

**UNITED STATES DISTRICT COURT**  
FOR THE EASTERN DISTRICT OF MICHIGAN  
505 THEODORE LEVIN UNITED STATES COURTHOUSE  
231 W. LAFAYETTE BOULEVARD  
DETROIT, MICHIGAN 48226

DAVID J. WEAVER  
COURT ADMINISTRATOR  
313-234-5051  
Fax 313-234-5399

DIVISIONAL OFFICES  
ANN ARBOR  
BAY CITY  
FLINT  
PORT HURON

**NOTICE OF NEW AND AMENDED LOCAL RULES**

At its regular meeting on January 5, 2015, the Court approved the following new local rules, effective February 1, 2015:

- LR 16.3, Alternative Dispute Resolution
- LR 16.4, Facilitative Mediation
- LR 16.5, Case Evaluation
- LR 16.6, Settlement Conferences
- LR 16.7, Other ADR Procedures

Additionally, former LR 16.4, Pretrial Filings and Exchanges, was renumbered as LR 16.8.

Pursuant to Fed. R. Civ. P. 83, these new rules were previously published for comment.

---

---

[Additions are indicated by underline, and deletions by strikethrough.]

**LR 16.3 Alternative Dispute Resolution: General Provisions**

**(a) ADR Favored.** Alternative dispute resolution (ADR) refers to a set of procedures that seek to provide litigants a more informal, less expensive, and less adversarial method for resolving their disputes than is afforded by traditional litigation procedures. The judges of this district favor ADR methods in cases where the court determines, after consultation with the parties, that ADR may help resolve the case. The ADR methods approved by these rules include facilitative mediation (LR 16.4); case evaluation (LR 16.5); settlement conferences (LR 16.6); and other procedures (LR 16.7). The court will also consider other ADR methods that the parties propose.

**(b) Court Administration of the ADR Program.** ADR is authorized in all civil actions in this district under 28 U.S.C. § 651(b). Each ADR program is governed by these rules.

**(c) Consideration of ADR.** In appropriate cases, as part of the conference held under Rule 26(f) of the Federal Rules of Civil Procedure, or at some other conference ordered by the court, all litigants and counsel must consider and discuss the use of an appropriate ADR process at a suitable stage of the litigation.

**(d) Confidentiality.** Communications in ADR proceedings are confidential. They

are not subject to discovery, are not admissible in a proceeding, and may not be disclosed to anyone other than the ADR participants unless the court permits disclosure. No party may compel a mediator to produce documents that relate to, or testify to matters discussed during, ADR proceedings except on order of the court.

**(e) Judicial Officers.** District judges and magistrate judges performing alternative dispute resolution functions, such as serving as mediators or settlement conference judges, act in their capacity as federal judicial officers.

**(f) Neutrality of Evaluators, Mediators and Arbitrators.**

**(1) Standards for Disqualification.** The standards for disqualification of a judicial officer under 18 U.S.C. § 455 apply to an evaluator and mediator. If the parties agree to the rules of an arbitration tribunal (such as the American Arbitration Association), the standards for disqualification of an arbitrator in those rules apply. If the rules of an arbitration tribunal do not apply, the standards for disqualification of a judicial officer under 18 U.S.C. § 455 apply to an arbitrator.

**(2) Procedure for Disqualification.** If an evaluator, mediator, or arbitrator becomes aware of facts that may require disqualification, or a party raises an issue about disqualification, the evaluator, mediator or arbitrator must disclose the relevant facts to the parties. If a party requests that the person withdraw, the person may withdraw and notify the court that another person should be appointed. If the person determines that withdrawal is not warranted, the person may elect to continue. The objecting party may then ask the court to remove the person by filing a motion. This procedure does not apply if the parties have agreed to another procedure.

**(g) Status of Discovery, Motions and Trial During the ADR Process.** Cases referred to ADR continue to be subject to the case management schedule established by the judge assigned to the case. Unless otherwise ordered, parties are not precluded from filing pretrial motions or pursuing discovery. Referral of a case to ADR is not grounds to avoid or postpone any deadline or obligation imposed by the case management order unless ordered by the court.

