

**STATE OF MICHIGAN**  
**IN THE PROBATE COURT FOR THE COUNTY OF MACOMB**

Administrative Order 2009-04 /

No: 91-117,735- ADM

At a session of said Court, held in the  
City of Mt. Clemens, County of Macomb  
This 12th day of August, 2009

**PRESENT: KENNETH N. SANBORN, ACTING CHIEF JUDGE OF PROBATE**

**CASE EVALUATION – SELECTING EVALUATORS AND PROCEDURES**

Pursuant to MCR 5.143, MCR 2.403 and MCL 2.404, which were amended effective August 1, 2000, and in response to the newly enacted MCR 2.410, which is effective August 1, 2000,

IT IS HEREBY ORDERED:

A. Case Evaluation Procedure

1. Scope and Applicability

This administrative order governs the procedure for case evaluation in this Court and is supplemental to MCR 2.403, MCR 2.404, MCR 2.410 and MCR 5.143. If there is a conflict between this administrative order and any prior local court rule or administrative order, this order controls.

2. Alternative Dispute Resolution (“ADR”) Clerk Designation

Pursuant to MCR 2.410(B)(2)(a), the Probate Court designates the Probate Register to serve as the ADR Clerk. In the absence of the Probate Register, the Chief Court Attorney shall serve as the ADR Clerk.

3. Dissemination of Information Concerning the Probate Court’s ADR Program

The Probate Court adopts the following procedure for dissemination of information on the Probate Court’s ADR Program:



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Pursuant to MCR 2.410(B)(2)(c), information concerning the Probate Court's ADR program will be available to litigants and in the public, upon request, in the ADR Clerk's office.

4. Selection of Cases for Case Evaluation

Pursuant to MCR 2.403(B)(1), the Probate Judge to whom an action is assigned, or the Chief Judge of Probate, may select the contested matter for case evaluation by written order no earlier than 91 days after the filing of an answer. The parties may also stipulate to case evaluation or a party may request case evaluation in a written motion.

5. Objecting to Case Evaluation

Pursuant to MCR 2.403(C), if a party objects to the order for case evaluation, they must file a written motion to remove the matter from case evaluation and serve the motion and a notice of hearing on the attorneys of record within 14 days after receiving the order for case evaluation. The motion must be heard within 14 days after it is filed, but no later than the date set for case evaluations.

6. Access to ADR Program by Indigent Persons

As it is required by MCR 2.410(B)(2)(d), the Probate Court adopts the following policy concerning indigent litigants:

If a party qualifies for waiver of filing fees under MCR 2.002 or the Probate Court determines on other grounds that the party is unable to pay the full cost of the ADR process, any case evaluation fees shall be waived.

B. Case Evaluator Selection Process

The Probate Court adopts the following procedure for establishing case evaluator pools:

1. A notice requesting new case evaluators will be published and posted annually. Those individuals who are interested in being case evaluators shall submit an application (MC34 Case Evaluator Application), provided by the Probate Court, from which the case evaluator pool shall be established. Pursuant to MCR 2.404(B)(1), the case evaluator application form will:
  - i. Contain an optional section identifying gender and racial/ethnic background (designed to be detached after receipt and prior to the review and application process); and
  - ii. include a certification that the case evaluator meets requirements for service under the Probate Court's selection plan and,
  - iii. certification that the case evaluator will not discriminate against parties, attorneys, or other case evaluators on the basis of race, ethnic origin, gender or other protected characteristic.

## 2. Qualification of Case Evaluator/Creation of Eligibility List

To serve as a case evaluator the candidate must meet the following minimum qualifications:

- a. As mandated by MCR 2.404(B)(2), the applicant must be a practicing lawyer for five years and a member in good standing of the State Bar of Michigan. Membership in no other organization is a prerequisite to serving as a case evaluator.
- b. The applicant must reside in or maintain an office in Macomb County or have an active practice in Macomb County Probate Court.
- c. The applicant must demonstrate that a substantial portion of their practice for the last three years has been devoted to probate administration, litigation or estate planning.
- d. If separate sublists are maintained for specific types of cases, the applicant must have had an active practice in the practice area for which the case evaluator is listed for at least the last 3 years.

## 3. Review of Applications

- A. Pursuant to MCR 2.404(B)(3), the Probate Court designates the Probate Register to annually review case evaluator applications and compile a list of qualified case evaluators. Pursuant to MCR 2.404(B)(6), the list of qualified case evaluators will be available to the public in the ADR Clerk's office.
- B. Applicants who are not placed on the case evaluator list will be notified in writing of this decision. As directed by MCR 2.404(B)(3)(c), a reconsideration mechanism is established as follows:

An individual who is deemed not eligible for placement in the case evaluator pool may submit a written request for reconsideration to the Chief Judge of Probate within 21 days of the mailing of notice of their failure to be selected. A decision on a reconsideration request will be made within 28 days of receipt by the Probate Court. The decision shall be communicated in writing to the individual who sought reconsideration.

### C. Training

All case evaluators will be required to attend an orientation session conducted by a Probate Judge, a former case evaluator and the ADR Clerk where written materials explaining the Probate Court's case evaluation process and program will be disseminated.

D. Term on list

Pursuant to MCR 2.404(B)(5), unless a different fixed period is directed by the Probate Court, persons selected for placement in the case evaluator pool will remain eligible to serve on a case evaluation panel for five case evaluation cycles, which cycles run from July 1 through June 30. Individuals seeking placement in the case evaluator pool at the end of the five year period must reapply in the same manner as persons seeking to be added to the list.

E. Removal from list

As directed by MCR 2.404(B)(7), the Probate Court reserves the right to remove case evaluators who demonstrate incompetence, bias, are consistently unavailable to serve or for other just cause. The ADR Clerk shall notify the person in writing that their name is being removed from the list of case evaluators and the reason for removal. Persons removed from the list of case evaluators may seek reconsideration of the decision by requesting the same in writing and forwarding the written request to the Chief Judge of Probate within 10 days from the date of removal. The request shall be reviewed by the Chief Judge of Probate and a written notification of the decision regarding the reconsideration will be forwarded to the person who sought reconsideration.

F. Selection of Panel

Pursuant to the Provisions of MCR 2.404(C)(1), the Probate Court adopts the following procedures for selecting case evaluation panels:


The ADR Clerk is to make either random or rotating assignments of case evaluators to panels to assure as nearly as possible that each case evaluator is assigned to the same number of cases over a period of time.

G. Supervision and Reporting

The Chief Judge will provide general supervision of the Probate Court's case evaluation program, including an annual review of the Probate Court's plan to ensure compliance with MCR 2.404. Pursuant to MCR 2.404(D)(1), the Probate Court will submit annual reports on its case evaluation program to the State Court Administrative Office (SCAO) on a form to be provided by the SCAO.

IT IS ORDERED THAT the Macomb County Probate Court shall apply these procedures to all cases for which case evaluation has been ordered or scheduled after August 15, 2009.

Date: August 12, 2009

  
**KENNETH N. SANBORN**  
Acting Chief Judge  
Macomb County Probate Court