

# Order

Michigan Supreme Court  
Lansing, Michigan

March 28, 2018

Stephen J. Markman,  
Chief Justice

ADM File No. 2017-19

Amendments of Rules 2.410 and  
2.411 and Addition of Rule 3.970  
of the Michigan Court Rules.

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Brian K. Zahra  
Bridget M. McCormack  
David F. Viviano  
Richard H. Bernstein  
Kurtis T. Wilder  
Elizabeth T. Clement,  
Justices

On order of the Court, notice of the proposed changes and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, the following amendments of MCR 2.410 and 2.411 and Addition of MCR 3.970 of the Michigan Court Rules are adopted, effective May 1, 2018.

[Additions to the text are indicated in underlining  
and deleted text is shown by strikeover.]

## Rule 2.410 Alternative Dispute Resolution

### (A) Scope and Applicability of Rule; Definitions.

(1) [Unchanged.]

(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; child protection mediation under MCR 3.970; and other procedures provided by local court rule or ordered on stipulation of the parties.

(B)-(F) [Unchanged.]

## 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. MCR 3.970 governs mediation in child protective proceedings.

(2) [Unchanged.]

(B)-(G) [Unchanged.]

[New] MCR 3.970 Child Protection Mediation

(A) Scope and Applicability of Rule; Definitions.

(1) This rule applies to the mediation of child protective proceedings.

(2) "Mediation" includes dispute resolution processes 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 or facilitator has no authoritative decision-making power.

(B) ADR Plan. Each trial court that submits child protective proceedings to mediation processes under this rule shall either incorporate the process into its current ADR plan, or if the court does not have an approved ADR plan, adopt an ADR plan by local administrative order under MCR 2.410(B).

(C) Order for Mediation.

(1) At any stage in the proceedings, after consultation with the parties, the court may order that a case be submitted to mediation.

(2) Unless a court first conducts a hearing to determine whether mediation is appropriate, the court shall not refer a case to mediation if the parties are subject to a personal protection order or other protective order. The court may order mediation without a hearing if a protected party requests mediation.

(3) In addition to other provisions the court considers appropriate, the order shall:

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

(b) provide time limits for initiation and completion of the mediation process.

The court shall not order a party to pay a fee for mediation services.

- (4) The order may require attendance at mediation proceedings as provided in subrule (E).
- (D) **Objections to Mediation.** A party may orally object to an order to mediate or in writing. Cases may be exempt from mediation on the basis of the following:
- (1) Domestic abuse, unless attorneys for both parties will be present at the mediation session;
  - (2) Inability of one or both parties to negotiate for themselves at the mediation, unless attorneys for both parties will be present at the mediation session;
  - (3) Reason to believe that one or both parties' health or safety would be endangered by mediation;
  - (4) A showing that the parties have made significant efforts to resolve the issues such that mediation is likely to be unsuccessful; or
  - (5) For other good cause shown.
- (E) **Attendance at Mediation Proceedings.**
- (1) **Attendance of Counsel.** The court may direct that the attorneys representing the parties attend mediation proceedings. If the attorney representing a party is unable to attend, another attorney associated with the representing attorney may attend, but must be familiar with the case.
  - (2) **Presence of Parties.** The court may direct that the parties to the action and other persons:
    - (a) be present at the mediation proceeding or be immediately available by some other means at the time of the proceeding; and
    - (b) have information and authority adequate for responsible and effective participation in the proceeding for all purposes.

The court's order may specify whether the availability is to be in person or by other means.
  - (3) Except for legal counsel, the parties may not bring other persons to the mediation session unless permission is first obtained from the mediator, after notice to opposing counsel.

- (4) Failure to appear. The failure of a party to appear in accordance with this rule may be considered a contempt of court.
- (F) Selection of the 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 (H). 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. If the parties do not stipulate to a particular mediator, the court may select a Community Dispute Resolution Program (CDRP) center or other mediator who meets the requirements of subrule (H).
  - (2) 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.
- (G) Scheduling and Mediation Process.
- (1) Scheduling. The order referring the case for mediation shall specify the time within which the mediation is to be completed. A copy of the order shall be sent to each party, the CDRP center or the mediator selected. Upon receipt of the court's order, the CDRP center or mediator shall promptly confer with the parties to schedule mediation in accordance with the order. The mediator may direct the parties to submit in advance, or bring to the mediation, documents or summaries providing information about the case.
  - (2) The mediator must make reasonable inquiry as to whether either party has a history of a coercive or violent relationship with the other party. Throughout the mediation process, the mediator must make reasonable efforts to screen for the presence of coercion or violence that would make mediation physically or emotionally unsafe for any participant or that would impede achieving a voluntary and safe resolution of issues. A reasonable inquiry includes the use of the domestic violence screening protocol for mediators provided by the State Court Administrative Office as directed by the Supreme Court.
  - (3) Mediation Process. The mediator shall discuss with the parties and counsel, if any, the facts and issues involved. Mediation participants may ask to meet separately with the mediator throughout the mediation process. The mediation will continue until: an agreement is reached, the mediator

determines that an agreement 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 to the mediator that the process may result in an agreement.

- (4) Following their attendance at a mediation session, a party may withdraw from mediation without penalty at any time.
  - (5) Completion of Mediation. Within two days after the completion of the mediation process, the CDRP center or the mediator shall so advise the court, stating only: the date of completion of the process, who appeared at the mediation, whether an agreement was reached, and whether further mediation proceedings are contemplated. If an agreement was reached, the CDRP center or the mediator shall submit the agreement to the court within 14 days of the completion of mediation.
  - (6) Agreements reached in mediation are not binding unless the terms are incorporated in an order of the court or placed on the record and the court complies with MCR 3.971.
  - (7) Confidentiality. Confidentiality in the mediation process is governed by MCR 2.412. However, previously uninvestigated allegations of abuse or neglect identified during the mediation process are not confidential and may be disclosed. The mediator shall advise the parties, orally and in writing, of the rules regarding confidentiality under MCR 2.412 and MCL 722.631.
- (H) Qualification of Mediators.
- (1) To be eligible to serve as a mediator in child protection cases, a person must meet the following minimum qualifications:
    - (a) Complete a general civil or domestic relations mediation 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, graduate degree in conflict resolution or a behavioral science, or 5 years of experience in the child protection field; or

- (ii) 40 hours of mediation experience over two years, including mediation, co-mediation, observation, and role-playing in the context of mediation.
  - (c) Upon completion of the training required under subrule (H)(1)(a), observe two general civil or domestic relations mediation proceedings conducted by an approved mediator, and conduct one general civil or domestic relations mediation to conclusion under the supervision and observation of an approved mediator.
  - (d) Complete a 15-hour advanced training program on child protection mediation practice and an 8-hour training program on domestic violence screening approved by the State Court Administrator.
- (2) Approved mediators are required to complete 8 hours of advanced mediation training during each 2-year period.
  - (3) Additional requirements may not be imposed upon mediators.

*Staff Comment:* The amendments of MCR 2.410 and MCR 2.411 and adoption of the new MCR 3.970 provide explicit authority for judges to order mediation in child protection proceedings.

The staff comment is not authoritative construction by the Court. In addition, adoption of a new rule or amendment in no way reflects a substantive determination by this Court.



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.

March 28, 2018

A handwritten signature in black ink, appearing to read "Larry S. Royster".

Clerk