**(h) Attorney's Responsibility for Payment of Fees.** The attorney or law firm representing a party participating in ADR is directly responsible for fees payable to the court, mediators, or arbitrators. Parties not represented by an attorney are personally responsible for fees. To the extent consistent with ethical rules, the attorney or law firm may seek reimbursement from the client. If any attorney or unrepresented party is delinquent in paying any fee required to be paid to a mediator or arbitrator under these rules, the mediator or arbitrator may petition the court for an order directing payment, and any judge or magistrate judge assigned to the case may order payment, upon pain of contempt.

**COMMENT:** Responsibility for payment of fees to mediators can be adjusted by the Court, considering the fairness in allocating likely expenses among the parties. In cases in which a party is represented by a pro bono attorney under the Court's pro bono counsel program, volunteer mediators are available at no cost to the parties. See also LR 16.4(d).

---

---

#### **LR 16.4 Facilitative Mediation**

##### **(a) Definition.**

**(1) Mediators.** Mediators are neutral persons who meet with the litigants and facilitate settlement negotiations.

**(2) Mediation.** Facilitative Mediation (mediation) is a flexible, nonbinding dispute resolution process in which an impartial third party - the mediator - facilitates negotiations among the parties to help them reach settlement. Mediation seeks to expand traditional settlement discussions and broaden resolution options, often by going beyond the issues in controversy. The mediator, who may meet jointly and separately with the parties, serves as a facilitator only and does not decide issues or make findings of fact. Cases will be assigned to mediation if the district or magistrate judge, after consultation with counsel or the parties, is satisfied that the selection of mediation will assist in the resolution of the case.

**(b) Qualification of Mediators.** Mediators must be qualified by training or experience. Completion of a mediator training course approved by the Michigan Supreme Court Administrative Office is sufficient to establish qualifications. A judge may maintain a list of qualified mediators to assist the parties in selecting a mediator.

**(c) Mediator Selection.** The parties may select a mediator. The court may disapprove the selection. If the parties cannot agree on a mediator, the judge may -

- o appoint a mediator from the parties' nominations
- o appoint a mediator from the judge's qualified mediator list, or
- o appoint another federal judicial officer, including a magistrate judge.

Once a mediator is selected, the court will enter an order appointing the mediator and referring the case to mediation.

**COMMENT:** The parties' choice of mediator will generally be honored and disapproval is expected to be exceedingly rare.

**(d) Mediator Compensation.** The mediator must be paid his or her standard

hourly rate, assessed in as many equal parts as there are separately represented parties, unless the parties agree in writing or the court orders otherwise. The mediator is responsible for billing counsel and unrepresented parties.

**COMMENT:** Responsibility for payment of fees to mediators can be adjusted by the Court, considering the fairness in allocating likely expenses among the parties. In cases in which a party is represented by a pro bono attorney under the Court's pro bono counsel program, volunteer mediators are available at no cost to the parties. See also LR 16.3(h).

**(e) The Mediation Process.**

**(1) Agreement.** The mediator may require the parties to sign an agreement consistent with this rule regarding confidentiality of the proceedings, discovery for the proceedings, and other procedural matters.

**(2) Notice.** The mediator must send a notice of the time and place of the mediation session(s) to participating parties.

**(3) Parties' Memoranda.** Unless the mediator directs otherwise, no later than seven calendar days before the mediation session, each party must provide the mediator with a concise memorandum stating the party's position, including issues of both liability and damages. Mediators may establish formal requirements for the memoranda. The mediator may circulate the parties' memoranda if the mediator gives the parties notice before they submit them.

**(4) Process.** The mediator will preside over the mediation session(s). The mediator may determine the length and timing of the session(s) and the order in which issues are presented. The mediator may meet jointly with the parties and separately with each party or group of parties. The mediator is expected to encourage and assist the parties in reaching a settlement but not to compel or coerce the parties to settle.

**(5) Party Responsibilities.** All parties or individuals with settlement authority must attend the mediation session(s), unless the court orders otherwise. Corporate parties must be represented by an agent with authority to negotiate a binding settlement. In cases involving insurance carriers, an insurer representative with settlement authority must attend in person. Each party must be accompanied by the lawyer expected to be primarily responsible for handling trial of the matter. The court will excuse a party or lawyer from attending in person only on a showing of extraordinary circumstances.

