

<b>STATE OF MICHIGAN 6<sup>TH</sup> JUDICIAL CIRCUIT COURT OAKLAND COUNTY PROBATE COURT</b>	<b>SELECTION OF CASE EVALUATORS AND CASE EVALUATION PANELS</b>	<b>ADMINISTRATIVE ORDER CIRCUIT 2019-13J PROBATE 2019-02J</b>
---	--	---

**IT IS ORDERED:**

This administrative order is issued in accordance with MCR 2.404 and is effective September 4, 2019. This order sets forth a plan to maintain a list of persons available to serve as case evaluators and to assign case evaluators from the list to case evaluation panels. Previous Circuit Administrative Order-2017-10J, and Probate Administrative Order 2017-03J, Selection of Case Evaluators and Case Evaluation Panels, are rescinded.

**1. List of Case Evaluators**

- A. Case Evaluator Application. Applicants who wish to be placed on the Oakland Circuit Court’s case evaluators list must complete the Court’s Case Evaluator Application. Applications are available in the Case Management Office and at the Oakland County Bar Association (OCBA).
- B. Case Evaluator Eligibility. Potential case evaluators must meet the following requirements:
  - 1) The applicant must have been a practicing lawyer for at least five years and be in good standing of the State Bar of Michigan;
  - 2) The applicant must reside, maintain an office, or have an active practice in Oakland County; and
  - 3) An applicant must demonstrate that a substantial portion of his or her practice for the last-five years has been devoted to civil litigation matters, including investigation, discovery, motion practice, case evaluation, settlement, trial preparation, and/or trial.
  - 4) An applicant who seeks inclusion in a separate sublist must have an active practice in the practice area for at least the last three years.

**2. Review of Applications**

- A. Applications shall be reviewed at least semiannually by the Oakland County Circuit Court in cooperation with the OCBA Circuit Court Case Evaluation Committee. The committee shall be comprised of members of the OCBA appointed by the president of the Bar Association and representatives of the Court appointed by the Chief Judge.

- B. At least three members of the committee, including one representative of the Court, must be present to review and approve case evaluator applications.
- C. Applicants not placed on the case evaluator list shall be notified in writing of the decision. The written notice shall advise the applicant that he or she may reapply for inclusion on the list in 120 days or sooner if the reason for denial has been corrected.
- D. Any applicant not approved by the committee may, within 21 days of denial, write a letter of appeal to the chairperson of the committee requesting a review of his or her application.
- E. Upon receipt of an appeal, the chair of the committee shall appoint two individuals who have previously served on the committee (but who are not current members), and the Chief Judge shall appoint two judges to review the appeal. The appeal committee shall complete its review and issue its decision in writing within 60 days of receipt of the appeal.
- F. An applicant who is denied placement by the appeal committee described in section (g) above may reapply to the OCBA Circuit Court Case Evaluation Committee for inclusion on the case evaluator list after one year from date of appeal committee's decision. Any reapplication shall be treated as a new application for purposes for evaluation.

### **3. Specialized Lists**

- A. The Oakland Circuit Court shall maintain separate lists of case evaluators divided into the following concentrations of legal practice:
  - 1) Personal injury/negligence law
  - 2) Commercial law
  - 3) Medical malpractice law
  - 4) Auto no-fault law
  - 5) Complex commercial law
  - 6) Employment/labor law
- B. The Oakland Circuit Court shall maintain separate lists of Plaintiff Case Evaluators comprised of attorneys who primarily represent civil plaintiffs in each of the concentrations of legal practice referenced above except commercial and complex commercial law.
- C. The Oakland Circuit Court shall maintain separate lists of Defense Case Evaluators comprised of attorneys who primarily represent civil defendants in each of the

concentrations of legal practice referenced above except commercial and complex commercial law.

D. The Oakland Circuit Court shall maintain separate lists of Neutral Case Evaluators except for commercial and complex commercial law lists wherein all panelists are considered neutral.

1) MCR 2.404(B)(2)(c) requires that a substantial portion of the applicant's practice has been devoted to civil litigation matters for the last 5 years and,

i. The applicant must further demonstrate that a substantial portion of their practice has involved the representation of plaintiffs and a substantial portion of their practice has involved the representation of defendants during the past 15 years or,

ii. Alternatively, the applicant must demonstrate regular service in other ADR settings as a neutral or facilitator.

2) Section 3(D)(1)(i) of this LAO shall be not be construed as mandating that an applicant meets the requirement for the entire 15 years, or that the applicant has 15 years of practice.

