

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF BAY

ADMINISTRATIVE ORDER: 2019-

FRIEND OF THE COURT ALTERNATIVE DISPUTE RESOLUTION PLAN
PURSUANT TO MCR 3.224

AT A SESSION OF SAID COURT HELD IN THE BAY COUNTY COURTHOUSE,
CITY OF BAY CITY,
ON THIS 11th DAY OF December 2019
PRESENT: HONORABLE DAWN A. KLIDA
Chief Judge

IT IS ORDERED:

Pursuant to MCR 3.224, the following is adopted by the 18th Circuit Court as the Friend of the Court Alternative Dispute Resolution Plan:

(A) Alternative Dispute Resolution (ADR)

The 18th 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. The authority for the 18th Circuit Court FOC Office to conduct ADR services has been determined by MCL 552.513, MCL 552.641, MCL 552.62a, and Michigan Court Rule 3.224.

The 18th Circuit Court FOC Office will use the following ADR practices: FOC Domestic Relations Mediation as established in MCL 552.513 and MCR 3.224, joint meetings as established in MCL 552.642a and MCR 3.224, facilitative and information-gathering conference as defined in MCR 3.224, and additional FOC ADR services as indicated later in this plan.

This plan has been approved by the 18th Circuit Court Chief Judge and the State Court Administrative Office (SCAO).

(B) General Provisions of FOC ADR

- 1) All FOC ADR cases must be screened for domestic violence using the screening protocol provided by the SCAO for the purpose of identifying domestic violence,

the existence of a protection order between the parties as defined in MCL 552.513, or other protective order; child abuse or neglect, and other safety concerns.

- 2) In accordance with MCL 552.505a, the FOC may provide ADR services for all open FOC cases that qualify for FOC ADR services.
- 3) 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) and must allege facts in support of the objection. Timely objections must be made in accordance with MCR 3.224(E).
- 4) 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.
- 5) 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.
- 6) Attorneys of record will be allowed to attend, and participate in, all FOC ADR processes. Attorneys may elect to attend any process by mutual agreement with opposing counsel or elect not to attend upon mutual agreement with opposing counsel; and their client.
- 7) Participants in an ADR process may not record the ADR proceeding.
- 8) 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.
- 9) When the Friend of the Court submits a proposed order following a joint meeting or FIG conference, the report shall contain the parties' agreed-upon and disputed facts and issues.
- 10) Qualifications: FOC ADR providers have met or will meet the training and qualifications established by SCAO and approved by the Chief Judge.
- 11) The FOC will provide the following ADR services:
 - FOC Domestic Relations Mediation: Post-judgment, by Court order.
 - Facilitative and Information-Gathering Conference (FIG Conference).
 - Joint meetings: Pre-judgment and Post-judgment custody or parenting time complaint; and objection to FOC support recommendation.

- Additional ADR services:
 - Mediation by Consent: Post-judgment parenting time and co-parent sessions.
 - Custody or Parenting Time Conference: Pre-judgment and post-judgment custody or parenting time.
- 12) The FOC will not provide the following ADR services:
 - Mediation pursuant to MCR 3.216.
 - 13) The 18th Circuit Court and FOC Office will make the FOC ADR plan available on the Court's website and in printed materials, available upon request.

(C) Submitting Cases to ADR

- 1) On written stipulation of the parties, on motion of a party, or on the court's initiative, the court may order any contested pre-judgment or post-judgment custody, parenting time, or support issue in a domestic relations case, including post-judgment matters to FOC mediation by written order.
- 2) The FOC may schedule the parties to any pending motion regarding custody, parenting time or support, to attend a FIG Conference.
- 3) The FOC may schedule a joint meeting with parties to a custody and/or parenting time complaint, or an objection to a support recommendation.

(D) FOC Domestic Relations Mediation (Court-Ordered):

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. FOC Domestic Relations Mediation is not governed by MCR 3.216 which relates to domestic relations mediation conducted without participation or supervision of the FOC. All 18th Circuit Court FOC Domestic Relations Mediation procedures comply with MCR 3.224.

- 1) **FOC Mediation Referral:** On written stipulation of the parties, on written motion of a party, or on the Court's initiative, the Court may order any contested custody or parenting time issue in a domestic relations case to the FOC Domestic Relations Mediation.
- 2) **Objection to Mediation:** A party who is ordered to FOC domestic relations mediation must 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.

3) FOC Domestic Relations Mediation Procedures: FOC domestic relations mediation will be conducted by a mediator selected by the FOC. The Community Dispute Resolution Program is the designated service provider at this time.

