

STATE OF MICHIGAN
54TH JUDICIAL CIRCUIT COURT
TUSCOLA COUNTY FAMILY DIVISION

Local Administrative Order 2019 - 05

FRIEND OF THE COURT
ALTERNATIVE DISPUTE RESOLUTION

IT IS ORDERED:

All previous alternative dispute resolution local administrative orders are rescinded.

Pursuant to MCR 3.224, the following is adopted at the 54th Judicial Circuit Court as the Friend of the Court Alternative Dispute Resolution Plan:

(A) Alternative Dispute Resolution (ADR) – General Provisions

The 54th Judicial Circuit Court has determined that Friend of the Court (FOC) ADR can assist parties and the court in resolving custody, parenting time, and support disputes.

- 1) The 54th Judicial Circuit Court will use the following ADR practices:
 - a. FOC domestic relations mediation as established in MCL 552.513 and MCR 3.224;
 - b. Facilitative and information-gathering conference as established in MCR 3.224;
 - c. Joint meetings established in MCL 552.642a and MCR 3.224,
- 2) All FOC cases must be screened for domestic violence using SCAO's screening protocol before the ADR process begins. If domestic violence is identified or suspected, the ADR process may not continue unless the protected party consents to ADR and the FOC takes additional precautions to ensure the safety of the protected party and court staff. Throughout the ADR process, the mediator or facilitator must make reasonable efforts to screen for the presence of coercion or violence that would make ADR physically or emotionally unsafe for any participant or that would impede achieving a voluntary and safe resolution of issues.
- 3) In accordance with MCL 552.505a, the FOC may provide ADR services for all open FOC cases that qualify for FOC ADR services.

- 4) A party may object to FOC ADR under MCR 3.224(E). Timely objections must be made in accordance with MCR 3.224(E). An objection must allege facts in support of the objection and be based on one or more of the factors listed in MCR 3.224(D)(2):
 - a. Child abuse or neglect;
 - b. Domestic abuse, unless the protected party submits a written consent and the friend of the court takes additional precautions to ensure the safety of the protected party and court staff;
 - c. Inability of one or both parties to negotiate for themselves at the ADR, unless attorneys for both parties will be present at the ADR session;
 - d. Reason to believe that one or both parties' health or safety would be endangered by ADR; or
 - e. For other good cause shown.
- 5) Parties who are, or have been, subject to a personal protection order or other protective order, or who are involved in a past or present child abuse and neglect proceeding may not be required to participate in FOC ADR without first holding a hearing to determine whether FOC ADR is appropriate. The court may order ADR if a protected party requests it without holding a hearing. Additionally, parties may voluntarily agree to participate in FOC ADR; however, FOC may, at any time, ask that a guardian ad litem be appointed or terminate ADR if it believes there is coercion or violence that would make ADR physically or emotionally unsafe for any participant or would impede achieving a voluntary and safe resolution of issues.
- 6) If a hearing is held and the court determines that FOC ADR is appropriate or upon receiving a referral for ADR, the FOC may ask the court to appoint a guardian ad litem if it feels the child's best interest might not otherwise be adequately protected. Additionally, the FOC may at any time terminate ADR if it believes there is coercion or violence that would make ADR physically or emotionally unsafe for any participant or would impede achieving a voluntary and safe resolution of issues.
- 7) The FOC may exempt cases from ADR based on MCR 3.224(D)(2). The FOC shall notify the court when it exempts a case from FOC ADR. If the FOC exempts a case from ADR, a party may file a motion and schedule a hearing to request the court to order FOC ADR.
- 8) Attorneys of record will be allowed to attend and participate in all FOC ADR processes. If an attorney elects to participate, they must provide FOC with 14

days' advanced notice so as to afford the opposing party's counsel an opportunity to attend.

- 9) Participants in an ADR process may not record the ADR proceeding.
- 10) If parties are referred to FOC ADR and parties reach an agreement, the FOC shall provide the court with sufficient information to enable the court to independently determine that the proposed consent order resulting from ADR is in the child's best interest.
- 11) Each FOC ADR provider must be approved by the chief judge and meet the training and qualifications established by SCAO within 45 days of the execution of this order.
- 12) Public Access to FOC ADR Plan: The FOC will make the FOC ADR plan available:
 - a. On the court's website.
 - b. By way of pamphlet, handbook, or other publication.

