

## REVISED JUDICATURE ACT OF 1961 (EXCERPT)

### Act 236 of 1961

#### CHAPTER 49

##### **600.4901 "Panel" defined.**

Sec. 4901. As used in this chapter, "panel" means a mediation panel selected pursuant to section 4905.

**History:** Add. 1986, Act 178, Eff. Oct. 1, 1986.

**Compiler's note:** Section 3 of Act 178 of 1986 provides:

"(1) Sections 2925b, 5805, 5838, and 5851 of Act No. 236 of the Public Acts of 1961, as amended by this amendatory act, shall not apply to causes of action arising before October 1, 1986.

"(2) Sections 1483, 5838a, and 6304 of Act No. 236 of the Public Acts of 1961, as added by this amendatory act, shall apply to causes of action arising on or after October 1, 1986.

"(3) Sections 1629, 1653, 2169, 2591, 2912c, 2912d, 2912e, 6098, 6301, 6303, 6305, 6306, 6307, 6309, and 6311 of Act No. 236 of the Public Acts of 1961, as added by this amendatory act, shall apply to cases filed on or after October 1, 1986.

"(4) Sections 1651 and 6013 of Act No. 236 of the Public Acts of 1961, as amended by this amendatory act, shall not apply to cases filed before October 1, 1986.

"(5) Chapter 49 of Act No. 236 of the Public Acts of 1961, as added by this amendatory act, shall apply to cases filed on or after January 1, 1987.

"(6) Chapter 49a of Act No. 236 of the Public Acts of 1961, as added by this amendatory act, shall apply to cases filed in judicial circuits which are comprised of more than 1 county on or after July 1, 1990 and shall apply to cases filed in judicial circuits which are comprised of 1 county on or after October 1, 1988."

##### **600.4903 Mediation of action alleging medical malpractice; time for referring action to mediation; hearing by mediation panel.**

Sec. 4903. (1) An action alleging medical malpractice shall be mediated pursuant to this chapter.

(2) The judge to whom an action alleging medical malpractice is assigned or the chief judge shall refer the action to mediation by written order not less than 91 days after the filing of the answer or answers.

(3) An action referred to mediation pursuant to subsection (2) shall be heard by a mediation panel selected pursuant to section 4905.

**History:** Add. 1986, Act 178, Eff. Oct. 1, 1986.

**Compiler's note:** Section 3 of Act 178 of 1986 provides:

"(1) Sections 2925b, 5805, 5838, and 5851 of Act No. 236 of the Public Acts of 1961, as amended by this amendatory act, shall not apply to causes of action arising before October 1, 1986.

"(2) Sections 1483, 5838a, and 6304 of Act No. 236 of the Public Acts of 1961, as added by this amendatory act, shall apply to causes of action arising on or after October 1, 1986.

"(3) Sections 1629, 1653, 2169, 2591, 2912c, 2912d, 2912e, 6098, 6301, 6303, 6305, 6306, 6307, 6309, and 6311 of Act No. 236 of the Public Acts of 1961, as added by this amendatory act, shall apply to cases filed on or after October 1, 1986.

"(4) Sections 1651 and 6013 of Act No. 236 of the Public Acts of 1961, as amended by this amendatory act, shall not apply to cases filed before October 1, 1986.

"(5) Chapter 49 of Act No. 236 of the Public Acts of 1961, as added by this amendatory act, shall apply to cases filed on or after January 1, 1987.

"(6) Chapter 49a of Act No. 236 of the Public Acts of 1961, as added by this amendatory act, shall apply to cases filed in judicial circuits which are comprised of more than 1 county on or after July 1, 1990 and shall apply to cases filed in judicial circuits which are comprised of 1 county on or after October 1, 1988."

##### **600.4905 Mediation panel; selection and qualifications of members; judge as member; grounds for disqualification as mediator.**

Sec. 4905. (1) A mediation panel shall be composed of 5 voting members, 3 of whom shall be licensed attorneys, 1 of whom shall be a licensed or registered health care provider selected by the defendant or defendants and 1 of whom shall be a licensed or registered health care provider selected by the plaintiff or plaintiffs. If a defendant is a specialist, the health care provider members of the panel shall specialize in the same or a related, relevant area of health care as the defendant.

