

**AMERICAN JUDGES ASSOCIATION
2011 ANNUAL EDUCATIONAL CONFERENCE
SESSION DESCRIPTION
JUDGE LEO BOWMAN/ BRYAN LEVY**

In this session Judge Bowman will discuss the use of mediation as a tool to facilitate settlement of civil cases. Judge Bowman's discussion will focus on case selection, scheduling considerations, when and how to select a mediator and the importance of timely decisions by the judge that serve to advance the mediation process.

Bryan Levy will outline the mediation process. He will discuss how mediation begins, types of mediation, the benefits of mediation, and finally how he closes the deal!

SETTLING THE CIVIL CASE

I. Mediation

- Michigan Court Rule 2.411 – covers mediation process.
- Policy – Favors mediation - ADR

Case Selection:

1. Month Long Trial
 2. (1) High Conflict Divorces
(2) Medical Malpractice
(3) Construction Litigation
- Identify Cases Early
 [HOW]
 - A. Number Lawyers
 - B. Number Litigants
 - C. Number Issues
 - D. Number Motions

II. EARLY PRETRIAL

Schedule Conference within 60 Days of filing Defendant's Answer
[WHY]

- A. Positions have not hardened
- B. Introduce concept mediation
- C. Discuss selection mediator
- D. Set date 2nd conference within 30 days

III. SECOND SCHEDULED CONFERENCE

- A. Appoint Mediator by consent agreement – most successful when parties agree.
 - B. Maintain List – Mediators
 - State Bar Association – Certified or Court Certified list.
 - Judges and Attorneys.
- ** Note: If parties agree then mediator need not be on certified list****
- C. Enter Court Ordering Compelling Mediation and Appointing Mediator.
 - Set Date(s) – parties flexible
 - All parties present.

IV. MAINTAIN JUDGE MEDIATOR –COMMUNICATION

[WHY]

- A. Know what's going on in case
- B. Know important issues
- C. Timely decisions – motions- (facilitate –settlement)
 - Summary Judgment – **Post Appointment (mediator)**

V. MEDIATION - DATE

- ❖ Case Potentially Settles
- ❖ What to do if case does not settle?
 - Advise mediator of trial date
 - Secure mediator presence at trial.

VI [TRIAL DATE] – Mediation

- A. Decisions - Release
 - Motions in Limine
 - Evidentiary Issues

B. Courts – Review –Case

Decision will be: Plus one side/Minus one side

- Plaintiff's problems
- Defendant's problems

C. Mediator – Present

1. Order direct parties to discuss case with settlement in mind
2. 80% Settle