

STATE OF MICHIGAN 6 TH JUDICIAL CIRCUIT OAKLAND COUNTY	Friend of the Court Alternative Dispute Resolution	ADMINISTRATIVE ORDER 2019-16 Rescinds 2006-07
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FRIEND OF THE COURT ALTERNATIVE DISPUTE RESOLUTION

IT IS ORDERED:

Administrative Order 2006-07 is rescinded. Pursuant to MCR 3.224, the following is adopted at the 6th Judicial Circuit Court as the Friend of the Court Alternative Dispute Resolution Plan.

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

The 6th 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 6th Judicial Circuit Court will use the following ADR practices:
 - ☒ FOC domestic relations mediation as established in MCL 552.513, MCR 3.224 regarding referring cases for mediation to FOC or to the Oakland Mediation Center,
 - ☒ joint meetings established in MCL 552.642a and MCR 3.224,
 - ☒ The 6th Judicial Circuit Court has established the following additional FOC ADR processes:
 - Order of reference for custody, parenting time, or change of domicile investigation and recommendation 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) 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).

- 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 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.
- 6) 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.
- 7) 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.
- 8) Participants in an ADR process may not record the ADR proceeding.
- 9) 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.
- 10) 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.
- 11) Qualifications: FOC ADR providers have met the training and qualifications established by SCAO and approved by the chief judge have been approved subject to conditions established by SCAO.
- 12) 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

- 1) On written stipulation of the parties, on motion of a party, or on the court's initiative, the court may order any contested ☒ prejudgment and ☒ postjudgment custody or parenting time in a domestic relations case, including post judgment matters to FOC mediation or mediation at the Oakland Mediation Center by written order.
- ☒ On written stipulation of the parties, on motion of a party, on the court's own initiative, the court may order the parties to attend a joint meeting postjudgment.
- ☒ The FOC may schedule a joint meeting with parties to a postjudgment custody, parenting time, and support dispute.

(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. Mediation may be facilitated by the FOC custody and parenting time specialist or at the Oakland Mediation Center.

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. The party must serve a copy of the motion and notice of hearing 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 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.
- iv. 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) ☒ **Joint Meetings**

Joint meetings are a process in which a person 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.
- 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 person 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 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).
- ii. 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:
 - 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 person 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 person'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 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:
 - 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) 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;
 - 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 can be recorded.

Date: 12/5/19



Shalina D. Kumar, Chief Judge
Oakland County Circuit Court

Attachment – FOC Alternative Dispute Resolution LAO

(D) Order of reference for custody, parenting time, or change of domicile investigation and recommendation conference. A process in which an FOC custody and parenting time specialist (also known as an FOC family counselor) meets with the parties to discuss proposed solutions to the custody and parenting time dispute before a custody and parenting time investigation is initiated.

- 1) **Conference scheduling:** The FOC will send contact letters with the time and date for the conference.
- 2) **Notifying the court:** The court will be notified if one or both parties fail to attend the conference.
- 3) **Conference procedures:** Conferences shall be conducted as follows:
 - a) The conference may not begin until the FOC case has been screened for domestic violence using a screening protocol provided by SCAO as directed by the Supreme Court.
 - b) If domestic violence is identified or suspected, the conference may not proceed unless the protected party submits a written consent and the FOC takes additional precautions to ensure the safety of court staff and the protected party. Throughout the conference the family counselor must make reasonable efforts to screen domestic violence that would make the conference 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 family counselor will advise the parties of the following:
 - i. The purpose of the conference and how the case family counselor will conduct the conference.
 - ii. How information gathered during the conference will be used;
 - iii. That statements made during the conference are not confidential and can be used in other court proceedings, and shall not be recorded; and
 - iv. That the parties 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 family counselor shall prepare a consent order.
 - e) If the parties do not resolve all contested issues at the conference, the family counselor will initiate a custody and parenting time investigation.