(2) Except as otherwise provided in subsection (1), the procedure for selecting mediation panel members and their qualifications shall be as prescribed by the Michigan court rules or local court rules.

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

(4) The grounds for disqualification of a mediator are the same as that provided in the Michigan court rules for the disqualification of a judge.

**History:** Add. 1986, Act 178, Eff. Oct. 1, 1986.

**Compiler's note:** Section 3 of Act 178 of 1986 provides:

"(1) Sections 2925b, 5805, 5838, and 5851 of Act No. 236 of the Public Acts of 1961, as amended by this amendatory act, shall not apply to causes of action arising before October 1, 1986.

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of action arising on or after October 1, 1986.

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“(4) Sections 1651 and 6013 of Act No. 236 of the Public Acts of 1961, as amended by this amendatory act, shall not apply to cases filed before October 1, 1986.

“(5) Chapter 49 of Act No. 236 of the Public Acts of 1961, as added by this amendatory act, shall apply to cases filed on or after January 1, 1987.

“(6) Chapter 49a of Act No. 236 of the Public Acts of 1961, as added by this amendatory act, shall apply to cases filed in judicial circuits which are comprised of more than 1 county on or after July 1, 1990 and shall apply to cases filed in judicial circuits which are comprised of 1 county on or after October 1, 1988.”

#### **600.4907 Mediation clerk; designation; setting time and place for mediation hearing; notice; adjournments.**

Sec. 4907. (1) 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.

(2) The mediation clerk shall set a time and place for the mediation hearing and send notice to the mediators and the attorneys of record at least 28 days before the date set for the mediation hearing.

(3) Adjournments of mediation hearings shall be granted only for good cause, in accordance with the Michigan court rules.

**History:** Add. 1986, Act 178, Eff. Oct. 1, 1986.

**Compiler's note:** Section 3 of Act 178 of 1986 provides:

“(1) Sections 2925b, 5805, 5838, and 5851 of Act No. 236 of the Public Acts of 1961, as amended by this amendatory act, shall not apply to causes of action arising before October 1, 1986.

“(2) Sections 1483, 5838a, and 6304 of Act No. 236 of the Public Acts of 1961, as added by this amendatory act, shall apply to causes of action arising on or after October 1, 1986.

“(3) Sections 1629, 1653, 2169, 2591, 2912c, 2912d, 2912e, 6098, 6301, 6303, 6305, 6306, 6307, 6309, and 6311 of Act No. 236 of the Public Acts of 1961, as added by this amendatory act, shall apply to cases filed on or after October 1, 1986.

“(4) Sections 1651 and 6013 of Act No. 236 of the Public Acts of 1961, as amended by this amendatory act, shall not apply to cases filed before October 1, 1986.

“(5) Chapter 49 of Act No. 236 of the Public Acts of 1961, as added by this amendatory act, shall apply to cases filed on or after January 1, 1987.

“(6) Chapter 49a of Act No. 236 of the Public Acts of 1961, as added by this amendatory act, shall apply to cases filed in judicial circuits which are comprised of more than 1 county on or after July 1, 1990 and shall apply to cases filed in judicial circuits which are comprised of 1 county on or after October 1, 1988.”

#### **600.4909 Mediation fee.**

Sec. 4909. (1) Within 14 days after the mailing of the notice of the mediation hearing, each party shall submit payment to the mediation clerk of a mediation fee of \$75.00 in the manner specified in the notice of the mediation hearing. However, if a judge is a member of the panel, the fee shall be \$50.00. Only a single fee is required of each party, even if there are counterclaims, cross-claims, or third-party claims. The mediation clerk shall arrange payment to the mediators.

(2) If a claim is derivative of another claim, the claims shall be treated as a single claim, with 1 fee to be paid and a single award made by the mediators.

(3) In the case of multiple injuries to members of a single family, the plaintiffs may elect to treat the action as involving 1 claim, with the payment of 1 fee and the rendering of 1 lump sum award to be accepted or rejected. If such an election is not made, a separate fee shall be paid for each plaintiff, and the mediation panel shall then make separate awards for each claim, which may be individually accepted or rejected.

**History:** Add. 1986, Act 178, Eff. Oct. 1, 1986.

**Compiler's note:** Section 3 of Act 178 of 1986 provides:

“(1) Sections 2925b, 5805, 5838, and 5851 of Act No. 236 of the Public Acts of 1961, as amended by this amendatory act, shall not apply to causes of action arising before October 1, 1986.

