Innovations in the Courts:
A Series on Court Administration

The Wayne County Mediation Program in the Eastern District of Michigan

A Report to the
Federal Judicial Center

1520 H Street, N.W.
Washington, D.C. 20005
Telephone 202/633-6011

THE WAYNE COUNTY MEDIATION PROGRAM IN THE EASTERN DISTRICT OF MICHIGAN

By Kathy L. Shuart

October 1984

Cite as K. Shuart, The Wayne County Mediation Program in the Eastern District of Michigan (Federal Judicial Center 1984).

Table of Contents

Foreword v

Introduction 1

Background and Description of the Mediation Program 4

Mediation's Effect on the Courts' Calendars and Case Dispositions 10

Attorneys' Attitudes Toward the Mediation Procedure 14

Concluding Remarks 19

Appendix A: Wayne County Local Court Rule 403 21

Appendix B: Michigan General Court Rule 316 29

Appendix C: Rule 32 of the United States District Court for the Eastern District of Michigan 37

Appendix D: Forms Used in the Mediation Process by the Third Judicial Circuit Court 43

Appendix E: Forms Used in the Mediation Process by the United States District Court for the Eastern District of Michigan 53

Foreword

This report, one in a collection entitled *Innovations in the Courts: A Series on Court Administration,* examines a mediation procedure operating, under Local Rule 32, in the United States District Court for the Eastern District of Michigan. Adopted in 1981 in response to a growth in diversity case filings, this procedure was built upon an already existing program developed by the state trial court in Wayne County (Detroit), Michigan, and the local litigating bar.

The report describes the mediation program as it operates in both the United States district court and the state trial court. Central to each court's program is reliance on the Mediation Tribunal Association, an independent, nonprofit organization established by the Wayne County court to provide a pool of mediators to hear cases and administrative support in holding the hearings.

Information in this report on the operation, as well as the performance, of the procedure is based on three studies that reviewed court records and interviewed attorneys and judges who had participated in the mediation program. Copies of the courts' rules and selected forms are included for ready reference.

We are aware that judgments concerning the desirability of particular procedures will vary from district to district, and that each court must assess any proposed change in the light of local conditions. The Center hopes that the information in this report will prove helpful to court personnel concerned with the issues examined here.

A. Leo Levin

Introduction

Federal and state courts are experiencing increases in the number of civil filings, and the difficulty of securing additional judges and support personnel to handle this influx of suits has led many courts to seek new ways to dispose of cases and avoid increased backlogs.[1]

A realization that the vast majority of cases settle with limited judicial involvement has caused many courts to focus on ways to encourage settlement. A number of procedures have emerged that are designed to increase the number of settlements or to decrease the time to settlement. The most familiar examples of such procedures—arbitration and mediation—are reportedly quite successful in disposing of cases.[2]

One mediation-like mechanism has been used in the state trial court in Wayne County (Detroit), Michigan, since 1971. In the early 1970s, the Third Judicial Circuit Court of Michigan was faced with a backlog of several thousand civil cases, substantial increases in annual filings, and no prospect of additional judgeships. Distressed by the situation, the litigating bar and trial bench in Wayne County set out to find ways to relieve the congested court docket. A committee with representatives from the plaintiff's bar, defense bar, and bench ultimately proposed a settlement mechanism, which they referred to as mediation.[3] Following approval by the full

---

1. For statistics on the increases in filings, see Administrative Office of the United States Courts, 1983 Annual Report of the Director; Bureau of Justice Statistics, State Court Caseload Statistics (1983).

2. *See, e.g.*, P. Connolly & S. Smith, *Description of Major Characteristics of the Rules for Selected Court-Annexed Mediation/Arbitration Programs* (unpublished paper, ABA Action Commission to Reduce Court Costs and Delay 1983); D. Hensler, A. Lipson, & E. Rolph, Judicial Arbitration in California: The First Year (Institute for Civil Justice 1981); J. Shapard, *Updated Analysis of Court-Annexed Arbitration in Three Federal District Courts*, in Evaluation of Court-Annexed Arbitration in Three Federal District Courts (Federal Judicial Center rev. ed. 1983); S. Weller, J. Rhunka, & J. Martin, *Compulsory Civil Arbitration: The Rochester Answer to Court Backlogs*, 20 Judges' J. 36 (1981). For a review of the literature on mediation and arbitration, see J. Pearson, *An Evaluation of Alternatives to Court Adjudication*, 7 Just. Sys. J. 420 (1983).

3. Although this disposition procedure is a bar-conducted case evaluation system rather than a typical mediation hearing, the officials dubbed the procedure "mediation," referring to the hearing as a "mediation hearing" and to the attorneys evaluating the cases as "mediators."

Wayne County circuit court bench, the proposal was submitted to and approved by the Michigan Supreme Court and adopted by the Third Judicial Circuit Court as a local rule.[4] After the court had had some experience with the procedure, it was modified and reinstituted in 1978 under Local Court Rule 403 as a mechanism within the court's case management program. (Rule 403 and a similar rule adopted by the Michigan Supreme Court—General Court Rule 316—that permits mediation throughout the state are reproduced in appendixes A and B.)

Central to the Wayne County circuit court mediation procedure is the Mediation Tribunal Association. This independent, nonprofit organization was created by the circuit court in 1979 to provide a pool of mediators for its cases and the administrative support necessary to operate the hearings. This group selects mediators and assigns them to panels, monitors the cases sent to mediation, handles all paper work associated with the hearings, and collects and disburses mediation fees.

Wayne County circuit court officials and the bench report that the mediation program is effective in disposing of cases, and they consider the program a success. In fact, the court credits to the procedure a twelve-month reduction in the time between filing and disposition over the period 1979 to 1983.

Similar circumstances prompted the initiation of mediation in the federal district court in Detroit. In the decade ending in 1980, the United States District Court for the Eastern District of Michigan witnessed a 300 percent increase in civil filings. Of special concern to the court was the growth in diversity case filings, particularly those removed from state courts. Diversity filings increased from 593 cases in 1971 to 1,317 cases in 1980, with the percentage of diversity cases removed from state courts jumping from 14 percent to 43 percent.

Faced with this growing burden on judges and staff, the federal court in 1981 began to pursue alternative methods of disposing of diversity matters. On the basis of the apparent success of the state court's mediation program and the availability of an operating mediation service, in November 1981 the United States District Court

4. On the basis of the successful operation of the Wayne County rule, in 1980 the Michigan Supreme Court adopted General Court Rule 316, permitting statewide mediation of civil cases. Although the statewide rule resembles the Wayne County rule in many respects (e.g., eligibility and selection of cases, submission of documents, fees, and penalties), it is more general in approach. For example, whereas the Wayne County rule is very specific about the makeup of the mediation panel, the general rule does not spell out its composition, allowing the locality to designate the panel. Wayne County requested and received approval from the Michigan Supreme Court to continue handling mediation according to its local court rule.

for the Eastern District of Michigan adopted Local Rule 32, permitting federal judges to refer certain diversity cases to mediation.

This report describes the procedure that is now being used in both the Third Judicial Circuit Court of Michigan and the United States District Court for the Eastern District of Michigan. Its purpose is to provide information on the background, operation, and performance of the procedure so that judges, attorneys, and clerks interested in developing case-disposition mechanisms can build on the experiences of the courts in Detroit. The information presented is drawn from three sources: an examination, conducted in 1982-83 by the American Bar Association Action Commission to Reduce Court Costs and Delay, of mediation in the state trial court in Wayne County; a 1983 study by the Federal Judicial Center on mediation's first year of operation in the U.S. district court in Detroit; and a 1984 update by the Center on the federal court's use of mediation.

The action commission's examination of the state trial court had three components: review of mediation and disposition information on more than two hundred cases, interviews with 120 attorneys and ten of the thirty-one circuit court judges handling trials, and observations of more than thirty mediation hearings. The examination was designed to gather information in four areas: the dynamics of the mediation procedure, the impact of the procedure on the disposition of cases that rejected the mediation valuation, the operation of the penalty provision, and the attitudes of the attorneys toward the procedure.

The 1983 Federal Judicial Center study, in an effort to document the U.S. district court's use of mediation, examined court records of the 388 cases ordered to participate in mediation during its first year of operation and interviewed ten of the twelve judges who had referred cases to mediation hearings. The interviews explored the ways in which cases are selected for referral to mediation, the imposition of the cost-shifting sanctions, and impressions of the effects of the mediation program. The 1984 examination reported on the cases referred to mediation during its second year of operation. Follow-up interviews were conducted with judges and staff to document changes in their attitudes toward the program and in their referral practices.

The first section of this report details the history of the mediation program and describes its operating procedures. The next section looks at the role mediation plays in both the United States District Court for the Eastern District of Michigan and the Third Judicial Circuit Court. The third section contains a discussion of attorneys' reactions to the procedure. Conclusions and issues of im-

plementation are presented in the final section of the report. Reproductions of the court rules permitting mediation in the state and federal courts, and selected forms, are contained in appendixes A through E.

Background and Description of the Mediation Program

The federal court's mediation rule and program are based on the Third Judicial Circuit Court's procedure, a fact that becomes most apparent when the operation of the programs is examined. Under the authority of both local rules, the courts may order selected civil cases to participate in mediation. Approximately sixty days after referral of a case, a thirty-minute hearing is conducted before a panel of three mediators, all of whom are experienced litigators. On the basis of oral presentations by counsel and brief written summaries submitted beforehand, the mediators evaluate the case and determine a settlement figure for it. This valuation becomes the judgment in the case unless rejected in writing by one or more of the parties within forty days. Cases in which the valuation is rejected proceed to trial, with the rejecting parties liable for a penalty if the trial verdict does not substantially improve upon the valuation unanimously agreed to by the mediators.

The similarities between the two programs do not stop at the wording of the rules. A major factor behind the federal court's adoption of a mediation rule was the existence of an established mediation service in Detroit. Rather than design a mediation procedure from scratch, the U.S. district court built its program around the Mediation Tribunal Association (MTA), which also serves as the foundation of the Third Judicial Circuit Court's mediation program. By relying on the MTA, the federal court did not have to resolve several operational issues already addressed by the state court: the administration of the program, the selection of mediators, and the operation of the hearings.

Program Administration

When the Wayne County circuit court modified its mediation program in 1978, a major concern was the administration of the

program. The court had few administrative personnel or financial resources to spare for the program's operation, and neither the county nor the state was in a position to supply any assistance. Circuit court and bar officials devised a unique administrative arrangement to deal with these constraints.