- a. The mediation may not begin until the FOC case has been screened for domestic violence, protective order as defined by MCL 552.513 or other protective order, child abuse or neglect, or other safety concerns using a screening protocol provided by the State Court Administrative Office as directed by the Supreme Court.
- b. If any domestic violence as defined by MCR 3.224, this ADR plan, or other safety concerns are detected the mediation 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 the Court staff. Throughout the mediation process, the mediator must make reasonable efforts to screen for the presence of coercion or violence that would make mediation physically or emotionally unsafe for any participate or that would impede achieving a voluntary and safe resolution.
- c. At the beginning of the mediation, the mediator will advise the parties and their attorneys, if applicable, of the following:
 - i. The purpose of mediation;
 - ii. How the mediator will conduct mediation;
 - iii. 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.
- d. 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.
- e. If the parties do not reach an agreement within seven days of the completion of mediation, the mediator shall so 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.
- f. 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.

(E) FOC Facilitative and Information-Gathering (FIG) Conference:

An FOC Facilitative and Information-Gathering Conference is a process in which an FOC employee assists the parties in reaching an agreement regarding custody, parenting time and support. The process may be initiated by a party filing a custody, parenting time or support motion.

1) Objection to an FOC Facilitative and Information-Gathering Conference:

- a. To object to a FOC FIG 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.
- b. 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.
- c. If a party timely objects, the FOC shall not hold a FIG Conference unless the Court orders a conference after motion and hearing or the objecting party withdraws the objection.

2) FOC Facilitative and Information-Gathering Conference Procedures:

- a. The FIG Conference may not begin until the FOC case has been screened for domestic violence, protective order as defined by MCL 552.513 or other protective order, child abuse or neglect, or other safety concerns using a screening protocol provided by the State Court Administrative Office as directed by the Supreme Court.
- b. If any domestic violence as defined by MCR 3.224 or this ADR plan, or other safety concerns are detected the procedure 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 the Court staff. Throughout the process, the FOC employee must make reasonable efforts to screen for the presence of coercion or violence that would make mediation physically or emotionally unsafe for any participate or that would impede achieving a voluntary and safe resolution.
- c. At the beginning of a FIG Conference, the facilitator conducting the conference shall do the following:
 - i. Advise the parties of the purpose of the conference and how the facilitator will conduct the conference;
 - ii. Advise the parties on how the information gathered during the conference will be used;

- iii. Inform the parties that statements made during the conference are not confidential, cannot be recorded, and can be used in other Court proceedings;
- iv. Inform the parties that they are expected to provide information as required by MCL 552.603 to the FOC and the consequences of not doing so;
- d. If the parties resolve all contested issues, the facilitator shall submit a report and consent order to the Court setting forth the parties' agreements.
- e. If the parties do not resolve all contested issues, or the parties agree to resolve all or some contested issues but do not sign the proposed order, the facilitator shall submit a report and recommended order to the Court pursuant to MCR 3.224(I).
- f. Upon preparing the report and recommended order, the facilitator shall serve the report and recommended on the parties and 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. After having received it, if the parties consent to the recommended order, they may waive the objection period and sign the recommended order which the Court may then sign.
- g. Except for communications made during domestic violence screening, communications made during a FIG Conference are not confidential and may be used in other Court proceedings.

(F) Joint Meetings:

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

- 2) **Joint meeting referral:** The 18th Circuit Court may, by an order or through this FOC ADR Plan, provide that the parties are to meet with a FOC employee conducting a joint meeting concerning a custody or parenting time complaint or an objection to an FOC child support recommendation. Under this plan, the FOC may schedule a joint meeting with parents in an attempt to resolve a dispute prior to scheduling a hearing or issuing a proposed order.

3) Objection to a Joint Meeting:

- a. 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.
- b. 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.

4) Joint Meeting Procedures: Joint meetings shall be conducted as follows:

- a. The joint meeting may not begin until the FOC case has been screened for domestic violence, protective order as defined by MCL 552.513 or other protective order, child abuse or neglect, or other safety concerns using a screening protocol provided by the State Court Administrative Office as directed by the Supreme Court.
- b. If any domestic violence as defined by MCR 3.224 or this ADR plan, or other safety concerns are detected the procedure 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 the Court staff. Throughout the process, the FOC employee must make reasonable efforts to screen for the presence of coercion or violence that would make mediation physically or emotionally unsafe for any participate or that would impede achieving a voluntary and safe resolution.
- c. At the beginning of a joint meeting, the person conducting the meeting shall do the following:
 - i. Advise the parties that statements made during the joint meeting are not confidential and can be used in other court proceedings;
 - ii. 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
 - iii. Advise the parties that the person 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).
- d. At the conclusion of a joint meeting, the person conducting the meeting shall either terminate the meeting without further action or do one of the following within seven days:
 - i. 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 to the court. If the court approves the order, the court shall enter it; or

- ii. If the parties do not reach an accommodation, the FOC Employee shall submit an order to the court stating the FOC employee's recommendation for resolving the dispute. 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.