“(2) Sections 1483, 5838a, and 6304 of Act No. 236 of the Public Acts of 1961, as added by this amendatory act, shall apply to causes of action arising on or after October 1, 1986.

“(3) Sections 1629, 1653, 2169, 2591, 2912c, 2912d, 2912e, 6098, 6301, 6303, 6305, 6306, 6307, 6309, and 6311 of Act No. 236 of the Public Acts of 1961, as added by this amendatory act, shall apply to cases filed on or after October 1, 1986.

“(4) Sections 1651 and 6013 of Act No. 236 of the Public Acts of 1961, as amended by this amendatory act, shall not apply to cases filed before October 1, 1986.

“(5) Chapter 49 of Act No. 236 of the Public Acts of 1961, as added by this amendatory act, shall apply to cases filed on or after January 1, 1987.

“(6) Chapter 49a of Act No. 236 of the Public Acts of 1961, as added by this amendatory act, shall apply to cases filed in judicial circuits which are comprised of more than 1 county on or after July 1, 1990 and shall apply to cases filed in judicial circuits which are comprised of 1 county on or after October 1, 1988.”

#### **600.4911 Submission of documents and brief or summary to mediation clerk; penalty for failure to submit materials.**

Sec. 4911. (1) At least 7 days before the mediation hearing date, each party shall submit to the mediation clerk 5 copies of the documents pertaining to the issues to be mediated and 5 copies of a concise brief or summary setting forth that party's factual or legal position on issues presented by the action. In addition, 1 copy of each shall be served on each attorney of record.

(2) Failure to submit the materials to the mediation clerk as prescribed in subsection (1) shall subject the offending party to a \$60.00 penalty to be paid at the time of the mediation hearing and distributed equally among the mediators.

**History:** Add. 1986, Act 178, Eff. Oct. 1, 1986.

**Compiler's note:** Section 3 of Act 178 of 1986 provides:

“(1) Sections 2925b, 5805, 5838, and 5851 of Act No. 236 of the Public Acts of 1961, as amended by this amendatory act, shall not apply to causes of action arising before October 1, 1986.

“(2) Sections 1483, 5838a, and 6304 of Act No. 236 of the Public Acts of 1961, as added by this amendatory act, shall apply to causes of action arising on or after October 1, 1986.

“(3) Sections 1629, 1653, 2169, 2591, 2912c, 2912d, 2912e, 6098, 6301, 6303, 6305, 6306, 6307, 6309, and 6311 of Act No. 236 of the Public Acts of 1961, as added by this amendatory act, shall apply to cases filed on or after October 1, 1986.

“(4) Sections 1651 and 6013 of Act No. 236 of the Public Acts of 1961, as amended by this amendatory act, shall not apply to cases filed before October 1, 1986.

“(5) Chapter 49 of Act No. 236 of the Public Acts of 1961, as added by this amendatory act, shall apply to cases filed on or after January 1, 1987.

“(6) Chapter 49a of Act No. 236 of the Public Acts of 1961, as added by this amendatory act, shall apply to cases filed in judicial circuits which are comprised of more than 1 county on or after July 1, 1990 and shall apply to cases filed in judicial circuits which are comprised of 1 county on or after October 1, 1988.”

**600.4913 Right of party to attend mediation hearing; personal appearance to demonstrate unusual conditions; testimony prohibited; rules of evidence inapplicable; factual information; limitation on oral presentation; requests and inquiries by panel; admissibility of statements, briefs, or summaries.**

Sec. 4913. (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 mediation panel by a personal appearance; however, testimony shall not be taken or permitted of any party.

(2) The Michigan rules of evidence shall not apply before the mediation panel. Factual information having a bearing on damages or liability shall 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 and may inquire about settlement negotiations, unless a party objects.

(4) Statements by the attorneys and the briefs or summaries are not admissible in any subsequent court or evidentiary proceeding.

**History:** Add. 1986, Act 178, Eff. Oct. 1, 1986.

**Compiler's note:** Section 3 of Act 178 of 1986 provides:

“(1) Sections 2925b, 5805, 5838, and 5851 of Act No. 236 of the Public Acts of 1961, as amended by this amendatory act, shall not apply to causes of action arising before October 1, 1986.