First, to resolve the personnel problem, the court assigned to the MTA, as one of its chief functions, the daily administration of the mediation program, which includes monitoring, scheduling, and administering cases through the mediation process. Though created as a separate and independent organization outside the court, the MTA maintains a close working relationship with the Wayne County circuit court at various levels. The MTA's policy is set by a board of directors composed of the chief judge of the Third Judicial Circuit Court and two prominent Wayne County litigators, one representing the plaintiff's bar and one the defense bar. General administration and planning for the program are handled by the court's administrator and the court's director of docket management.[5] Two court employees under the direct supervision of the docket manager head the MTA staff of thirteen and are charged with overseeing the day-to-day operation of the association.

The second issue, financing, was resolved by charging litigants a mediation fee of $75 and a penalty of $60 for failure to meet filing deadlines. These fees and penalties make the association virtually self-sustaining, paying rent, mediators' fees and expenses, and MTA clerks' salaries.

The circuit court, by having established the MTA, and the U.S. district court, by relying on it for its mediation program, give the association credibility and authority. The arrangement is beneficial to both courts. It allows them to maintain supervision of their cases throughout the mediation process, but does not encumber them with additional administrative expenses. In addition, the fees provide a sound financial base for the association, permitting it to administer the program effectively without the expenditure of limited court resources.

---

5. The Third Circuit Judicial Court uses a hybrid calendaring system, in which cases are assigned to individual judges through the discovery cutoff date, then assigned to another judge for a settlement conference, and finally returned to the pool for reassignment to an available trial judge. The court's docket management office is responsible for scheduling cases for court hearings and imposing deadlines, notifying attorneys of upcoming events, and managing the court's civil and criminal dockets. Thus, it is this office that actually schedules cases for mediation and notifies attorneys of hearing dates.

Selection of Mediators

The Mediation Tribunal Association's most obvious responsibility is to provide a pool of mediators for the hearings. In setting up the mediation program and the MTA, the Wayne County circuit court paid particular attention to the composition and selection of the valuation body.

The MTA uses three-member panels to handle mediation hearings in both the state court and the federal district court. Each panel is composed of experts with a minimum of five years' litigation experience and is balanced with a plaintiff's attorney, a defense attorney, and a neutral attorney. To ensure the high caliber of panel members, MTA selects attorneys from three separate lists of potential mediators provided by two bar organizations. The Detroit chapter of the Association of Trial Lawyers of America, predominantly a plaintiff's bar, submits a list of expert plaintiff's attorneys, and the Detroit Defense Council Association submits a list of qualified defense attorneys. Each of these groups also compiles a list of attorneys with varied experience who are acceptable to both groups as neutral counsel.

Panels are scheduled for one week, handling mediation hearings at the MTA's offices Monday through Thursday. Each panel is assigned approximately fourteen cases per day and, discounting settled cases and adjournments, averages forty hearings per week. Typically, one of the four panels scheduled each week is designated to handle federal cases. Each panel member is paid $600 per day by MTA for serving as a mediator, from monies collected as mediation fees from the parties.

Hearing Format

The MTA uses the same hearing format for both the federal and the state court. In preparation for a hearing, the attorney for each party prepares a brief summary of the case and submits the summary to the MTA a minimum of three court days prior to the hearing. The trial attorneys use this summary to pull together the facts of the case, an exercise that necessarily precedes either settlement discussions or trial.

The hearing is typically nonadversarial and operates more as a settlement session than a mediation hearing. Counsel present their case to the mediators, who, having read the written summaries beforehand, begin the session with questions or ask the attorneys to summarize the case orally. No testimony is presented and parties

rarely appear, but physical evidence such as photographs of injuries and scenes may be shared with the panel during the hearing. The panel then speaks with each attorney privately to find a settlement figure that might be acceptable to all parties.

The mediators then meet alone to discuss the case, usually reaching a unanimous decision within a few minutes. The hearing, which lasts approximately thirty minutes, concludes with the announcement of the mediators' valuation award. The valuation is deemed accepted if it is not rejected, in writing to the MTA, within forty days of the hearing. Once the forty-day period has lapsed, the MTA notifies the court of the outcome of the hearing and of the parties' responses. Unless the mediation result is explicitly rejected, an order is entered incorporating the valuation and dismissing the case.

Occasionally, mediators are unable to agree on a figure; in those instances, the award sheet is marked nonunanimous. If two of the three mediators agree on a figure, that amount is noted on the sheet to aid the parties and their attorneys in settlement discussions. If there is no objection by a party, the rules do permit a nonunanimous valuation to be entered as judgment. However, it is very rare for a party not to object to a nonunanimous decision.

Although the local rules established the authority for the procedures and the MTA provided the mediation mechanism, officials in each court still had to decide what, when, and how cases would be referred to mediation and how to handle the imposition of penalties.

Method and Timing of Case Referral

According to the federal court's local rule, any diversity case seeking money damages as the exclusive remedy is eligible for mediation, and may be referred by stipulation of all parties, by motion of one party with notice to the other party, or on the court's own motion. (See the next subsection for eligibility and referral practices of the state court.)

There continues to be some variation among the federal judges in referral practices, but an early reliance on party stipulations has given way to greater use of court motions. The timing of the referral has also changed since the procedure's introduction. Originally, several judges ordered cases to participate in a mediation hearing early in the pretrial process. Referral now occurs, with few exceptions, when it does in the state program—at the close of discovery. Scheduling the hearing at this point is considered critical to effec-

tive mediation hearings for several reasons. First, with discovery completed or nearly completed, the parties are in a position to discuss settlement in an informed manner. Second, the preparation for the mediation hearing coincides with the preparation for trial and therefore does not add another step to the preparation process. Third, the imminence of the trial date encourages serious settlement discussions.

Selection of Cases

The basis for determining which diversity cases are appropriate for mediation varies among the members of the U.S. district court bench. Although a few judges refer all eligible cases to a hearing, the majority are selective, basing their decision on their perception of how successful mediation is likely to be. For example, mediation is viewed as most successful in small personal injury cases, especially those involving inexperienced attorneys, and as least successful in large cases and matters with multiple defendants or "judgment-proof" plaintiffs. Most judges, however, will not refer a case to mediation if the attorneys object to the procedure, even if the judges had identified the case as appropriate for mediation.

The case selection process differs considerably in the state court, in which eligibility is defined more broadly and the selection process is more routine. All civil cases in which the relief sought is exclusively money damages or division of property are eligible for mediation. Any eligible case in which parties have not stipulated to the procedure by the close of discovery is automatically ordered by the chief judge to participate in a hearing. Therefore, a routine aspect of pretrial activity in the Third Judicial Circuit Court is the identification and scheduling by the docket management office of cases eligible for mediation.

The state court's choice of eligibility and referral procedures has had an impact on the role mediation plays in that court and has also affected the success of the mediation mechanism. Because eligibility is defined broadly and entry into mediation is automatic by order of the court, a sizable number of circuit court cases are exposed to the mediation procedure. Mediation thus plays a greater role in the disposition process and calendar management in the state court than it does in the federal court.

In addition, by not excluding broad categories of cases from mediation, by making entry into mediation automatic for those cases, and by limiting each hearing to thirty minutes, the state court ensures that the MTA has a large volume of cases and is able to

handle them quickly. The high volume of the operation, coupled with the mediation fee, is the key to the program's self-sufficiency. If the program were voluntary or excluded a substantial portion of the civil caseload, it might be underutilized. If it required considerable preparation time, lengthy presentations, or protracted analysis, the mediation mechanism could not handle as large a volume of cases. In either instance, the system would not be able to generate the revenues necessary to keep the program in operation.

Imposition of Penalties

The rules of both the federal and the state court provide that a party which rejects a unanimous mediation valuation may incur a penalty should the case go to verdict and the party not substantially improve its position. Specifically, if the position of the rejecting party is not improved upon by an amount in excess of 10 percent of the mediation valuation, a penalty consisting of the opponent's attorney's fees for trial and the court costs may be imposed. For example, a claim unanimously valued by the mediators at $10,000 must receive a verdict of at least $11,001 for rejecting plaintiffs to avoid liability for a penalty, whereas the verdict must be below $9,000 for rejecting defendants to avoid liability.

The federal court has had limited experience to date with the imposition of sanctions.[6] First, very few diversity cases reach the trial stage and fewer still go to verdict. Second, in the handful of situations in which a party has been eligible for a penalty, the penalty has not been automatically imposed, but has been considered for assessment only when requested by the party.

Federal judges, and their counterparts in the state court, are reluctant to impose penalties if the party to be compensated does not specifically ask to have them imposed. Cost shifting is not viewed by federal judges as a mechanism to deter future trials that fail to improve on settlement offers; rather, it is seen as compensation for the party that has needlessly been put to the expense of a trial.[7] In

6. According to interviews with the federal judges, fewer than five of the first-year cases involved the imposition of a penalty.

7. A similar view of the purpose of the penalty provision was expressed by one of the creators of the state court rule, a prominent plaintiff's attorney in Detroit, but from a different angle. In his opinion, the mechanism was not designed to coerce parties to accept inequitable valuations or to waive their rights to trial. Rather, it was designed to defray a party's legal expenses incurred at trial when the opposing party fails to assess the value of the case accurately. The underlying premise is that attorneys control the litigation process and must responsibly evaluate their cases and the mediation valuations.

determining whether to impose sanctions, the judges defer to the wishes of the party that has been wronged. There is also a practical problem in imposing sanctions on the court's own motion: By the time the imposition of sanctions becomes appropriate, the judge is unlikely to recall the details of the mediation award unless reminded by one of the parties.

Furthermore, several federal judges expressed concern early in the program about the authority of the court to impose cost-shifting sanctions. Some judges interviewed by the Center early in 1983 suggested that it was this uncertainty about the court's authority that prompted several judges to encourage parties to stipulate to mediation rather than rely on the court's motion for referral. Parties' stipulation to participate in mediation was perceived as providing a stronger justification for imposing a cost-shifting sanction. Concern over the court's authority did not surface during the follow-up interviews, which may be due to the low frequency of assessment of penalties by the court and the lack of subsequent challenges to such assessments. In fact, the judges reported an increased reliance on court referral to mediation, suggesting the court may no longer feel uneasy about its authority to impose penalties on offending parties.