- e. If the person 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:
 - i. 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;
 - ii. The objection must be sent to the FOC or Clerk of the Court, as directed;
 - iii. That a party may waive the 21-day objection period by returning a signed copy of the recommended order;
 - iv. 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;
 - v. 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.

ADDITIONAL ADR SERVICES NOT DEFINED IN MCR 3.224:

(G) FOC Mediation by Consent:

A process in which an FOC employee provides mediation and discusses proposed solutions with parties for minor issues including but not limited to: Parenting time addressed by Court-order but lacking in specificity; or Holiday parenting time, where regular parenting time is addressed by Court order and holidays are not; or Transportation arrangements for parenting time already addressed by Court order but lacking in specificity; or co-parent communication barriers.

- 1) **FOC Mediation by Written Consent Referral:** On their own initiative, parties can request voluntary mediation in writing and a mediation appointment will be scheduled upon receipt of written consent from both parents.
- 2) **FOC Mediation by Written Consent Procedures:** FOC domestic relations mediation will be conducted by a mediator selected by the FOC.
 - a. The mediation may not begin until the FOC case has been screened for domestic violence using a screening protocol provided by the State Court Administrative Office as directed by the Supreme Court.
 - b. If domestic violence is identified or suspected, the mediation 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 mediation process, the mediator must make reasonable efforts to screen for the presence of coercion or violence that would make mediation physically or emotionally unsafe for any participant or that would impede achieving a voluntary and safe resolution of issues.
 - c. At the beginning of the mediation, the mediator will advise the parties and their attorneys, if applicable, of the following:
 - i. The purpose of the mediation;
 - ii. How the mediator will conduct the mediation;
 - iii. 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.
 - d. If the parties reach an agreement, the mediator shall submit a proposed order and report pursuant to MCR 3.224 within seven days.
 - e. If the parties do not reach an agreement the mediation will be terminated.
 - f. With the exceptions provided for in MCR 2.412(D), communication during FOC domestic relations mediation is confidential and cannot be used in Court proceedings and cannot be recorded.

(H) FOC Custody or Parenting Time Conference:

A FOC process in which an FOC employee provides information and discusses proposed solutions with parties, and their respective legal counsel, if applicable, when the Court has referred custody or parenting time to the Friend of the Court for evaluation and recommendation.

- 1) **FOC Custody or Parenting Time Conference Referral:** Upon Court order for custody or parenting time investigation in a pre-judgment or post-judgment dispute.

- 2) **FOC Custody or Parenting Time Conference Procedure:** Upon receipt of a custody or parenting time referral the parties and attorneys, if applicable, will meet with a FOC Employee; at which time all parties will receive information and discuss potential solutions. Attorneys are permitted to participate but may opt out of this conference by notifying the FOC Employee.
 - a. The appointment may not begin until the FOC case has been screened for domestic violence using a screening protocol provided by the State Court Administrative Office as directed by the Supreme Court.

 - b. If domestic violence is identified or suspected, the Custody or Parenting Time Conference 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 process, the FOC employee must make reasonable efforts to screen for the presence of coercion or violence that would make mediation physically or emotionally unsafe for any participant or that would impede achieving a voluntary and safe resolution of issues.

 - c. At the beginning of the conference, the FOC Employee will advise the parties and their attorneys, if applicable, of the following:
 - i. The purpose of the Custody or Parenting Time Conference;

 - ii. How the FOC Employee will conduct the Custody or Parenting Time Conference;

 - iii. Advise the parties and their attorneys that the Custody or Parenting Time Conference cannot be recorded; but is not confidential and any information discussed during the process may be used in further Court proceedings.

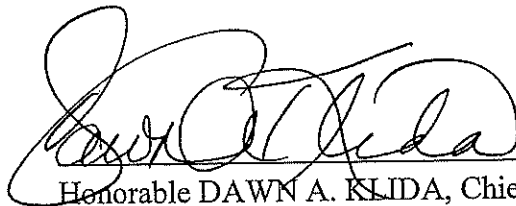
 - d. If the parties reach an agreement, the FOC employee may either submit a proposed order and companion report to the Court; or may issue a Settlement Report to the Court detailing the agreed upon issues.

 - e. If the parties reach a partial agreement and request a period of time to continue working on the disputed issues, the Court and parties will be notified in writing and scheduled for a future appointment with an FOC Employee.

- f. If the parties do not reach an agreement, the FOC employee will terminate the conference and the FOC will proceed with the referral.
- g. Communication during a Custody or Parenting Time Conference is not confidential, cannot be recorded, and can be used in future Court proceedings.

IT IS SO ORDERED:

Dated: 12-11-19


Honorable DAWN A. KLIDA, Chief Judge