“(2) Sections 1483, 5838a, and 6304 of Act No. 236 of the Public Acts of 1961, as added by this amendatory act, shall apply to causes of action arising on or after October 1, 1986.

“(3) Sections 1629, 1653, 2169, 2591, 2912c, 2912d, 2912e, 6098, 6301, 6303, 6305, 6306, 6307, 6309, and 6311 of Act No. 236 of the Public Acts of 1961, as added by this amendatory act, shall apply to cases filed on or after October 1, 1986.

“(4) Sections 1651 and 6013 of Act No. 236 of the Public Acts of 1961, as amended by this amendatory act, shall not apply to cases filed before October 1, 1986.

“(5) Chapter 49 of Act No. 236 of the Public Acts of 1961, as added by this amendatory act, shall apply to cases filed on or after January 1, 1987.

“(6) Chapter 49a of Act No. 236 of the Public Acts of 1961, as added by this amendatory act, shall apply to cases filed in judicial circuits which are comprised of more than 1 county on or after July 1, 1990 and shall apply to cases filed in judicial circuits which are comprised of 1 county on or after October 1, 1988.”

**600.4915 Evaluation by panel; notice; contents of evaluation; determination that action or defense is frivolous; posting cash or surety bond; payment of costs and attorney fees; separate awards; treating claims as single claim.**

Sec. 4915. (1) Except as otherwise provided in subsection (2), within 14 days after the mediation hearing, the panel shall make an evaluation and notify the attorney for each party of its evaluation in writing. The evaluation shall include a specific finding on the applicable standard of care. If an award is not unanimous, the evaluation shall so indicate.

(2) If the panel unanimously determines that a complete action or defense is frivolous as to any party, the panel shall so state as to that party. If the action proceeds to trial, the party who has been determined to have a frivolous action or defense shall post a cash or surety bond, approved by the court, in the amount of \$5,000.00

for each party against whom the action or defense was determined to be frivolous. If judgment is entered against the party who posted the bond, the bond shall be used to pay all reasonable costs incurred by the other parties and any costs allowed by law or by court rule, including court costs and reasonable attorney fees.

(3) The evaluation shall include a separate award as to each cross-claim, counterclaim, or third-party claim that has been filed in the action. For the purpose of this subsection, all such claims filed by any 1 party against any other party shall be treated as a single claim.

**History:** Add. 1986, Act 178, Eff. Oct. 1, 1986.

**Compiler's note:** Section 3 of Act 178 of 1986 provides:

“(1) Sections 2925b, 5805, 5838, and 5851 of Act No. 236 of the Public Acts of 1961, as amended by this amendatory act, shall not apply to causes of action arising before October 1, 1986.

“(2) Sections 1483, 5838a, and 6304 of Act No. 236 of the Public Acts of 1961, as added by this amendatory act, shall apply to causes of action arising on or after October 1, 1986.

“(3) Sections 1629, 1653, 2169, 2591, 2912c, 2912d, 2912e, 6098, 6301, 6303, 6305, 6306, 6307, 6309, and 6311 of Act No. 236 of the Public Acts of 1961, as added by this amendatory act, shall apply to cases filed on or after October 1, 1986.

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“(6) Chapter 49a of Act No. 236 of the Public Acts of 1961, as added by this amendatory act, shall apply to cases filed in judicial circuits which are comprised of more than 1 county on or after July 1, 1990 and shall apply to cases filed in judicial circuits which are comprised of 1 county on or after October 1, 1988.”

#### **600.4917 Filing written acceptance or rejection of evaluation; failure to file as acceptance; disclosure of acceptance or rejection; notice; rules applicable in mediations involving multiple parties.**

Sec. 4917. (1) Each party shall file a written acceptance or rejection of the mediation panel's evaluation with the mediation clerk within 28 days after service of the panel's evaluation. The failure to file a written acceptance or rejection within the 28 days constitutes acceptance.

(2) A party's acceptance or rejection of the panel's evaluation shall not be disclosed until the expiration of the 28-day period, at which time the mediation clerk shall send a notice indicating each party's acceptance or rejection of the panel's evaluation.