Mediation's Effect on the Courts' Calendars and Case Dispositions

Both the U.S. district court and the Third Judicial Circuit Court view the goal of the mediation procedure to be removal of cases from the trial docket through settlement. An examination of cases referred to mediation illustrates the impact of the procedure not only on case disposition but also on the courts' management of their calendars. Overall in 1982, 63 percent of the circuit court cases and 36 percent of the U.S. district court cases set for mediation were removed from the calendar in one of the following ways (see also the table that follows). First, the mediation procedure identifies for the court cases that have been abandoned or dismissed but that the court continues to carry on its calendar as active. This identification process is particularly effective in the state court, as the span of time between the preceding court event and the mediation hearing can be several months. Second, merely scheduling a case for mediation focuses parties' attention on settle-

ment and sometimes causes parties and their attorneys to opt for immediate settlement negotiations rather than payment of the mediation fee or preparation of the summaries. In 1982, one out of five state court cases and one out of three federal cases set for mediation were resolved by settlement, abandonment, or dismissal prior to hearing dates. Third, many parties take their cases through the hearing process and ultimately accept the mediation valuation. Twenty-two percent of state cases and 19 percent of federal cases set for mediation in 1982 were resolved in this manner, with the valuation figure becoming the judgment in the case. Fourth, the valuation process identifies those cases that do not fall under the jurisdiction of the Wayne County circuit court. Cases valued during a mediation hearing at less than $10,000 in which parties subsequently reject the valuation are removed from the circuit court calendar and remanded to the lower court. In 1982, such removals accounted for an additional 21 percent of the cases set for mediation in the Third Judicial Circuit Court.

Outcome of Cases Set for Mediation in the Michigan State Court and Federal Court in 1982

Outcome	State	Federal
Resolved prior to mediation hearing	1,613	28
Hearing held and mediation valuation accepted	1,787	76
Remanded to lower court based on rejection of mediation valuation of less than $10,000	1,664	—
Proceeded to settlement conference or trial after rejection of valuation of more than $10,000	2,934	184
Total cases set for mediation	7,998	288

NOTE: These figures come from the Mediation Tribunal Association's 1982 final report.

The benefit of this procedure to the parties in many of these cases is obvious—their disputes are resolved, and the procedure may have hastened the settlement process. The courts also benefit. The procedure serves to notify the court that certain cases have been "resolved" and removed from the calendar without judicial involvement. Because resolution and notification come well in advance of the trial dates, the court is able to schedule other pending cases for trial.

The examination of the state court program conducted by the ABA Action Commission to Reduce Court Costs and Delay suggests that the mediation procedure also has an impact on cases that reject the mediation valuation. Circuit court statistics for 1982 indi-

cated that only 7 percent of the cases in which a valuation was rejected went to trial, the overwhelming number of them ultimately being settled. It is plausible to expect that panel valuations, though rejected, play some role in subsequent settlement negotiations, particularly if the final disposition amounts show some resemblance to the valuation figures or if dispositions come shortly after the mediation hearings. The ABA study examined these relationships in a sample of cases in which the mediation valuation was rejected.[8]

A comparison of the valuation amounts and the disposition amounts indicated that the mediators' assessments of the value of the cases served as accurate starting points for settlement discussions. One-fourth of the sampled claims were resolved at amounts falling within 10 percent of the mediators' valuation figures, and another 10 percent of the claims were disposed of at amounts within 25 percent of the valuation figures. This suggests that the mediation procedure is helpful in establishing working valuations on which to base further settlement negotiations.

Another indicator of the procedure's impact on case resolution is the timing of disposition. A reasonable assumption is that cases resolved shortly after a rejected mediation valuation do so as a result of settlement discussions initiated at the hearing. An attempt was made to collect data that would allow a comparison between case disposition dates and mediation dates. Unfortunately, the information available on disposition dates was frequently imprecise. For example, disposition dates listed in court files reflect the date on which the court was notified of settlement, not the date on which the parties reached agreement. Therefore, the approach of the next court-initiated event—the settlement conference—could also be responsible for settlements. Despite the limitations of the available data, circuit court records showed that no fewer than 10 percent of the sampled cases that rejected mediation valuations settled within forty days of the mediation hearing.[9] Comments by attorneys on

8. The sample of cases was selected from MTA's mediation hearing panel schedules. To allow sufficient time for cases to have proceeded to trial, the cases were drawn during a three-week period in July of 1981. (Court officials did not believe that the time of year would affect the sample in terms of case type, dispositions, and so on.) The sample was drawn to include 100 or more cases that had rejected mediation valuations and had remained within the jurisdiction of the circuit court. A total of 121 cases were selected; however, disposition information was unavailable for 17 cases, leaving a sample of 104 cases for examination. Case data for the sample were collected from three sources: MTA files, circuit court files, and attorney surveys.

9. Typically, the shortest period between a mediation hearing and a settlement conference in a circuit court case is ninety days. Therefore, a settlement before the midway point can reasonably be attributed to the past event rather than the impending future event.

the timing of settlements indicate that this figure understates the actual number that settled within a short period after the mediation hearing.[10] Finally, circuit court judges and attorneys alike reported that valuation figures served as bases for discussions at the mandatory settlement conferences.

Judges' Perceptions of the Success of the Program

Although no data are available on the mediation program's impact on trial rates, judges' perceptions of the procedure's performance are available from interviews conducted with several members of the federal bench and their staffs at the close of the first year of operation and again at the two-year mark.

Because the program applies to a relatively small portion of the caseload of each federal judge, the opportunities for individual judges to assess the effects of the program have been limited. Nevertheless, most judges felt that the program reduces the number of trials of diversity cases by increasing the proportion that settle. Most also agreed that the program conserves the resources of the court by limiting the amount of time spent by judges on such cases and reduces the cost of litigation to the parties in a substantial number of cases by avoiding unnecessary trials. The impressions of the effectiveness of the mediation program as a case settlement mechanism were favorable.

In general, the judges attributed the success of the program to the generation of an objective valuation of a claim rather than to its fee-shifting provision. They agreed, however, that the court's authority to impose sanctions should be retained as an encouragement to parties to consider a valuation seriously. Judges viewed the award of the mediation panel as beneficial even if it is rejected by one or more of the parties, because it serves as a starting point in settlement discussions. The valuation is particularly helpful to attorneys who are inexperienced in assessing the value of personal injury cases, the type of federal case most commonly referred to mediation. The mediation award also aids judges' participation in settlement negotiations, especially in cases destined for jury trials, in which judges are less reluctant to participate in the settlement process. Several judges also mentioned that the mediation award may be useful to an attorney who is encouraging a reluctant client to settle.

---

10. For example, many of the attorneys stated during interviews that settlement was reached shortly after the mediation hearing but that the court was not notified until the date of the next court action, that is, the settlement conference.

The federal judges were also asked whether cases other than diversity cases might benefit from referral to the mediation program. The most common suggestions for other appropriate cases were federal tort claims and other simple federal question cases that may be within the experience of the panel members (e.g., Federal Employer's Liability Act and Jones Act cases). In fact, several cases with federal question jurisdiction have been referred to the panel through stipulation of the parties. Although party stipulation meets the question of the court's authority to refer such cases to mediation, some judges remain unsure of the likelihood that an MTA panel will have the required expertise to be effective in nondiversity cases.

The judges and their staffs mentioned few adverse effects of the mediation program and are quite satisfied with the performance of the program to date. However, several judges questioned the accuracy of the mediation panels' valuations of claims. They indicated that the awards set by the mediation panel, though perhaps consistent with jury awards in the state court, are higher than awards juries in the federal court typically set. In addition, judges mentioned that on occasion parties appeared to have sought mediation for the purpose of postponing a trial. This is less of a problem now that the dates for mediation and for trial are set at the same time.

The one major drawback reported during the first-year interviews—that the mediation process extended the time from filing to disposition because of the additional period required for the mediation hearing—has been resolved. Rather than waiting until the official close of discovery to initiate the process, U.S. district court clerks now flag the mediation cases early and coordinate scheduling with the Mediation Tribunal Association to minimize the time between the end of discovery and the mediation hearing.

Attorneys' Attitudes Toward the Mediation Procedure

Case data and interviews with the federal judges provide a reasonably complete description of the court's perspective on the mediation procedure. The success of any mediation program, however, lies in its ability to enhance the settlement process, and judges can only speculate on the procedure's performance in that regard. Those most closely involved in the settlement process—the attor-

neys—are in a better position to provide insights into why the mediation mechanism appears to be a successful settlement device and how the settlement process operates in general.

In the course of the ABA's examination of the mediation procedure, 120 attorneys who had presented state court cases to a mediation panel were interviewed.[11] They were asked for their impressions and suggestions concerning (a) hearing format, (b) case valuation as a settlement technique, (c) role of the penalty provision, (d) cost of mediation to attorneys and their clients, and (e) redundancy of multiple settlement devices. The survey focused on these aspects of the procedure for two reasons. First, discussions with circuit court judges, administrators, and bar officials in Detroit identified those features as contributing to the successful operation of the mediation mechanism. Second, it is in those areas that the mechanism differs most from settlement devices operating in other jurisdictions.

Hearing Format

The mediation hearing in both the federal and the state program is scheduled to occur after the completion of discovery and is designed so that attorneys communicate the highlights of a case within a thirty-minute span, without testimony or appearances by the parties. The attorneys' presentation supplements the short written summary submitted to the mediators in advance of the hearing and allows the mediators to focus on pertinent points raised in that summary.

The attorney interviews focused on two aspects of the hearing format: the timing of the hearing and the adequacy of the written and oral communications. Eighty-five percent of the respondents recommended no alterations to the timing of the hearing.[12] The majority of changes suggested related to the often lengthy period in the state court program between the mediation hearing and the trial date.[13]

---

11. The criterion in selecting the attitudinal sample was the ability to fill in missing case data. Therefore, attorneys involved in more than one case in previously drawn case data samples were targeted first. In addition, if a case consisted of multiple claims involving more than one defendant, the plaintiff's attorney was approached first in an attempt to fill in missing case data for all the claims.

12. Unless stated otherwise, the percentages mentioned in the text are based on a sample size of 120.

13. Civil cases in Wayne County circuit court are currently scheduled for trial thirty months after filing. Because the mediation hearing is held eighteen months after filing for many cases, there is usually a twelve-month lapse between mediation and trial.

