specific requirements of subrule (F)(2), 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 under this section.

(4) Approved mediators are required to obtain 8 hours of advanced mediation training during each 2-year period. Failure to submit documentation establishing compliance is ground for removal from the list under subrule(E)(4).

(5) Additional qualifications may not be imposed upon mediators.

(G) Standards of Conduct for Mediators. The State Court Administrator shall develop and approve standards of conduct for mediators designed to promote honesty, integrity, and impartiality in providing court-connected dispute resolution services. These standards shall be made a part of all training and educational requirements for court-connected programs, shall be provided to all mediators involved in court-connected programs, and shall be available to the public.