

Legal Update Article

# Michigan Makes Case Evaluation Voluntary

By Marlo Johnson Roebuck

March 8, 2022

## Meet the Authors



### Marlo Johnson Roebuck

(She/Her)

Principal

(248) 936-1928

Marlo.Roebuck@jacksonlewis.com

## Related Services

Alternative Dispute Resolution

Employment Litigation

Trials and Appeals

Michigan has changed its rules to allow parties in most civil cases brought in Michigan state courts to choose a different alternative dispute resolution method after the close of pretrial discovery than the mandatory alternative dispute resolution process called “case evaluation.”

### Previous Rules

Under the mandatory program, the parties submit briefs to a panel of three neutral evaluators (attorneys or retired judges), then appear at a hearing for oral arguments. If both parties accept the award issued by the panel, the case settles for the recommended amount. If both parties reject the award, the case continues toward trial. However, if only one party rejected the award and the panel’s award was unanimous, the rejecting party was subject to sanctions.

Case evaluation is generally favored by judges, but less popular among attorneys.

Considering these disparate views, starting in 2011, the State Court Administrative Office (SCAO) began a study to explore the effectiveness of case evaluation. The SCAO’s efforts culminated in amendments to the Michigan Court Rules that took effect on January 1, 2022.

### New Rules

The amendments to Michigan Court Rules 2.403, 2.404, and 2.503 render case evaluation voluntary. Parties that wish to pursue other alternative dispute resolution methods may do so on court-approved stipulation.

Should the parties elect case evaluation, failure to timely submit materials will result in monetary penalties.

The amendments also require that the case evaluation panel issue an award within seven days of the hearing.

The most controversial change is elimination of sanctions when one party rejects a case evaluation award. This change prompted Michigan Supreme Court Justice David F. Viviano, joined by Justice Brian K. Zahra, to write a dissenting opinion. Justice Viviano wrote that the elimination of penalties would “sound the death knell of case evaluation as an effective dispute resolution tool.” On the other hand, Justice Megan K. Cavanagh wrote a concurrence, outlining the benefits of the amendments: removing sanctions levels the playing field between plaintiffs and defendants and avoids forced settlements not based on the merits of a case.

\*\*\*

The long-range impact of these amendments remains to be seen, although fewer cases certainly will be settled through the case evaluation process.

Should you have questions about these amendments and their possible bearing on your business, please reach out to one of the attorneys at Jackson Lewis’ Michigan offices.

(KM Attorney Jennifer Burgess contributed significantly to this article.)

©2022 Jackson Lewis P.C. This material is provided for informational purposes only. It is not intended to constitute legal advice nor does it create a client-lawyer relationship between Jackson Lewis and any recipient. Recipients should consult with counsel before taking any actions based on the information contained within this material. This material may be considered attorney advertising in some jurisdictions. Prior results do not guarantee a similar outcome.

Focused on labor and employment law since 1958, Jackson Lewis P.C.'s 1000+ attorneys located in major cities nationwide consistently identify and respond to new ways workplace law intersects business. We help employers develop proactive strategies, strong policies and business-oriented solutions to cultivate high-functioning workforces that are engaged, stable and diverse, and share our clients' goals to emphasize inclusivity and respect for the contribution of every employee. For more information, visit <https://www.jacksonlewis.com>.