Regarding the adequacy of communications, the attorneys were asked whether they thought the short written summary submitted before the hearing and the thirty-minute hearing without testimony or evidence provide mediators with sufficient information upon which to base a valuation. Almost ninety percent agreed that the information conveyed is sufficient for valuation purposes.

The positive assessment of this hearing format is notable. Many settlement devices are labor-intensive at both the preparation and the hearing stages. The Detroit mechanism is not, yet the attorneys think the format permits them to present enough information to a mediation panel to allow for a fair assessment of a case. This is true despite the fact that many of the cases referred are complex. Whereas most jurisdictions automatically exclude certain types of cases or big-dollar cases from their settlement programs,[14] such is not the case in the Third Judicial Circuit Court program, where the procedure applies to all types of cases, at every dollar level.

Case Valuation as a Settlement Technique

Attorneys' views were also sought on the use of a panel for mediation and on how the valuation process contributes to the disposition of a case.

Though the attorneys did not express dissatisfaction with the concept of a panel or its composition (i.e., size and balance), 47 percent recommended changes in the mediator selection process. The responses suggested that panel selection might be improved by (a) expanding the list of qualified mediators to include more minorities and attorneys not affiliated with large firms; (b) selecting neutral members more carefully to preclude those who are obviously proplaintiff or prodefense or who do not litigate regularly; and (c) creating specialized panels to mediate certain types of cases that might benefit from handling by experts.[15] In short, the critical issue for the attorneys is the quality of the mediation panel, a quality based on experience and balance.

To find out how the attorneys viewed the valuation process, the ABA action commission asked them to rate the performance of the mediation hearing as to disclosure, valuation, and settlement.

Three-fourths of the attorneys agreed that the mediation hearing provides a useful disclosure of the strengths and weaknesses of a case. That one-quarter did not agree is not to be construed as a

14. *See* Connolly & Smith, *supra* note 2.

15. In 1983, an amendment to Local Court Rule 403 to include specialized panels was submitted to the Michigan Supreme Court for approval.

negative assessment of the hearing, however. Several noted that disclosure is not a goal of the mediation hearing; with discovery completed and the case ready for trial, counsel should already be well acquainted with the strengths and weaknesses of the case.

The attorneys were also asked to evaluate the reasonableness of the mediation figures awarded. Two-thirds agreed that the figures are generally reasonable valuations of the cases. As the next series of questions reveals, reasonable valuations—that is, valuations that attorneys find credible—may be one component of the success of mediation; an unreasonable case valuation not only is a lost opportunity to assist in settling the case, but may, in fact, have a negative impact on settlement negotiations.

Regarding the role of the mediation procedure in settlement activities, nine out of ten of the surveyed attorneys said they view the hearing as a tool with which to encourage clients to consider settlement. However, 80 percent noted that inaccurate valuations translate into unrealistic client expectations and a hardening of the positions of one or both sides, sometimes to the point of ending negotiations. For attorneys, the success of a panel-determined valuation—the Third Judicial Circuit Court's core case settlement device—hinges greatly on the competence of the mediation panel and the panel's ability to assess the case accurately.

Role of the Penalty Provision

Parties rejecting a mediation valuation may incur a penalty if the case goes to verdict and the party does not substantially improve its position. To assess what role this penalty provision plays in the settlement process, the attorneys were asked a series of questions on the purpose and imposition of the penalty.

Eighty-seven percent of the attorneys responded that the purpose of the provision is to encourage parties to accept the mediation valuations by providing "teeth" to the procedure. However, six out of ten attorneys did not feel the penalty achieves that goal. One possible explanation for the perceived ineffectiveness of the penalty provision may be that it is viewed by attorneys as an empty threat, rarely if ever imposed. Their responses, however, reveal that only one-third thought penalties are rarely or never imposed against liable parties.

In addition, 10 percent of those questioned believed that a defendant is far more likely to incur a penalty than a plaintiff. The collection of an imposed penalty was viewed as even more one-sided: Thirty percent of the attorneys perceived the defendant as

bearing the remunerative burden much more often than the plaintiff, if not in all instances. Although an examination of penalty impositions in the sample cases indicates that the attorneys were correct in their assertions of selectivity, their responses as to why penalties go uncollected suggest that the selectivity in both imposition and collection of penalties may be attorney initiated. Decisions by the prevailing parties to forgo requesting the penalty, or to waive it in lieu of appeal or settlement, accounted for 40 percent of the reasons offered for noncollection.

These responses shed light on the more subtle aspects of the operation of the penalty provision. First, although attorneys did not think that the penalty provision is effective in encouraging acceptance of the mediation valuation, they did not think its failure is due to the fact that the penalty is not applied. It is possible that valuations are rejected because they are unreasonable or because the parties are not inclined to settle at any amount, in which case the threat of a penalty does nothing to address the impediments. Second, simply counting the number of cases in which a penalty was imposed or collected may not adequately reveal the extent of the role penalties do play. The responses indicate that penalties are also used by attorneys as bargaining chips to preclude future appellate activity in a case.

Cost of Mediation to Attorneys and Clients

The costs of operating and administering the mediation procedure are well documented, yet very little is known about the costs of mediation to the "users," that is, to attorneys and their clients. Although the mediation procedure obviously requires work on the part of attorneys, it is not clear whether this work adds to the cost of litigation or simply replaces other activities that would be necessary to resolve matters if mediation was not available. To gauge the relationship between time spent on mediation and overall time expenditures on a case, the attorneys were asked if the time spent preparing for, traveling to, and attending a mediation hearing is recoverable as a result of faster settlements or reductions in trial preparations. Eighty-five percent of those surveyed indicated that the time spent on the mediation process is recovered and does not affect the overall amount of time expended in the course of litigating a case. Combined with earlier research in the areas of time expenditures, attorneys' fees, and client billing methods, this infor-

mation suggests that the Third Judicial Circuit Court mediation procedure does not add to the expense of litigation for the client.[16]

Redundancy of Multiple Settlement Devices

In addition to the mediation procedure, civil cases in the Third Judicial Circuit Court that are not disposed of through mediation also go through a settlement conference conducted by a judge on the morning of the scheduled trial day.[17] Concern had been expressed by court officials in Wayne County that dual hearings for settlement might be redundant. The attorneys overwhelmingly rejected the notion of redundancy, by 111 to 7. Although the majority identified the goals of both hearings to be settlement, they noted that variations in tone, technique, and timing of the hearings make each a worthwhile settlement mechanism. These findings suggest that jurisdictions employing settlement conferences should not automatically discount other settlement mechanisms from consideration.

Concluding Remarks

The preceding examination of the mediation procedure in the state and federal courts in Detroit suggests that the procedure works for these courts as both a settlement mechanism and a case management tool. In closing, several observations are offered on the design, implementation, and operation of the Detroit procedure for those considering the adoption of a similar settlement mechanism.

---

16. *See, e.g.,* J. Chapper & R. Hanson, *The Attorney Time Savings/Litigant Cost Savings Hypothesis: Does Time Equal Money?* 8 Just. Sys. J. 258 (1983). Although additional attorneys' fees may not be involved, the filing fee and the potential late fee and/or penalty may be incurred.

17. The clerk of the United States District Court for the Eastern District of Michigan reported that most of that court's judges regularly conduct settlement conferences as well.

Planning

The Detroit mediation program is a carefully designed, well-thought-out procedure developed to address particular problems. Although it appears to work effectively in Wayne County, any settlement mechanism must be designed to meet the needs and make use of the resources of the jurisdiction developing the procedure. It should be emphasized that the federal court in the Eastern District of Michigan implemented its local rule on the basis of the availability of a preexisting state program that had already gained credibility in the legal community. The federal court was therefore spared the extensive preparation that would be necessary in developing and gaining acceptance of a similar program elsewhere.

The Detroit experience does, however, highlight procedural aspects that should be considered in planning a settlement device: the administration and financing of the procedure, type of settlement technique to employ, composition and selection of the valuation body, timing of the hearing, selection of appropriate cases, format of the hearing, and inclusion of a penalty provision. The way in which each of these aspects is ultimately handled may not be as important as ensuring that each is actually addressed.

Administration

Rules establishing a new procedure are rarely if ever self-executing; effective administration is essential to the successful operation of any program. Although state court officials and bar leaders in Detroit realized the need for competent and thorough program oversight, they also knew that court support staff would be unable to handle the new program and that additional court staff and funding would be very difficult to secure. Therefore, rather than allow the mediation program to fail for lack of administration, an independent entity (the MTA) was created to administer and finance the procedure. Other programs may not require such elaborate arrangements, but administration cannot be overlooked.

Cooperation

The design and operation of the mediation program in Detroit reflect the cooperative efforts of the bar, the state court, and the federal court. It is thus clear that input from all involved parties early in the development of any similar procedure will both enhance acceptance of the innovation and contribute to its smooth operation.

APPENDIX A
Wayne County Local Court Rule 403

Rule 403
Mediation

.1 Eligible Cases.

The court may submit any civil case to mediation when the relief sought is exclusively money damages or division of property.

.2 Manner of Selection of Cases.

A case may be selected for mediation:

(1) by stipulation of the parties at any time as long as mediation does not interfere with trial of the case,

(2) on written motion by a party and order of the court, or

(3) on order of the chief judge.

.3 Objections to Mediation.

To object to mediation, a party must:

(1) file a written motion with the clerk of the court and a copy with the mediation tribunal clerk within 15 days after the date of the court's notice assigning the case to mediation, and

(2) serve a copy on opposing counsel and the chief judge.

If the motion is filed, the case may not be assigned for a mediation hearing until the chief judge, or a judge he assigns, has ruled on it.

[Amended and effective Nov. 2, 1979.]

.4 Mediation Board.

(a) Mediation boards will be composed of three attorneys.

(b) The Mediation Tribunal Association shall select the mediators.

[Amended September 8, 1982, eff. September 15, 1982.]

.5 Term of Mediators.

The term of a member of a mediation board is one week unless otherwise ordered.

[Amended and effective Nov. 2, 1979.]

.6 Disqualification of Mediators.

The rule for disqualification of mediators is the same as that provided in GCR 1963, 912 for the disqualification of judges.

.7 Procedure for Mediation.

(a) Time and Place for Hearing; Notice. After a case has been selected for mediation by one of the methods set forth in Rule 403.2, the tribunal clerk shall set a time and place for the hearing and send notice to the mediators and opposing counsel at least 30 days before the date set.

