ADMINISTRATIVE ORDER

43rd Circuit Court, 2020-1

FRIEND OF THE COURT ALTERNATIVE DISPUTE RESOLUTION

Pursuant to MCR 8.112(B)(2), this Local Administrative Order is the controlling LAO regarding Friend of the Court Alternative Dispute Resolution. This Order rescinds Administrative Order 2006-01 (C 43).

IT IS ORDERED:

Pursuant to MCR 3.224, the following is adopted at the 43rd Circuit Court as the Friend of the Court Alternative Dispute Resolution Plan:

A. Alternative Dispute Resolution (ADR) – General Provisions

The 43rd 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 43rd Circuit Court will use the following ADR practices with respect to the FOC:

    a. FOC domestic relations mediation as established in MCL 552.513 and MCR 3.224;
    b. FOC facilitative and information-gathering conference as established in MCR 3.224; or
    c. FOC 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 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.

The objection must also 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 parties do not resolve some or all of the issues in a facilitative and information-gathering 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.

11. Qualifications: FOC ADR providers have met the training and qualifications established by SCAO and approved by the chief judge and 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:

    a. On the court's website
    b. By way of pamphlet, handbook, or other written publication

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, 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. On written stipulation of the parties, on motion of a party, or on the court's own initiative, the court may order the parties to attend a FOC facilitative and information-gathering conference.

3. 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 FOC joint meeting post-judgment.

4. The FOC may schedule a joint meeting with parties to a post-judgment 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.

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:

1. The purpose of mediation;
2. How the mediator will conduct mediation;
3. 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:
1. Take the parties in front of an Attorney Referee or Judge, if available, to put the parties' agreement on the record and allow the Attorney Referee or Judge to make necessary findings relative to the parties' agreement; and,
2. 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

by completing and submitting a written Mediation Status Report to the Court Clerk.

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. FOC Facilitative and Information-Gathering Conference

A 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 a FOC 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:

1. 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);

2. How information gathered during the conference will be used;

3. That statements made during the conference are not confidential and can be used in other court proceedings, and shall not be recorded; and

4. 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 also:

1. 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.

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. FOC 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 also do the following:

1. Advise the parties that statements made during the joint meeting are not confidential and can be used in other court proceedings;

2. 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

3. 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:

1. 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

2. 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:

1. 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;

2. The objection must be sent to the Clerk of the Court;

3. That a party may waive the 21-day objection period by returning a signed copy of the recommended order;

4. 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;

5. 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.

Effective Date: January 1, 2020

Signed: 12-3-19

Honorable Susan L. Dobrich, P32783
Chief Judge, Cass County Courts