

State of Michigan 54<sup>th</sup> Judicial Circuit Court  
Tuscola County Family Division

Administrative Order 2023 - 02 (rescinds Administrative Order 2023-01)

**FRIEND OF THE COURT ALTERNATIVE DISPUTE RESOLUTION**

**IT IS ORDERED:**

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

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

The 54<sup>th</sup> 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 54<sup>th</sup> Circuit Court will use the following ADR practices:
  - FOC domestic relations mediation as established in MCL 552.513 and MCR 3.224,
  - facilitative and information-gathering conference as established in MCR 3.224,
  - joint meetings as established in MCL 552.642a and MCR 3.224,
  - 54<sup>th</sup> Circuit Court has established the following additional FOC ADR processes: Dispute Resolution Conference.
- 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 submits a written consent 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) Parties will be court ordered to appear for a facilitative and information-gathering conference. If the party fails to appear the court may order the party to appear and show cause why an order should not enter directing the party's appearance. The show cause hearing may be cancelled if the party contacts the FOC to schedule an appearance for the facilitative and information-gathering conference by a specific

date provided in the show cause hearing notice and order. The notice to appear for the facilitative and information-gathering conference must include the time, place, date of the facilitative and information-gathering conference, and a link to the Court's FOC ADR Local Administrative Order.

- 5) A party may object to FOC ADR under MCR 3.224(E). An objection must 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;

and must allege facts in support of the objection. Timely objections must be made in accordance with MCR 3.224(E).

- 6) 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 referred to FOC ADR without a hearing to determine whether FOC ADR is appropriate. The court may order ADR if a protected party requests it without holding a hearing.
- 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. The FOC will schedule a referee hearing if the case is exempted from an FOC ADR session.
- 8) Attorneys of record will be allowed to attend, and participate in, all FOC ADR processes, or elect not to attend upon mutual agreement with opposing counsel and their client. Attorneys of record must notify the FOC 14 days in advance if the attorneys are going to attend the FOC ADR session.
- 9) Participants in an ADR process may not record the ADR proceeding.

- 10) The FOC shall provide a report with each FOC ADR proposed consent order containing sufficient information to allow the court to make an independent determination that the proposed order is in the child's best interest.
- 11) When the parties do not resolve some or all of the issues in a facilitative and information-gathering conference, a dispute resolution conference, or when the FOC submits a proposed order following a joint meeting, the FOC shall submit a report containing the parties' agreed-upon and disputed facts and issues.
- 12) Qualifications: FOC ADR providers have met the training and qualifications established by SCAO and approved by the chief judge.
- 13) Public Access to FOC ADR Plan: The FOC will make the FOC ADR plan available on the court's website.

**(B) Submitting Cases to ADR**

On written stipulation of the parties, on motion of a party, or on the court's initiative, the court may order any contested post-judgment custody, parenting time, or support issue in a domestic relations case, including post-judgment matters to FOC mediation by written order.

All prejudgment custody, parenting time, and support issues are ordered to a facilitative and information-gathering conference.

On written stipulation of the parties, on motion of a party, or on the court's own initiative, the court may order any contested post-judgment custody, parenting time, or support dispute to a facilitative and information-gathering conference.

The FOC may schedule a joint meeting with parties to a post-judgment custody, parenting time, and support dispute.

A party or parties may voluntarily request a dispute resolution conference.

**(C) ADR Procedures**

**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. **Objection to Mediation:** A party who is ordered to FOC domestic relations mediation may file a written motion to remove the case from FOC mediation and a notice of hearing of the motion and serve a copy on all parties or their attorneys of record within 14 days after receiving notice

of the order. The motion must be set for hearing within 14 days after it is filed unless the hearing is adjourned by agreement of counsel or the court orders otherwise. A timely objection will be heard before the case is mediated by the FOC.

**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 the 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 shall submit a proposed order and a report pursuant to MCR 3.224(I) within seven days.
- iii. If the parties do not reach an agreement the mediator shall so advise the court within seven days after the completion of mediation, stating only the date of completion of the process, who participated in the mediation, whether a settlement was reached, and whether additional FOC ADR proceedings are contemplated.
- iv. With the exceptions provided for in MCR 2.412(D), communications during the 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, or refer the case to referee hearing.

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

- i. To object to a FOC facilitative and information-gathering conference, a party must include the objection within the pleading or post-judgment motion initiating the action, a responsive

pleading or answer, or file the objection within 14 days of the date that the notice is sent to the party. All objections must be filed with the court.