(B) Submitting Cases to ADR

Cases may be submitted to ADR as follows:

- 1) All prejudgment custody, parenting time, and support issues are ordered to a facilitative and information-gathering conference, except as provided herein.
- 2) On stipulation of the parties, on the court's own initiative, or pursuant to a hearing, the court may order that parties attend a facilitative and information-gathering conference to resolve contested prejudgment and postjudgment custody, parenting time, or support issues.
- 3) On stipulation of the parties, on the court's own initiative, or pursuant to a hearing, the court may order that parties attend mediation to resolve contested prejudgment and postjudgment custody, parenting time, or support issues.
- 4) On stipulation of the parties, on the court's own initiative, or pursuant to a hearing, the court may order that parties attend a joint meeting, prejudgement and postjudgement.
- 5) The FOC may schedule a joint meeting with parties to a prejudgement and postjudgment custody, parenting time, and support dispute.
- 6) Parties may mutually agree to participate in FOC ADR.

(C) ADR Procedures

Mediation, facilitative and information-gathering conferences, and joint meetings shall be conducted as follows:

1) **FOC Domestic Relations Mediation**

FOC domestic relations mediation is a process in which a neutral third party facilitates confidential communication between parties to explore solutions to settle custody and parenting time or support issues for FOC cases.

a. **Mediation May Be Initiated Pursuant to the Following:**

- i. **Agreement by the Parties:** Either party may request the FOC provide mediation services for custody, parenting time or support issues. If a party requests FOC mediation, the FOC will send a request to the other party to determine if they are willing to participate in mediation. If both parties agree, FOC mediation may be held.
- ii. **Court Ordered Mediation as a Result of a Hearing:** The court may order that parties attend FOC mediation pursuant to a hearing if the court feels that parties would benefit from meeting with an FOC mediator. Upon receiving the order for mediation, the FOC shall send a mediation appointment letter to the parties and their attorneys, if represented.
- iii. **Court Ordered Mediation - Motion to Remove:** A party who is ordered to participate in FOC mediation may file a motion to remove the case from mediation within 14 days by serving a copy of the motion on all parties or their attorneys of record and the FOC. The motion must be set for hearing within 14 days, unless otherwise agreed to by parties or permitted by the court. No mediation shall be conducted until after a hearing is held to determine if mediation is appropriate.

b. **FOC Domestic Relations Mediation Procedures:** FOC domestic relations mediation will be conducted by a mediator selected by the FOC.

- i. At the beginning of mediation, the mediator will advise the parties and their attorneys, if applicable, of the following:
 - a) The purpose of mediation;
 - b) How the mediator will conduct mediation;
 - c) Except as provided for in MCR 2.412(D)(8), statements made during the mediation process are confidential and cannot be used in court proceedings and cannot be recorded.

- ii. If the parties reach an agreement, the mediator will submit a proposed order and a report pursuant to MCR 3.224(I) within seven days.
- iii. If the parties voluntarily agreed to attend mediation but do not reach an agreement, the mediator will advise the parties of their option to file a motion to obtain the relief they are requesting and provide parties with a motion forms.
- iv. If the parties were ordered by the court to attend mediation and do not reach an agreement within seven days of the completion of mediation, the mediator shall advise the court, stating only the date of completion of the process, who participated in the mediation, whether settlement was reached, and whether additional FOC ADR proceedings are contemplated.
- v. With the exceptions provided for in MCR 2.412(D), communications during FOC domestic relations mediation process are confidential and cannot be used in court proceedings and cannot be recorded.

2) **Facilitative and Information-Gathering Conference**

An FOC facilitative and information-gathering conference is a process in which a facilitator assists the parties in reaching an agreement regarding custody, parenting time, and support. If the parties fail to reach an agreement, the facilitator may prepare a report and/or recommended order.

a. **Objections to Court Ordered Facilitative and Information-Gathering Conference:**

- i. To object to an FOC facilitative and information-gathering conference, a party must include the objection with the initial pleading, a responsive pleading or answer, or file the objection within 14 days of the date an order was entered requiring participation. All objections must be filed with the court.
- ii. The objecting party must schedule the hearing and serve a copy of the objection on all parties and/or attorneys of record.
- iii. If a party timely objects, the FOC shall not hold a facilitative and information-gathering conference unless the court orders the parties to attend pursuant to a hearing or the objecting party withdraws the objection.

