

# State of Michigan



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## Thirteenth Judicial Circuit

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## 13th CIRCUIT COURT MEDIATION PROTOCOLS

The following are guidelines for Court-approved mediators when arranging and conducting mediations. They have been suggested by the ADR Committee of the Grand Traverse/Leelanau/Antrim Bar Association and have been approved by the Judges of the 13<sup>th</sup> Circuit Court. These are guidelines and should be applied with reasonableness and discretion by the facilitative mediators. They are not meant to be absolute rules. Please contact the ADR Clerk, Trina N. Girardin, (231/922-4741 or [tgirardin@13thcircuitcourt](mailto:tgirardin@13thcircircuitcourt) if you have any questions. If you have suggestions for changes or additions, please submit them to the ADR Committee, c/o Lee Hornberger, (231/941-0746 or [leehornberger@leehornberger.com](mailto:leehornberger@leehornberger.com)) Chair of the Alternative Dispute Resolution of the Grand Traverse/Leelanau/Antrim Bar Association.

1. **Scheduling a Mediation.** The mediator should schedule the mediation time, date, and place through negotiation with the attorneys for the parties or the parties if unrepresented. (Hereafter, if "attorney" is mentioned, that means the party if not represented by a lawyer.) The mediator may use a third person to do the scheduling but should monitor it and should not allow one of the attorneys to schedule the mediation. Unless otherwise agreed, it is suggested that the mediation place be in the city or village where the Courthouse is located. The mediator is free to withdraw from a case if a suitable location cannot be arrived at within a reasonable time. The mediator should arrange for suitable facilities where the mediation is to occur.
2. **Timing of the Mediation.** At the time the mediator is engaged by the parties, the mediator should establish his or her parameters for the timing of the mediation. For example, the mediator should let the parties know if he or she will only conduct mediations at certain times. If the parties cannot agree on a starting time or ending time, the mediator should ask the ADR Clerk to establish the times.
3. **Confirming Mediation Scheduling.** Mediators are required to confirm in writing the time, date, and place of the mediation and to keep the ADR Clerk advised. Mediators are *REQUIRED* to contact the ADR Clerk *before rescheduling or canceling a mediation.*
4. **Scheduling Beyond the Facilitative Mediation Deadline.** The attorneys are responsible for contacting the Court if a mutually acceptable mediation date cannot occur prior to the deadline established in the Civil Scheduling Conference Order. The ADR Clerk should

be promptly advised if the parties have attempted to schedule mediation before the deadline and are unable to secure a date. The Court generally will allow a 30-day grace period if a date certain can be scheduled. The ADR Clerk will notify the attorneys and the mediator if such an extension is not allowed by the Court. Extensions beyond the 30-day grace period for the mediation must be by Court order. Attorneys who have held the first facilitative mediation and wish to have subsequent sessions beyond the deadline should keep the ADR Clerk advised. Mediations are to be completed before the final settlement conference.

5. Local Governmental Parties. If a local unit of government, such as a city, township, village, county, or school board, is a party to litigation that has been directed to mediation, that local government should be represented at the mediation in either of the two following ways:

- a. The attorney and a quorum of the elected body should be present. For example, the school board attorney and a majority of the school board should be present for a school district.
- b. The attorney, the chief executive or administrative officer, and one other elected official should be present and, if necessary, there should also have been scheduled a full board or commission meeting soon after the mediation session in order to review and ratify any recommended settlement. For example, the township attorney, supervisor, and clerk should be present and have previously scheduled a special town board meeting for three days after the mediation.

In addition to the alternative representation above, the local unit of government should be encouraged to have in attendance other key individuals involved in the underlying issues, such as the planner, planning commission chairman, or building inspector. Insurance representatives must also attend as described below.

6. Insurance Companies and Lien Holders. Often in litigation a party is insured and the insurance company has taken over their representation or in some way acknowledged coverage. Representatives of lien holders and representatives of insurance carriers *SHALL* be present and have information and authority adequate for responsible and effective participation in the conference for all purposes including settlement.

7. Excusing a Party or Attorney. Generally, all parties, persons with authority to settle, and lead attorneys must attend all mediation sessions. In rare cases, it may be permissible to allow a party or attorney to not attend, and this may occur where *all* parties agree to the absence *and* the mediator in his or her discretion determines that the person is not essential *and* the Court approves upon entry of a stipulation and order presented by counsel. However, this should be the rare exception used only in cases such as ill health or advanced age and where the absent person is fully represented and is available by telephone. The person who has the settlement authority is always required to attend.