- ii. The objecting party must schedule the hearing and serve a copy of the objection and notice of hearing 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 a conference after motion and hearing, or the objecting party withdraws the objection.

**b. 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 and how the facilitator will conduct the conference and submit an order or recommendation to the court under MCR 3.224(F);
  - b) How information gathered during the conference will be used;
  - c) That 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, the facilitator shall submit a report pursuant to MCR 3.224(I) and shall provide a proposed order to the court setting forth the parties' agreements.
- iii. If the parties do not resolve all contested issues at the conference or the parties agree to resolve all or some contested issues but do not sign the proposed order, the facilitator shall submit a report pursuant to MCR 3.224(I). The facilitator shall complete one of the following:

- a) 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, and by scheduling a hearing on the objection. If neither party files a timely objection, the court may enter the order if it approves.
  
- b) Submit a recommendation to the court for further action the court might take to help the parties resolve the remaining contested issues in the case, or alert the court there are contested issues that might require the court's immediate attention.

A party may consent to entry of a recommended order by signing a copy of the order at the time of the conference or 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. Except for communications made during domestic violence screening, communications made during a facilitative and information-gathering conference are not confidential and may be used in court proceedings.

**3) Joint Meetings**

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

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

- i. To object to a joint meeting, the party must file a written objection with the FOC and provide a copy to all parties and their attorneys of record before the time scheduled for the joint meeting. The objection must be filed within 14 days from the date the parties were served with the joint meeting notice.
  
- ii. If a party files an objection, the FOC shall not hold a joint meeting unless the court orders a joint meeting following a hearing on motion of a party, or the objecting party withdraws the objection.

**b. Joint Meeting Procedures:** Joint meetings shall be conducted as follows:

- i. At the beginning of a joint meeting, the FOC employee conducting the meeting shall do the following:
  - a) Advise the parties that statements made during the joint meeting are not confidential and can be used in other court proceedings;
  - b) Advise the parties that the purpose of the meeting is for the parties to reach an accommodation and how the person will conduct the meeting; and
  - c) Advise the parties that the FOC employee may recommend an order to the court to resolve the dispute and explain to the parties the information provided for in MCR 3.224(H)(1)(d)-(e).
- ii. At the conclusion of a joint meeting, the FOC employee conducting the meeting shall either terminate the meeting without further action or do one of the following within seven days:
  - a) If the parties reach an accommodation, record the accommodation in writing and provide a copy to the parties and attorneys of record. If the accommodation modifies an order, the FOC employee must submit a proposed order and a report pursuant to MCR 3.224(I) to the court. If the court approves the order, the court shall enter it; or
  - b) Submit an order to the court stating the FOC employee's recommendation for resolving the dispute with a report pursuant to MCR 3.224(I). The parties may consent by signing the recommended order and waiving the objection period in accordance with MCR 3.224(H)(1)(e)(iii). If the court approves the order, the court shall enter it.
- iii. If the FOC employee conducting the joint meeting submits a recommended order to the court, the FOC 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 Friend of the Court Office.
- 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. 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;
- e) 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 cannot be recorded.

#### 4. **Dispute Resolution Conference**

A dispute resolution conference is a process in which an FOC employee discusses proposed solutions with the parties to a custody or parenting time dispute. A party or parties to an FOC case can voluntarily request a dispute resolution conference.

- a. **Dispute Resolution Conference Procedures:** Dispute Resolution Conferences shall be conducted as follows:
  - i. At the beginning of a dispute resolution conference, the FOC employee conducting the conference shall do the following:
    - a) Advise the parties that statements made during the dispute resolution conference are not confidential and can be used in other court proceedings.
    - b) Advise the parties that the purpose of the conference is for the parties to reach an agreement and how the FOC employee will conduct the conference.
  - ii. At the conclusion of a dispute resolution conference, the FOC employee conducting the conference shall do one of the following within seven days:
    - a) If the parties reach an agreement, prepare a proposed order and a report pursuant to MCR 3.224(I) and present the report and proposed order to the court. If the court approves the order, the court shall enter it;

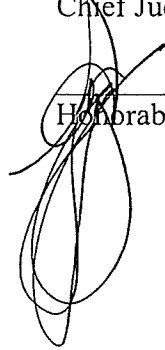


- b) If the parties fail to reach an agreement, advise the parties that they have the option to file a motion with the court.

Date:

07.26.23

Chief Judge Signature:



Honorable Amy Grace Gierhart (P51305)