b. **Court Ordered FOC Facilitative and Information-Gathering Conference Procedures:** An FOC facilitative and information-gathering conference shall use the following procedures:

- i. At the beginning of the conference, the facilitator will advise the parties and their attorneys, if applicable, of the following:
 - a) The purpose of the conference, how the facilitator will conduct the conference, and the process by which the FOC will submit an order or recommendation to the court under MCR 3.224(F);
 - b) How information gathered during the conference will be used;
 - c) Except for communications made during domestic violence screening, statements made during the conference are not confidential and can be used in other court proceedings, and shall not be recorded; and
 - d) That the parties are expected to provide information as required by MCL 552.603 to the FOC and the consequences of not doing so.
- ii. If the parties resolve all contested issues during the conference, the facilitator shall submit a report pursuant to MCR 3.224(I), and may prepare proposed consent order setting forth the parties' agreements and submit it to the court.
 - a) A party may consent to entry of the order by signing the proposed order at the conference. A party who consents to entry of the order waives the right to object to the order and must file a motion to set the order aside once it enters.
 - b) If the parties reach an agreement but their attorneys are not present during the conference, or for other good reason, the facilitator shall refrain from asking the parties to sign the proposed consent order, and instead issue a recommended consent order as set forth in (b)(iii).
- iii. If the parties resolve all contested issues but do not sign the proposed consent order at the conclusion of the conference, the facilitator shall submit a report pursuant to MCR 3.224(I). The facilitator may also:
 - a) Prepare and serve a recommended consent order on the parties within seven days from the date of the conference along with a notice that the recommended order will be presented to the court for entry unless a party objects by filing a written objection within 21 days after the date of service. If a timely objection is filed, the court will set the matter for hearing to

address contested issues. If neither party files a timely objection, the court may enter the order if it approves.

- b) A party may consent to entry of a recommended order by signing a copy of the order after receiving the recommended order. A party who consents to entry of the order waives the right to object to the order and must file a motion to set the order aside once it enters.

- iv. If the parties do not resolve all contested issues at the conference, the FOC shall either file a report with the court within seven days and ask that the matter be set for hearing or prepare and serve a recommended order on the parties within seven days from the date of the conference along with a notice that the recommended order will be presented to the court for entry unless a party objects by filing a written objection within 21 days after the date of service. If neither party files a timely objection, the court may enter the order if it approves.

c. **Agreement by the Parties to Participate in Facilitative and Information-Gathering Conference:** Either party may request the FOC ADR facilitator hold a facilitative and information gathering conference for custody, parenting time or support issues. If a party requests a conference, the facilitator will send a notice of the request to the other party to determine if they are willing to participate. If both parties agree, the facilitator may hold a conference.

- i. At the beginning of the conference, the facilitator will advise the parties of the following:
 - a) The purpose of the conference;
 - b) How the conference will be conducted;
- ii. If the parties reach an agreement, the facilitator will submit a proposed order within seven days.
- iii. If the parties do not reach an agreement, the facilitator will advise the parties of their option to file a motion to obtain the relief they are requesting and provide parties with motion forms or other relevant forms and resources.

3) **Joint Meetings**

Joint meetings are a process in which the FOC meets with parties to discuss proposed solutions to a custody or parenting time complaint or an objection to an FOC support recommendation.

- a. **Objection to a Joint Meeting:**

- iii. If the person conducting the joint meeting submits a recommended order to the court, they must serve the parties and attorneys of record with a copy of the order and a notice that provides the following information:
- a) That the court may enter the recommended order resolving the dispute unless a party objects to the order in writing within 21 days after the notice is sent;
 - b) The objection must be sent to the Tuscola County Clerk's Office, 440 N State Street, Caro, MI 48723;
 - c) That a party may waive the 21-day objection period by returning a signed copy of the recommended order;
 - d) If a party files a written objection within the 21-day limit, the FOC shall set a court hearing before a judge or referee to resolve the dispute;
 - e) If a party fails to file a written objection within the 21-day limit, the FOC shall submit the proposed order to the court for entry if the court approves it;
 - f) Except for communications made during domestic violence screening, communications made during a joint meeting are not confidential and may be used in other court proceedings and can be recorded.

Dated: 12-20-19

Chief judge signature: _____


Honorable Amy G. Gierhart (P-51305)