(b) Submission of Documents. At least three court days before the hearing date, each party must submit three copies of all documents pertaining to the issues to be mediated to the Mediation Tribunal Association and one copy to opposing counsel.

Each party shall also submit a concise brief or summary setting forth that party's factual and legal position on issues presented by the action.

A failure to submit these proofs within the above-designated time subjects the offending party to a $60 penalty payable at the time of the mediation hearing and distributed equally to the Mediation Tribunal Association.

[Amended and effective Nov. 2, 1979; September 8, 1982, eff. September 15, 1982.]

(c) Presence of Parties; Evidence. A party has the right, but is not required, to attend or be present at a mediation hearing. When scars, disfigurement or other unusual conditions exist, they may be demonstrated to the board by a personal appearance; however, no testimony will be taken or permitted of any party.

(d) Decision. After the hearing the board will make an evaluation of the case and notify each counsel of its evaluation in writing, on the day of the hearing in person, or, if necessary by mail within 10 days of the date of the hearing.

[Amended September 8, 1982, eff. September 15, 1982.]

(e) Action on Board's Decision. Written acceptance or rejection of the board's evaluation must be given to the tribunal clerk within 40 days of the mailing of the board's evaluation. There may be no disclosure of a party's acceptance or rejection of the board's evaluation until the expiration of 40 days following notification. At the expiration of the above period, the tribunal clerk shall send a notice indicating each counsel's acceptance or rejection of the board's evaluation.

If the evaluation of the mediation board is rejected, the tribunal clerk shall place all mediation documents in a sealed manila envelope before forwarding them to the County Clerk for filing. The envelope may not be opened in a nonjury case until the trial judge has rendered judgment.

.8 Fees.

On the Submission of the stipulation to mediate or within 10 days of the notice or order requiring mediation, each injured party and each defendant shall send to the Mediation Tribunal Association $75. Derivative claims (husband-wife, parent-child) must be treated as one injury. In the case of multiple injuries to members of a single family, the plaintiffs or defendants may elect to treat the cases as involving one injury, with the payment of one fee and the rendering of one lump sum award to be accepted or rejected. If no election is made, the fee must be paid for each injured party, and the board will then make separate awards for each injury, which may be accepted or rejected.

[Amended and effective Nov. 2, 1979; September 8, 1982, eff. September 15, 1982.]

.9 Place of Hearing.

The tribunal clerk shall designate the place of hearing.

.10 Time for Hearing.

The tribunal clerk shall designate a hearing date.

.12 Hearings.

Oral presentation of information is limited to 15 minutes per side, unless there are multiple parties or unusual circumstances warranting additional time. The board may request information on the status of settlement negotiations and applicable policy limits.

.13 Adjournment of Hearing.

(a) Adjournments of hearings are to be avoided whenever possible. If an attorney who is principally in charge of a case is in actual trial, he will be entitled to an adjournment of the hearing date as a matter of right if he gives opposing counsel and the board one day's advance notice. Otherwise mediation hearings must be given preference over other matters. Whenever possible, the attorney in principal charge of a case should delegate responsibility for attendance at the hearing to another person when he is in trial so as to minimize the number of adjournments.

(b) When cases are settled or otherwise disposed of before the hearing date, it is the duty of both counsel to notify the tribunal clerk of the disposition of the case as soon as possible so an attempt can be made to fill the time set aside for that hearing.

(c) When a copy of the final disposition order of a case is given to the tribunal clerk at least 15 days before the hearing date, the fee paid to the tribunal clerk for that hearing will be returned.

[Amended and effective Nov. 2, 1979.]

(d) Failure to comply with the rules for adjournment under this section subjects offending counsel to the payment of all mediation fees for all other parties who are required to pay additional fees.

[Amended September 8, 1982, eff. September 15, 1982.]

.14 Evidence.

The rules of evidence do not apply before the mediation board. Factual information having a bearing on the question of damages must be supported by documentary evidence whenever possible.

.15 Effect of Mediation.

(a) If the board's evaluation is not rejected under rule 403.7(e), a judgment will be entered in that amount, which includes all fees, costs and interest to the date of judgment.

(b) If any party rejects the board's evaluation, the case proceeds to trial in the normal fashion. If the evaluation is $10,000 or less, a date for hearing before the chief judge will be set for the purpose of determining whether the case should be removed to the district court. A notice of hearing will be served on counsel for the parties at least 5 days before the hearing date. The chief judge will enter an order of removal unless objection to removal is made at the hearing. The penalty provisions still apply to cases which are removed.

[Amended September 8, 1982, eff. September 15, 1982.]

(c) When the board's evaluation is unanimous and the defendant accepts the evaluation but the plaintiff rejects it and the matter proceeds to trial, the plaintiff must obtain a verdict in an amount which, when interest on the amount and assessable costs from the date of filing of the complaint to the date of the mediation evaluation are added, is more than 10 percent greater than the board's evaluation in order to avoid the payment of actual costs to the defendant.

(d) When the board's evaluation is unanimous, and the plaintiff accepts the board's evaluation but the defendant rejects it and the matter proceeds to trial, the defendant must obtain a verdict in an amount which, when interest on the amount and assessable costs from the date of filing of the complaint to the date of the mediation evaluation are added, is more than 10 percent below the evaluation of the board or pay actual costs.

(e) When the board's evaluation is unanimous and both parties reject the board's evaluation and the amount of the verdict, when interest on the amount and assessable costs from the date of filing of the complaint to the date of the mediation evaluation are added, is within 10 percent above or below the board's evaluation, each party is responsible for his own costs from the mediation date. If the verdict is in an amount which, when interest on the amount and assessable costs from the date of filing of the complaint to the date of the mediation evaluation are added, is more than 10 percent above the board's evaluation, the defendant shall be taxed actual costs. If the verdict is in an amount which when interest on the amount and assessable costs from the date of filing of the complaint to the date of the mediation evaluation are added, is more than 10 percent below the board's evaluation, the plaintiff shall be taxed actual costs.

.16 Actual Costs.

Actual costs include those costs and fees taxable in any civil action and, in addition, an attorney fee for each day of trial in circuit court, determined by the trial judge in accordance with the fee prevailing locally.

[Added Dec. 4, 1978.]

Notice Re Rule 403

The following notice was issued by Chief Judge Richard J. Dunn, Feb. 28, 1979:

Wayne County Circuit Court Rule 21 has been replaced by Local Rule 403 by virtue of the approval of the Supreme Court, under date of December 4, 1978.

Henceforth there will be a resumption of the assignment of cases to the Mediation Docket. The Rule provides that all civil actions, where the relief sought is exclusively money damages or division of property, regardless of liability, may be assigned to Mediation.

Matters initially assigned to Mediation will go to the three attorney panels. These panels will evaluate cases without limitations as to the amount.

In the event you desire to have your matter assigned to a mediation panel chaired by a Circuit Judge, it may be done by either one of the following steps:

(1) By stipulation of all the parties; or

(2) Upon filing of a motion, together with a praecipe, with the mediation clerk, to be heard on a Friday at 11:00 a.m. before the Chief Judge of the Court.

All documents, summaries for mediation must be submitted directly to each mediator at least three court days before the hearing date and one copy must be given to opposing counsel. When the panel is composed of two attorneys and a circuit judge, the circuit judge copy must be filed with his court clerk.

APPENDIX B
Michigan General Court Rule 316

Rule 316
Mediation

.1 Scope and Applicability of Rule.

(a) A court may submit to mediation any civil case in which the relief sought consists of money damages or division of property.

(b) This rule does not apply to the circuit court for the third judicial circuit. In that court, mediation procedure is governed by third circuit local rule 403.

.2 Selection of Cases.

(a) The judge to whom a case is assigned or the chief judge may select it for mediation by written order at least 90 days after the filing of the answer

(1) on written stipulation by the parties,

(2) on written motion by a party, or

(3) on the judge's own motion.

.3 Objections to Mediation.

(a) To object to mediation, a party must file a written motion to remove from mediation and a notice of hearing of the motion and serve a copy on counsel of record and the mediation clerk within 15 days after notice of the order assigning the case to mediation. The motion must be set for hearing within 15 days after it is filed, unless the court orders otherwise.

(b) The filing of a motion to remove from mediation stays mediation proceedings, and the case may not be assigned for a mediation hearing until after the court decides the motion.

.4 Mediation Panel.

(a) Mediation panels will be composed of 3 persons.

(b) The court may adopt by administrative order a procedure for selecting mediation panels, including setting minimum qualifications for mediators.

(c) A judge may be selected as a member of a mediation panel but may not preside at the trial of any case in which he or she served as a mediator.

.5 Disqualification of Mediators. The rule for disqualification of a mediator is the same as that provided in GCR 1963, 912 for the disqualification of a judge.

.6 Procedure for Mediation.

(a) Mediation Clerk. The court shall designate the clerk of the court, the court administrator, the assignment clerk, or some other person to serve as the mediation clerk.

(b) Time and Place for Hearing; Notice. The mediation clerk shall set a time and place for the hearing and send notice to the mediators and counsel at least 30 days before the date set.

(c) Fees.

(1) Within 15 days after the mailing of the notice of the mediation hearing, each plaintiff and each defendant must send to the mediation clerk a check for $75 made payable jointly to the attorneys on the mediation panel. However, if a judge is a member of the panel, the fee is $50. The mediation clerk shall deliver the checks to the attorney-mediators on the day of the hearing.

(2) Derivative claims (husband-wife, parent-child) must be treated as one claim.

(3) In the case of multiple injuries to members of a single family, the plaintiffs may elect to treat the case as involving one claim, with the payment of one fee and the rendering of one lump sum award to be accepted or rejected. If no such election is made, a separate fee must be paid for each plaintiff, and the mediation panel will then make separate awards for each claim, which may be individually accepted or rejected.

(d) Continuance of Hearings. Continuances may be granted only for good cause shown, in accordance with GCR 1963, 503.

(e) Submission of Documents.

(1) At least 10 days before the hearing date, each party shall submit 3 copies of all documents pertaining to the issues to be mediated to the mediation clerk and 1 copy to each attorney of record. Failure to submit these materials within the above-designated time subjects the offending party to a $60 penalty payable at the time of the mediation hearing and distributed equally to the attorney-mediators.

