

ADR Growth in Michigan Federal and State Courts

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Alternative Dispute Resolution Sweeps into the Eastern District of Michigan - We all know of the tremendous success achieved through mediation in the Detroit Bankruptcy Case. Yet facilitative mediation was not in the local Eastern District Rules until February 1, 2015.

New Eastern District LR 16.3 states:

(a) *ADR FAVORED*

"...The Judges of the district favor ADR methods in cases where the court determines, after consultation with the parties, that ADR may help resolve the case...." (Emphasis added)

(b) *CONSIDERATION of ADR*

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

The new local rules also include case evaluation, settlement conferences and other ADR procedures. This reference to other ADR procedures is an opening to an amazing number of different approaches being used to resolve disputes. An excellent review of the diversity of options for resolving disputes is found in the just released Office of Dispute Resolution Michigan Supreme Court's "Michigan Judges Guide to ADR Practice and Procedure."¹

The Guide begins with a list of ADR options and with the suggestion that these options can be discussed at numerous times throughout the dispute. I have a strong bias toward mediation, but it is not the only way to resolve disputes and it comes in many forms. The Guide includes a realistic definition of the mediation process.

"Mediation focuses more on "solutions" rather than determining who might be at fault. In earlier years, mediators spoke of helping parties find "win-win" solutions. That was perceived by some as setting the bar too high in terms of everyone leaving mediation a "winner." A more common objective is to help parties reach a "solution they can live with," meaning reaching a solution that, while arguably not optimal, avoids the risks and uncertainty of trial and allows the parties to put the matter behind them so that they can move on." P 20

Those of us involved with ADR, and in particular mediation, have come to understand the tremendous advantages of civilized discussions, understanding different perspectives and emphasizing the future instead of the past. It is exciting to see the Eastern District make such a strong statement in favor of ADR and equally exciting to see the tremendous sophistication in understanding the diversity in ADR practices represented by the "Michigan Judges Guide to ADR Practice and Procedure".



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