**(6) Completion of Mediation.** The mediator must advise the court of completion of mediation within seven days of completion, stating only the date of

completion, who participated, whether settlement was reached, and whether further ADR proceedings are contemplated.

**(7) Settlement.** If the case is settled, the parties must notify the court without delay and submit appropriate documents to conclude the case within 21 days of settlement.

---

---

**LR 16.5 Case Evaluation**

**(a) Case Evaluation Under Mich. Ct. R. 2.403.** Michigan Court Rule 2.403, as amended from time to time, applies to civil cases that the court selects for case evaluation, subject to the provisions of this rule, but only if the parties consent to be bound by that rule, including the sanctions provisions. The court may approve other procedures different from those in Mich. Ct. R. 2.403.

**(b) Excepted Cases.** Cases in which the United States is a party are not subject to case evaluation.

**(c) Case Evaluation Panel; Stipulation of the Parties.** The Wayne County Mediation Tribunal Association or another Michigan state trial court case evaluation system will evaluate cases, unless the court orders otherwise. For cases evaluated by the Wayne County Mediation Tribunal Association, the tribunal clerk is the case evaluation clerk. With the court's approval, the parties may stipulate to different procedures that apply.

**(d) Actual Costs and Attorney's Fees.** Actual costs, including attorney fees, may be awarded under this rule. However, if a statute or Federal Rule of Civil Procedure also authorizes the payment of attorney's fees, duplicate costs and attorney's fees may not be awarded.

**COMMENT:** For example, if attorney's fees are awarded pursuant to Fed. R. Civ. P. 68 - Offers of Judgment, or 42 U.S.C. 1988 - Civil Rights Cases, the same fees may not be awarded pursuant to this Local Rule.

---

---

**LR 16.6 Settlement Conferences**

The judge assigned to the case may order a settlement conference to be held before that judge, another district judge, or a magistrate judge. The court may require parties to be present. For parties that are not natural persons, the court may require a natural person representing that party who possesses ultimate settlement authority to attend in person. In cases where an insured party does not have full settlement

authority, the court may require an official of the insurer with ultimate settlement authority to attend.

**COMMENT:** The court may consider assigning a settlement conference to another judicial officer rather than ordering a case to facilitative mediation when the amount in controversy is low or a party appears pro se.

---

---

**LR 16.7    Other ADR Procedures**

A judge may use other methods of alternative dispute resolution, including summary jury trials, summary bench trials, and (with the parties' consent) arbitration, or recommend or facilitate the use of any extrajudicial procedures for dispute resolution not otherwise provided for by these rules.

---

---

**LR 16.48    Pretrial Filings and Exchanges**

- (a) Applicability. These requirements apply unless the court orders otherwise.
- (b) Trial Briefs. Parties in civil cases must file and serve trial briefs on the first day of trial.
- (c) Exhibits. Parties in civil cases must mark, number, and exchange all trial exhibits before trial. For good cause, the court may admit exhibits that are not marked, numbered, and exchanged before trial. During trial, each party must have its exhibits available as needed. After trial, each party must retain its exhibits.
- (d) Jury Instructions.
  - (1) Parties in jury trials must file and serve on opposing counsel requested instructions on the first day of trial. In civil cases, they must include an instruction stating concisely the party's claim and theory of the issues. At any time before closing argument, a party may file and serve additional requested instructions that could not have reasonably been anticipated before trial.
  - (2) A party may file and serve with the requests a legal memorandum in support of the requested instructions. Parties may file and serve legal memoranda opposing requested instructions at any time before settlement of the instructions.
  - (3) Each requested instruction must:
    - (A) start on a separate page;
    - (B) be consecutively numbered;

- (C) bear the case number;
- (D) identify the requesting party; and
- (E) cite supporting authority.

**COMMENT:** In criminal cases, the court's Standing Order for Discovery and Inspection and Fixing Motion Cut-Off Date in Criminal Cases governs certain pretrial obligations.