(2) Each party may also submit 3 copies of a concise brief or summary setting forth that party's factual or legal position

on issues presented by the action to the mediation clerk and 1 copy to each attorney of record.

(f) Presence of Parties; Evidence.

(1) A party has the right, but is not required, to attend a mediation hearing. If scars, disfigurement, or other unusual conditions exist, they may be demonstrated to the panel by a personal appearance; however, no testimony will be taken or permitted of any party.

(2) The rules of evidence do not apply before the mediation panel. Factual information having a bearing on damages or liability must be supported by documentary evidence, if possible.

(3) Oral presentation shall be limited to 15 minutes per side unless multiple parties or unusual circumstances warrant additional time. The mediation panel may request information on applicable insurance policy limits but may not inquire about settlement negotiations.

(4) Statements by counsel and the brief or summary are not admissible in any court or evidentiary proceeding.

(g) Decision. Within 15 days after the hearing, the panel will make an evaluation of the case and notify counsel for each party of its evaluation in writing.

(h) Action on Board's Decision.

(1) Each party must file a written acceptance or rejection of the panel's evaluation with the mediation clerk within 20 days after the mailing of the panel's evaluation. The failure to file a written acceptance within 20 days constitutes rejection. There may be no disclosure of a party's acceptance or rejection of the panel's evaluation until the expiration of the 20-day period, at which time the mediation clerk shall send a notice indicating each party's acceptance or rejection of the panel's evaluation.

(2) If the evaluation of the mediation panel is rejected, the mediation clerk shall return to each attorney all the documents submitted by that attorney. The mediation clerk shall place a copy of the mediation evaluation and the parties' acceptances and rejections in a sealed envelope for filing with the clerk of the court. The envelope may not be opened in a nonjury case until the trial judge has rendered judgment.

(3) If the mediation evaluation of a case pending in the circuit court does not exceed the jurisdictional limitation of the

district court, the mediation clerk shall so inform the trial judge.

.7 Effect of Mediation.

(a) If all the parties accept the panel's evaluation, judgment will be entered in that amount, which includes all fees, costs, and interest to the date of judgment.

(b) If any party rejects the panel's evaluation, the case proceeds to trial in the normal fashion.

(1) If the defendant accepts the evaluation but the plaintiff rejects it and the case proceeds to trial, the plaintiff must obtain a verdict in an amount which, when interest on the amount and assessable costs from the date of filing of the complaint to the date of the mediation evaluation are added, is more than 10 percent greater than the panel's evaluation, or pay actual costs to the defendant.

(2) If the plaintiff accepts the evaluation but the defendant rejects it and the case proceeds to trial, the defendant must obtain a verdict in an amount which, when interest on the amount and assessable costs from the date of filing of the complaint to the date of the mediation evaluation are added, is more than 10 percent below the panel's evaluation or pay actual costs to the plaintiff.

(3) If both parties reject the panel's evaluation and the amount of the verdict, when interest on the amount and assessable costs from the date of filing of the complaint to the date of the mediation evaluation are added, is no more than 10 percent greater or less than the panel's evaluation, each party is responsible for his own costs from the mediation date. If the verdict is in an amount which, when interest on the amount and assessable costs from the date of filing of the complaint to the date of mediation evaluation are added, is more than 10 percent greater than the panel's evaluation, the defendant must pay actual costs. If the verdict is in an amount which, when interest and assessable costs from the date of filing of the complaint to the date of the mediation evaluation are added, is more than 10 percent below the panel's evaluation, the plaintiff must pay actual costs.

.8 Actual Costs. Actual costs include those costs taxable in any civil action and a reasonable attorney fee as determined by the trial judge for services necessitated by the rejection of the panel's evaluation.

[Adopted May 9, 1980, effective July 1, 1980; amended June 6, 1980, effective June 17, 1980.]

APPENDIX C
Rule 32 of the United States District Court for the Eastern District of Michigan

Rule 32
Mediation

a. Eligible Cases

The Court * may submit any civil diversity case to mediation when the relief sought is exclusively money damages.

b. Manner of Selection of Cases

A case may be selected for mediation:

(1) By stipulation of the parties with the approval of the Court;

(2) On motion of a party with notice to the opposing party;

(3) On the Court's own motion without notice to any party.

c. Objection to Mediation Order on Court's Own Motion

(1) Objections must be made for reconsideration within 10 days of the Court's order.

(2) Copy of the motion for reconsideration is to be served on opposing counsel and on the Court.

(3) Mediation procedures are stayed pending decision on motion for reconsideration unless otherwise ordered by the Court.

d. Mediation Panel

Mediation shall be by a panel designated and supervised by the Mediation Tribunal Association, a nonprofit corporation, which presently is utilized by the Circuit Court for the Third Judicial Circuit of Michigan.

e. Procedure for Mediation

(1) Time and place for hearing; notice. After a case has been assigned for mediation, the Tribunal Clerk of the Mediation Tribunal Association shall set the time and place for the hearing and send notice to the mediators and opposing counsel at least 30 days before the date set.

(2) Submission of documents. At least 3 business days before the hearing date, 3 copies of all documents pertaining to the ques-

* The term Court means the Judge to whom the case has been assigned unless the context indicates otherwise.

tions of damages and liability shall be submitted to the Tribunal Clerk and one copy given to opposing counsel. The documents shall include all medical reports, bills, records, photographs, and any other documents supporting the party's claim. Failure to submit the documents within the time designated shall result in costs of $60 being assessed, payable at the time to the Mediation Tribunal Association.

(3) Presence of parties; evidence. A party has the right, but is not required, to attend or be present at a mediation hearing. When scars, disfigurement or other unusual conditions exist, they may be demonstrated to the Mediation Panel by a personal appearance; however, no testimony shall be taken or permitted of any party.

(4) Decision. Within 10 days after the hearing, the Mediation Panel shall make an evaluation of the case and shall notify each counsel of its evaluation in writing.

(5) Action on Mediation Panel's decision. Written acceptance or rejection of the Mediation Panel's evaluation shall be given to the Tribunal Clerk within 40 days of the mailing of the evaluation. There may be no disclosure of a party's acceptance or rejection of the evaluation until the expiration of 40 days following notification. At the expiration of the above period, the Tribunal Clerk shall send a notice indicating each counsel's acceptance or rejection of the evaluation.

f. Fees

Within 10 days after the mailing of the Notice of the Mediation Hearing, each plaintiff and each defendant shall send to the Mediation Tribunal Association a check for $75 for each award requested. Derivative claims (husband/wife, parent/child) shall be treated as one award. In the case of multiple parties, unless the case is a derivative one, each party shall pay the sum of $75 for each award. For each fee paid, the Mediation Panel shall make an award.

g. Hearings

Presentations to a Mediation Panel shall be limited to 15 minutes a side unless there are multiple parties or unusual circumstances warranting additional time. The mediators may request information on the status of settlement negotiations and applicable insurance limits.

h. Adjournment of Hearing

(1) Adjournments of mediation hearings may be had only for good cause shown upon motion to the Court.

(2) When cases are selected or otherwise disposed of before the hearing date, it is the duty of counsel to notify the Tribunal Clerk of the disposition of the case as soon as possible so an attempt can be made to fill the time set aside for that hearing.

(3) If notice of the disposition of a case is given to the Tribunal Clerk at least 15 days before the hearing date, the fee paid to the Tribunal Clerk for that hearing shall be returned.

i. Evidence

The rules of evidence do not apply before the Mediation Panel. Factual information having a bearing on the question of damages must be supported by documentary evidence whenever possible.

j. Effect of Mediation

(1) If the Mediation Panel's evaluation is not rejected by any of the parties within 40 days, a judgment shall be entered by the Court in the amount of the award. The judgment shall include all fees, costs and interest to the date of judgment.

(2) If any party rejects the Mediation Panel's evaluation, the matter shall proceed to trial as the Court may direct. The penalty provisions set forth in j(3), (4) and (5) shall apply.

(3) If the Mediation Panel's evaluation is unanimous and the defendant accepts the evaluation but the plaintiff rejects it and the matter proceeds to trial, the plaintiff must obtain a verdict in an amount which, when interest on the amount and costs from the date of filing of the complaint to the date of the evaluation are added, is more than 10 percent greater than the evaluation in order to avoid the payment of actual costs to the defendant.

(4) If the Mediation Panel's evaluation is unanimous, and the plaintiff accepts the evaluation but the defendant rejects it and the matter proceeds to trial, the defendant must obtain a verdict in an amount which, when interest on the amount and costs from the date of filing of the complaint to the date of the evaluation are added, is more than 10 percent below the evaluation or pay actual costs.

(5) If the Mediation Panel's evaluation is unanimous and both parties reject the evaluation and the amount of the verdict, when interest on the amount and costs from the date of filing of the complaint to the date of the evaluation are added, is within 10 percent above or below the evaluation, each party is responsible for its own costs from the mediation date on. If

the verdict is in an amount which, when interest on the amount and costs from the date of filing of the complaint to the date of the evaluation are added, is more than 10 percent above the evaluation, the defendant shall be taxed actual costs. If the verdict is in an amount which, when interest on the amount and costs from the date of filing of the complaint to the date of the evaluation are added, is more than 10 percent below the evaluation, the plaintiff shall be taxed actual costs.

k. Actual Costs

Actual costs include those costs and fees taxable in any civil action and, in addition, an attorney fee for each day of trial as may be determined by the Court.

APPENDIX D
Forms Used in the Mediation Process by the Third Judicial Circuit Court

THIRD JUDICIAL CIRCUIT COURT	TRIAL AND MEDIATION NOTICE MAILING DATE:_____	CASE NO.

Nicholas Shaheen, Assignment Clerk, 1705 City-County Building, Detroit, Michigan 48226

Mediation Tribunal Association 1115 Lafayette Building Detroit, Michigan 48226

PLAINTIFF,	vs.	DEFENDANT,

_____ MEDIATION DATE TIME

_____ 9:00 A.M. TRIAL DATE TIME

Place: 1115 Lafayette Bldg., Detroit, Mich. 48226 Hon._____

If a defendant is in default, the default must be entered and motion for default judgment filed before trial date.	Failure to appear promptly on trial date will result in the dismissal or entry of a default judgment in this action.

PLEASE NOTIFY THE MEDIATION CLERK (313) 224-5606 AND THE ASSIGNMENT CLERK (313) 224-5255 IMMEDIATELY OF ANY ATTORNEY OF RECORD OR PARTIES IN PRO PER WHOSE NAMES DO NOT APPEAR ON THIS NOTICE.