#### **4. Term of Placement on Case Evaluators List**

A. A person may remain on the list for seven years. At the end of that time, he or she must reapply in the same manner as persons seeking to be added to the list.

#### **5. List Availability**

A. The list shall be available to the public in the Case Evaluation Office and at the Oakland County Bar Association

#### **6. Removal from List**

A. An individual may be removed from the list for demonstrated incompetency, bias, consistent unavailability to serve as a case evaluator or for other just cause.

B. The removal procedures may be initiated by the Case Evaluation Office, the Court, or the OCBA Circuit Court Case Evaluation Committee.

1) The procedure is confidential.

2) The party initiating the removal process must submit a written complaint setting forth the specific details of the complaint to the Oakland Circuit Court Case Evaluation Office. If the complainant is the Case Evaluation Office, he or she will submit a written complaint according to the procedures outlined below.

3) The Case Evaluation Office will furnish copies of the complaint to:

- a) the case evaluator(s) against whom the complaint is made;
  - b) the Chief Judge and the Court Administrator;
  - c) the chair of the OCBA Circuit Court Case Evaluation Committee; and
  - d) the chair of the case evaluation panel.
- 4) The chair of the OCBA Circuit Court Case Evaluation Committee will assign a member or members of the committee to investigate the complaint, and to prepare and present a written report to the general committee within 30 days.
  - 5) The chair of the OCBA Circuit Court Case Evaluation Committee will forward the written report of the findings and recommendations, if any, to:
    - a) the complainant;
    - b) the case evaluator(s) against whom the complaint was filed;
    - c) the Chief Judge, Court Administrator, and the Case Evaluation Office; and
    - d) the chair of the case evaluation panel.
  - 6) Unless a regular OCBA Circuit Court Case Evaluation Committee meeting is already scheduled, the chair will convene a special meeting within 30 days of receipt of the written report. A majority of committee members must be present.
  - 7) The case evaluator who is the subject of the complaint may attend and shall be given the opportunity to explain his or her position.
  - 8) Following discussion of the report and the case evaluator's opportunity to explain his or her position, the case evaluator will be removed from the list if a three-quarter majority of the committee members present vote to remove the person from the case evaluator list.
  - 9) A person removed from the case evaluator list may reapply after one year from the date of removal from the list. The individual must certify that he or she has corrected the reason for removal from the list and present supporting documentation.
  - 10) A removed case evaluator may write a letter of appeal to the Chief Judge, requesting review of the OCBA Circuit Court Case Evaluation Committee's decision to remove him or her from the list. The Chief Judge's decision on the matter is final.

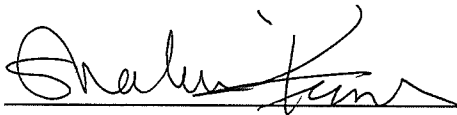
- 11) Only the assigned circuit court judge has the authority to issue orders regarding case evaluation. Neither the Case Evaluation Office nor the OCBA Circuit Court Case Evaluation Committee has authority to order reevaluation of a case or to modify or set aside a case evaluation award.

**7. Orientation and Training**

- A. All individuals who qualify to be case evaluators must complete the case evaluator training developed and administered by the OCBA.

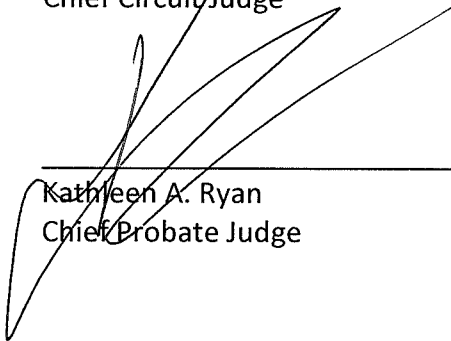
**8. Assignment to Panels**

- A. The Case Evaluation Office will assign case evaluators. The assignment must be in a random or rotating manner to assure that, as close as practicable, each case evaluator is assigned approximately the same number of cases over a period of time.



Shalina Kumar  
Chief Circuit Judge

9/4/19  
Date



Kathleen A. Ryan  
Chief Probate Judge

9/4/19  
Date

Notes:

- i. This modification to Circuit LAO 2017-05J and Probate LAO 2017-02J was adopted to expand the pool of eligible and qualified Case Evaluation Panel Neutrals for "Specialized Lists" pursuant to MCR 2.404(4).