(3) In mediations involving multiple parties, the following rules apply:

(a) Each party has the option of accepting all of the awards covering the claims by or against that party or of accepting some and rejecting others. However, as to any particular opposing party, the party shall either accept or reject the evaluation in its entirety.

(b) A party who accepts all of the awards may specifically indicate that he or she intends the acceptance to be effective only if all opposing parties accept. If this limitation is not included in the acceptance, an accepting party is considered to have agreed to entry of judgment as to that party and those of the opposing parties who accept, with the action to continue between the accepting party and those opposing parties who reject.

(c) If a party makes a limited acceptance under subdivision (b) and some of the opposing parties accept and others reject, for the purposes of the cost provisions of section 4921, the party who made the limited acceptance is considered to have rejected as to those opposing parties who accept.

**History:** Add. 1986, Act 178, Eff. Oct. 1, 1986.

**Compiler's note:** Section 3 of Act 178 of 1986 provides:

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“(2) Sections 1483, 5838a, and 6304 of Act No. 236 of the Public Acts of 1961, as added by this amendatory act, shall apply to causes of action arising on or after October 1, 1986.

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“(6) Chapter 49a of Act No. 236 of the Public Acts of 1961, as added by this amendatory act, shall apply to cases filed in judicial circuits which are comprised of more than 1 county on or after July 1, 1990 and shall apply to cases filed in judicial circuits which are comprised of 1 county on or after October 1, 1988.”

#### **600.4919 Entry of judgment; action to proceed to trial upon rejection; placing copies of evaluation, acceptances, and rejections in sealed envelope; filing envelope with clerk of court; opening envelope; evaluation not exceeding jurisdictional limitation of district court.**

Sec. 4919. (1) If all the parties accept the mediation panel's evaluation, judgment shall be entered in that amount, which shall include all fees, costs, and interest to the date of judgment.

(2) In a case involving multiple parties, judgment shall be entered as to those opposing parties who have accepted the portions of the evaluation that apply to them.

(3) Except as otherwise provided in this chapter for multiple parties, if all or part of the evaluation of the mediation panel is rejected, the action shall proceed to trial.

(4) 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. In a nonjury action, the envelope shall not be opened and the parties shall not reveal the amount of the evaluation until the judge has rendered judgment.

(5) If the mediation evaluation of an action pending in the circuit court does not exceed the jurisdictional limitation of the district court, the mediation clerk shall so inform the trial judge.

**History:** Add. 1986, Act 178, Eff. Oct. 1, 1986.

**Compiler's note:** Section 3 of Act 178 of 1986 provides:

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"(5) Chapter 49 of Act No. 236 of the Public Acts of 1961, as added by this amendatory act, shall apply to cases filed on or after January 1, 1987.

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#### **600.4921 Payment of actual costs; adjustment of verdict; scope of actual costs; condition prohibiting award of costs.**

Sec. 4921. (1) If a party has rejected an evaluation and the action proceeds to trial, that party shall pay the opposing party's actual costs unless the verdict is more favorable to the rejecting party than the mediation evaluation. However, if the opposing party has also rejected the evaluation, that party is entitled to costs only if the verdict is more favorable to that party than the mediation evaluation.

(2) For the purpose of subsection (1), a verdict shall be adjusted by adding to it assessable costs and interest on the amount of the verdict from the filing of the complaint to the date of the mediation evaluation. After this adjustment, the verdict is considered more favorable to a defendant if it is more than 10% below the evaluation, and is considered more favorable to the plaintiff if it is more than 10% above the evaluation.

(3) For the purpose of this section, 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 mediation evaluation.

(4) Costs shall not be awarded if the mediation award was not unanimous.

**History:** Add. 1986, Act 178, Eff. Oct. 1, 1986.

**Compiler's note:** Section 3 of Act 178 of 1986 provides:

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#### **600.4923 Delay of trial date scheduled in advance of date set for mediation hearing; applicability of section.**

Sec. 4923. A trial date scheduled in advance of the date set for a mediation hearing shall not be delayed because the mediation hearing was not held, unless the court finds that the interests of justice are served by the mediation proceeding. This section shall not apply if the mediation hearing was adjourned under section 4907(3).



**History:** Add. 1986, Act 178, Eff. Oct. 1, 1986.

**Compiler's note:** Section 3 of Act 178 of 1986 provides:

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