ATTORNEYS OF RECORD AND PARTIES IN PRO PER:
(Name and BAR Number)

FROM: JUDGE TO: JUDGE

A COPY OF THIS NOTICE SHALL BE ATTACHED AND FILED WITH THE MEDIATION SUMMARY

INSTRUCTION SHEET

_____ v. _____ CASE NO. _____

MEDIATION

(See Local Court Rule 403)

1. Within ten days a check in the amount of $75.00 payable to the MEDIATION TRIBUNAL ASSOCIATION shall be forwarded to the Tribunal Clerk at 1115 Lafayette Building, Detroit, Michigan 48226. A copy of the Trial and Mediation Notice shall be attached.

2. SUBMISSION OF DOCUMENTS - At least three court days before the hearing date, three copies of all documents pertaining to the issues to be mediated (damages and liability) must be submitted directly to the Mediation Tribunal Association, 1115 Lafayette Building, Detroit, Michigan 48226, along with a copy to opposing counsel. The documents must include a summary with all medical reports, bills, records, photographs, and any other documents supporting the party's claim. Each party shall also submit a concise brief or summary setting forth that party's factual and legal position on issues presented by this action. A copy of the Trial and Mediation Notice shall be attached. A failure to submit these proofs within the above-designated time subjects the offending party to a $60.00 penalty payable at the time of the mediation hearing (to the MEDIATION TRIBUNAL ASSOCIATION).

3. Motions for adjournment of mediation/trial shall be heard by the Chief Judge every Wednesday at 2:00 P.M. upon filing of a motion praecipe with the Mediation Clerk and the Chief Judge's Clerk no later than the Friday preceding the Wednesday the motion is to be heard. Emergency motions to adjourn shall be presented directly to the Chief Judge.

Failure to comply with the rules for adjournment under this section subjects the offending counsel to the payment of ALL MEDIATION FEES FOR ALL OTHER PARTIES WHO ARE REQUIRED TO MAKE ADDITIONAL PAYMENT OF FEES.

IF THIS MATTER IS SETTLED OR OTHERWISE DISPOSED OF AND NOTICE OF SUCH DISPOSITION IS GIVEN TO THE TRIBUNAL CLERK AT LEAST 15 DAYS PRIOR TO THE DATE OF MEDIATION, ALL MEDIATION FEES WILL BE RETURNED TO THE PARTIES UPON SIGNING OF A RECEIPT TO THE TRIBUNAL CLERK.

[continued]

PRETRIAL STATEMENT

(Complete and file original copy with the settlement conference judge on the trial date.)

1. Discovery must be completed in accordance with L.C.R. 301.3(c).

2. If you desire a pretrial conference, pursuant to provisions of L.C.R. 301.1, you must file a motion requesting same and showing need. Your motion must be noticed for hearing not later than two months prior to the trial date.

3. Briefly state the facts on which your action/defense is based.

4. What are the real issues?

5. You must furnish opposing counsel within 20 days after receipt of this trial notice with a list of names and addresses of all witnesses, including experts, whom you plan to call at trial; experts must be so designated. Failure to furnish such witness list will result in penalty (see L.C.R. 301.7 and 301.11 for cases filed before January 1 of 1980 and L.C.R. 301.3 for cases filed after this date).

6. Itemize out-of-pocket expenses, to date.

7. No. 6 hereof must be completely answered and the original of this form returned to the County Clerk, 201 City-County Building, Detroit, Michigan 48226, and a copy served on all counsel not later than two months prior to the trial date whether you move for pretrial conference or not.

8. If trial by jury has been demanded pursuant to G.C.R. 508, the jury fee must have been paid in accordance with Wayne County Administrative Order 1978-1.

9. Failure to complete and timely return this form may result in the action being dismissed or a default judgment entered (see L.C.R. 8.3).

Revised: 3/31/83

Appendix D

STATE OF MICHIGAN
THIRD JUDICIAL CIRCUIT COURT

CASE

TO:

DATE
TIME

MEDIATION EVALUATION

The Board has evaluated the above captioned case at $ _____

Major Question
Equity_____ Liability_____ Its evaluation is unanimous Yes_____ No_____

_____

_____

_____

The Mediation Tribunal Clerk must be notified in writing of acceptance or rejection of this evaluation on or before _____
(L.C.R. 403 requires response within forty (40) days of this notice.)

_____ _____ _____

PLEASE DETACH AND RETURN TO TRIBUNAL CLERK

CASE

FROM

I ACCEPT THE MEDIATION AWARD OF $ _____ ON BEHALF OF_____

I REJECT THE MEDIATION AWARD OF $ _____ ON BEHALF OF_____

PLEASE CIRCLE YOUR NAME ABOVE AND SIGN HERE X_____

DATE OF MEDIATION PANEL

MEDIATION TRIBUNAL ASSOCIATION • 1115 LAFAYETTE BUILDING • DETROIT, MICH. 48226-2667 • PHONE (313)224-5606

STATE OF MICHIGAN

THIRD JUDICIAL CIRCUIT COURT

_____ V _____	CASE NO._____

STATEMENT OF UNDERSTANDING

WE THE UNDERSIGNED UNDERSTAND THAT IF THE MEDIATION BOARD'S EVALUATION IS NOT REJECTED IN WRITING, GIVEN TO THE TRIBUNAL CLERK WITHIN FORTY (40) DAYS, A JUDGMENT IS TO BE ENTERED PURSUANT TO L.C.R. 403.15(a). UPON APPEARANCE AND PAYMENT OF THE JUDGMENT FEE A JUDGMENT WILL BE ENTERED BY THE CHIEF JUDGE. FAILURE TO TIMELY ENTER THE JUDGMENT UNDER G.C.R. 522.1 WILL RESULT IN THE ENTRY OF THE ORDER INCORPORATING THE MEDIATION EVALUATION AND DISMISSING THE CASE UNLESS OBJECTION TO THE DISMISSAL ARE MADE AT THE HEARING.

_____

_____	_____
ATTORNEY FOR_____	ATTORNEY FOR_____
_____	_____
ATTORNEY FOR_____	ATTORNEY FOR_____
_____	_____
ATTORNEY FOR_____	ATTORNEY FOR_____
_____	_____
ATTORNEY FOR_____	ATTORNEY FOR_____

Appendix D

MEDIATION TRIBUNAL ASSOCIATION
1115 LAFAYETTE BUILDING, DETROIT, MICH. 48226-2667

NOTICE TO ATTORNEYS CONCERNING ACCEPTANCE OR REJECTION NOTICES

Attached you will find the final results of Mediation from the Mediation Tribunal Association. This notice indicates each counsel's acceptance or rejection of the Board's Evaluation and is being sent pursuant to L.C.R. 403.7(e).

In addition to providing notification of the Board's Evaluation as indicated above, the notice also gives an indication of the next scheduled court hearing or action. The next scheduled court hearing or action has been determined pursuant to L.C.R. 403.15 as follows:

1. If the Mediation evaluation has been accepted, a judgment is to be entered pursuant to L.C.R. 403.15(a). G.C.R. 522.1 provides that the judgment is to be submitted to the Chief Judge within 10 days. Failure to enter the judgment will result in the entry of an order incorporating the mediation board's evaluation and dismissing the case. If the mediation award has been accepted, the form order which has been completed on the reverse side of the acceptance or rejection notice has been sent by the Mediation Clerk to the Chief Judge. A judgment will be entered by the Chief Judge upon appearance and payment of the judgment fee. **Failure to timely enter the judgment will result in the entry of the order incorporating the mediation board's evaluation and dismissing the case which has been completed on the reverse side of the acceptance or rejection notice unless objection to the dismissal is made at the hearing. The attached notice and proposed order will serve as the court's notice of intent to dismiss.**

2. If the mediation evaluation is $10,000 or less and has been rejected, a date for hearing before the Chief Judge for the purpose of determining whether the case should be removed to the District Court has been set. The hearing date and location is noted on the attached notice. If the mediation award has been rejected, the form order which has been completed on the reverse side of the acceptance or rejection notice has been sent by the Mediation Clerk to the Chief Judge. The Chief Judge will enter an order of removal unless objection to removal is made at the hearing. **The attached notice will serve as the court's Notice of Removal Hearing.**

3. If the evaluation is over $10,000 and rejected, you will proceed to settlement conference and trial in the normal fashion. **If a settlement conference has been set, the date is noted on the attached notice.**

Please submit inquiries to:
Third Judicial Circuit Court
Docket Management
1707 City County Building
Detroit, Michigan 48226
(313) 224-5255

ORDER FOR REMOVAL OF ACTION TO LOWER COURT

At a session of said Court, held in the City-County Building, Detroit, Michigan on _____

PRESENT: HON. _____
Circuit Judge

IT IS HEREBY ORDERED IN accordance with the provisions of 1969 PA 258, as amended being Section 600.641 of the Compiled Laws of 1970 and L.C.R. 403.15(b) that the case specified on the reverse side of this order be removed to the _____ Court for further proceedings.

_____
Circuit Judge

ORDER INCORPORATING THE MEDIATION EVALUATION AND DISMISSING CAUSE

At a session of said Court, held in the City-County Building, Detroit, Michigan on _____

PRESENT: HON. _____
Circuit Judge

A mediation board's evaluation in this case not having been rejected as provided by L.C.R. 403.7(e) and a judgment not having been presented, it is therefore ordered that the mediation evaluation in the amount(s) specified on the reverse side of this order, which sums include all fees, costs and interest to the date hereof is hereby adopted by the Court. It is further ordered that the case specified on the reverse side of this order is hereby dismissed.

_____
Circuit Judge

MEDIATION TRIBUNAL ASSOCIATION
11TH FLOOR LAFAYETTE BUILDING
DETROIT, MICHIGAN 48226-2667
(313) 224-5606

NOTICE OF PAYMENT DUE

DATE _____

CASE NO. _____

_____

VS

_____

DATE OF MEDIATION _____

ATTORNEY _____

Please be advised that the records of the Mediation Tribunal Association indicate that the:

1. FEE FOR MEDIATION: _____
   See (W.C.L.C.R. 403.8) (U.S.Dist. Rule 32.6)
2. FEE FOR LATE NOTICE OF SETTLEMENT: _____
   See (W.C.L.C.R. 403.13(c)) (U.S. Dist. Rule 32.8(c))
3. FEE FOR ADJOURNMENT: _____
   See Order of Adjournment:
4. FINE FOR LATE FILING OF MEDIATION SUMMARIES: _____
   See (W.C.L.C.R. 403.7(b)) (U.S. Dist. Rule 32.5(b))
5. FINE FOR FAILURE TO FILE MEDIATION SUMMARIES: _____
   See (W.C.L.C.R. 403.7(b)) (U.S.Dist. Rule 32.5(b))

remain unpaid in this matter.

Please forward the sum indicated above, made payable to the Mediation Tribunal Association within ten (10) days. Failure to make payment due will require show cause proceedings. If your records indicate that payment has been made, please submit a copy of your cancelled check.

PLEASE RETURN A COPY OF THIS NOTICE ALONG WITH YOUR CHECK

APPENDIX E
Forms Used in the Mediation Process by the United States District Court for the Eastern District of Michigan

MEDIATION NOTICE

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MICHIGAN	CASE NO.
MEDIATION TRIBUNAL ASSOCIATION 1115 Lafayette Building Detroit, Michigan 48226-2667	

PLAINTIFF,	DEFENDANT,

MEDIATION DATE _____ TIME _____

Place: 1115 Lafayette Bldg., Detroit, Mich. 48226-2667

PLEASE NOTIFY THE MEDIATION CLERK (313) 224-5606 IMMEDIATELY OF ANY ATTORNEY OF RECORD OR PARTIES IN PRO PER WHOSE NAMES DO NOT APPEAR ON THIS NOTICE.

ATTORNEYS OF RECORD AND PARTIES IN PRO PER:
(Name and BAR Number)

JUDGE:

A COPY OF THIS NOTICE SHALL BE ATTACHED AND FILED WITH THE MEDIATION SUMMARY

INSTRUCTION SHEET

MEDIATION UNDER UNITED STATES DISTRICT COURT LOCAL RULE 32

1. Within 10 days after the mailing of the Notice of the Mediation Hearing, each plaintiff and each defendant shall send to the Mediation Tribunal Association a check for $75.00 for each award requested. Make check payable to the MEDIATION TRIBUNAL ASSOCIATION and forward it to the Tribunal Clerk at 1115 Lafayette Building, Detroit, Michigan 48226. *A copy of the Mediation Notice shall be attached.*

2. SUBMISSION OF DOCUMENTS – At least 3 business days before the hearing date, 3 copies of all documents pertaining to the question of damages and liability shall be submitted to the Tribunal Clerk and one copy given to opposing counsel. The documents shall include all medical reports, bills, records, photographs, and any other documents supporting the party's claim. *A copy of the Mediation Notice shall be attached.* Failure to submit the documents within the time designated shall result in costs of $60.00 being assessed, payable at the time to the Mediation Tribunal Association.

3. ADJOURNMENT OF HEARING – Adjournments of mediation hearing may be had only for good cause shown upon motion before the assigned judge.

IF THIS MATTER IS SETTLED OR OTHERWISE DISPOSED OF AND NOTICE OF SUCH DISPOSITION IS GIVEN THE TRIBUNAL CLERK AT LEAST 15 DAYS PRIOR TO THE HEARING DATE, THE FEE PAID TO THE TRIBUNAL CLERK FOR THAT HEARING SHALL BE RETURNED.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

_____V_____	_____ MAILING DATE:

NO. _____

_____ ATTORNEY FOR PLAINTIFF(S)

_____ ATTORNEY FOR DEFENDANT(S)

TO THE PARTIES TO THIS LAWSUIT AND THEIR COUNSEL:

The Mediation Board's evaluation was unanimous:

_____Yes _____No

You are hereby notified that the Mediation Board consisting of three experienced trial attorneys having at least 5 years of actual practice experience has evaluated this case for settlement purposes at $_____.

When the board's evaluation is unanimous, and the plaintiff accepts the board's evaluation but the defendant rejects it and the matter proceeds to trial, the defendant must obtain a verdict in an amount which, when interest on the amount and assessable costs from the date of filing of the complaint to the date of the mediation evaluation are added, is more than 10 percent below the evaluation of the board or pay actual costs.

When the board's evaluation is unanimous and the defendant accepts the evaluation but the plaintiff rejects it and the matter proceeds to trial, the plaintiff must obtain a verdict in an amount which, when interest on the amount and assessable costs from the date of filing of the complaint to the date of mediation evaluation are added, is 10 percent greater than the board's evaluation in order to avoid the payment of actual costs to the defendant.

ACTUAL COSTS

Actual costs include those costs and fees taxable in any civil action and, in addition, an attorney fee for each day of trial determined by the trial judge in accordance with the fee prevailing locally.

You are further notified that the Tribunal Clerk must be notified in writing of acceptance or rejection of the Mediation Board's evaluation within forty (40) days of the date of mailing of said evaluation. If the evaluation is not rejected within forty (40) days the evaluation shall be deemed to be accepted (NR) and an appropriate judgment will be entered by the court pursuant to Local Rule 32.

Mediation Tribunal Clerk
1115 Lafayette Building
Detroit, Michigan 48226-2667
224-5606

Appendix E

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

_____ VS _____ U.S. DIST. CT. NO. _____

WE UNDERSTAND THAT IF THE MEDIATION BOARD'S EVALUATION IS NOT REJECTED IN WRITING, GIVEN TO THE TRIBUNAL CLERK WITHIN 40 DAYS OF THE DATE OF THE BOARD'S EVALUATION THE PLAINTIFF(S) DEFENDANT(S) SHALL PRESENT A FORM OF JUDGMENT TO BE ENTERED IN THE AMOUNT OF THE BOARD'S EVALUATION WHICH INCLUDES ALL FEES, COSTS AND INTEREST TO THE DATE OF JUDGMENT.

_____

I HEREBY WAIVE MAILING OF THE MEDIATION BOARD'S EVALUATION UNDER LOCAL RULE 32.5(e) AND ACKNOWLEDGE PERSONAL SERVICE OF THE EVALUATION AWARD ON THE ABOVE DATE.

ATTORNEY FOR _____	ATTORNEY FOR _____
ATTORNEY FOR _____	ATTORNEY FOR _____
ATTORNEY FOR _____	ATTORNEY FOR _____

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

_____ V _____	NO. _____

Pursuant to Local Rule 32, you are hereby notified of the following acceptance or rejection by plaintiff(s) and defendant(s) of the mediation board's evaluation of:

EVALUATION DATE _____, AMT $ _____

ATTORNEYS OF RECORD

_____ _____

_____ *the board's evaluation* _____ *the board's evaluation*

_____ _____

_____ *the board's evaluation* _____ *the board's evaluation*

_____ _____

_____ *the board's evaluation* _____ *the board's evaluation*

_____

Local Rule 32.10(a)

If the mediation panel's evaluation is not rejected by any of the parties within 40 days, a judgment shall be entered by the Court in the amount of the award. The judgment shall include all fees, costs and interest to the date of judgment.

Local Rule 32.10(b)

If any party rejects the mediation panel's evaluation, the matter shall proceed to trial as the Court may direct. The penalty provisions set forth in 10(c), (d) and (e) shall apply.

MEDIATION TRIBUNAL ASSOCIATION
1115 Lafayette Bldg
Detroit, Michigan 48226-2667

Appendix E

MEDIATION TRIBUNAL ASSOCIATION
11TH FLOOR LAFAYETTE BUILDING
DETROIT, MICHIGAN 48226-2667
(313) 224-5606

NOTICE OF PAYMENT DUE

DATE _____

CASE NO. _____

_____

VS

_____

DATE OF MEDIATION _____

ATTORNEY _____

Please be advised that the records of the Mediation Tribunal Association indicate that the:

1. FEE FOR MEDIATION: _____
   See (W.C.L.C.R. 403.8) (U.S.Dist. Rule 32.6)
2. FEE FOR LATE NOTICE OF SETTLEMENT: _____
   See (W.C.L.C.R. 403.13(c)) (U.S. Dist. Rule 32.8(c))
3. FEE FOR ADJOURNMENT: _____
   See Order of Adjournment:
4. FINE FOR LATE FILING OF MEDIATION SUMMARIES: _____
   See (W.C.L.C.R. 403.7(b)) (U.S. Dist. Rule 32.5(b))
5. FINE FOR FAILURE TO FILE MEDIATION SUMMARIES: _____
   See (W.C.L.C.R. 403.7(b)) (U.S.Dist. Rule 32.5(b))

remain unpaid in this matter.

Please forward the sum indicated above, made payable to the Mediation Tribunal Association within ten (10) days. Failure to make payment due will require show cause proceedings. If your records indicate that payment has been made, please submit a copy of your cancelled check.

PLEASE RETURN A COPY OF THIS NOTICE ALONG WITH YOUR CHECK

THE FEDERAL JUDICIAL CENTER

The Federal Judicial Center is the research, development, and training arm of the federal judicial system. It was established by Congress in 1967 (28 U.S.C. §§ 620-629), on the recommendation of the Judicial Conference of the United States.

By statute, the Chief Justice of the United States is chairman of the Center's Board, which also includes the Director of the Administrative Office of the United States Courts and six judges elected by the Judicial Conference.

The Center's **Continuing Education and Training Division** provides educational programs and services for all third branch personnel. These include orientation seminars, programs on recent developments in law and law-related areas, on-site management training for support personnel, publications and audiovisual resources, and tuition support.

The **Research Division** undertakes empirical and exploratory research on federal judicial processes, court management, and sentencing and its consequences, usually at the request of the Judicial Conference and its committees, the courts themselves, or other groups in the federal court system.

The **Innovations and Systems Development Division** designs and tests new technologies, especially computer systems, that are useful for case management and court administration. The division also contributes to the training required for the successful implementation of technology in the courts.

The **Inter-Judicial Affairs and Information Services Division** prepares several periodic reports and bulletins for the courts and maintains liaison with state and foreign judges and related judicial administration organizations. The Center's library, which specializes in judicial administration materials, is located within this division.

The Center's main facility is the historic Dolley Madison House, located on Lafayette Square in Washington, D.C.

Copies of Center publications can be obtained from the Center's Information Services Office, 1520 H Street, N.W., Washington, D.C. 20005.

Federal Judicial Center
Dolley Madison House
1520 H Street, N.W.
Washington, D.C. 20005
202/633-6011