

State of Michigan Washtenaw County Trial Court	FRIEND OF THE COURT ALTERNATIVE DISPUTE RESOLUTION PLAN	Local Administrative Order 2019 – <u>15</u> – ____
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Effective Date: January 1, 2020

FRIEND OF THE COURT ALTERNATIVE DISPUTE RESOLUTION

IT IS ORDERED:

Pursuant to MCR 3.224, the following is adopted as the Washtenaw County Trial Court - Friend of the Court Alternative Dispute Resolution Plan:

(A) Alternative Dispute Resolution (ADR)

The Trial Court has determined that Friend of the Court (FOC) ADR can serve an extremely useful purpose in resolving custody, parenting time, and support disputes. The authority for the Trial Court FOC Office to conduct ADR services has been determined by MCL 552.513, MCL 552.641, MCL 552.642a, and Michigan Court Rule 3.224. In addition, the Chief Judge for the Trial Court and the State Court Administrative Office have approved the Trial Court's FOC ADR Plan.

(B) General Provisions of FOC ADR

- 1) The Trial Court will utilize FOC domestic relations mediation as established in MCL 552.513, joint meetings as established in MCL 552.642a and MCR 3.224, as well as Peacemaking. The Trial Court may establish additional FOC ADR processes and incorporate them into this FOC ADR plan.
- 2) All FOC cases must be screened for domestic violence using a screening protocol provided by the SCAO to identify domestic violence, the existence of protection orders as defined in MCL 552.513 between the parties or other protective order, child abuse or neglect, and other safety concerns.
- 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) 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, parenting time, or support issue in a domestic relations case, including post judgment matters to the FOC by written order.
- 5) The court may, by an order or through its FOC ADR plan, provide that the parties are to meet with a person conducting ADR other than FOC domestic relations mediation

concerning custody, parenting time, and support issues, unless otherwise provided by statute or court rule.

- 6) 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 3.216 (D)(2) and must allege facts in support of the objection. Timely objections must be made in accordance with MCR 3.224(E).
- 7) 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.
- 8) The FOC may exempt cases from ADR based on MCR 3.224(D)(2). The FOC shall notify the court when a FOC case has been exempted 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.
- 9) Attorneys of record may attend, and participate in, all FOC ADR processes. Attorneys may elect not to attend in consultation with their respective clients.
- 10) Participants in an ADR process may not record the ADR proceeding.
- 11) A report will accompany each FOC ADR proposed consent order and shall contain enough information to allow the court to make an independent determination that the proposed order is in the child's best interest.
- 12) When the parties do not resolve some or all of the issues in a facilitative and information-gathering conference or when the friend of the court submits a proposed order following a joint meeting, the report shall contain the parties' agreed-upon and disputed facts and issues.
- 13) Qualifications: FOC ADR providers have met the training and qualifications established by SCAO and approved by the Chief Judge or will meet the training and qualification within the standards established by SCAO and the Chief Judge.
- 14) The Chief Judge shall supervise this FOC ADR plan.
- 15) The FOC will provide the following ADR services:
 - FOC Domestic Relations Mediation
 - Joint Meetings/Evaluator Settlement Conferences
 - Peacemaking
- 16) Public Access to FOC ADR Plan: The FOC plan is available on the Trial Court's website.

(C) FOC Domestic Relations Mediation

The Trial Court hereby adopts FOC domestic relations mediation under MCR 3.224, and MCL 552.513. 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 Trial 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, parenting time, or support issue in a domestic relations case, matters to the FOC mediation by written order.
- 2) **Objection to Mediation:** To object to FOC domestic relations mediation, a party 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 must 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 scheduling clerk or alternatively by the FOC Legal Manager.
 - 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 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 7 days.
- e. If the parties do not reach an agreement within 7 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 friend of the court 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.

(D) Joint Meetings

Joint meeting is 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.

- 1) **Joint meeting referral:** The Trial Court may, by an order or through this FOC ADR plan, provide that the parties are to meet with a person conducting a joint meeting concerning custody, parenting time, or support issues.
- 2) **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.
- 3) **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 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 meeting may not proceed 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 joint meeting, the person conducting the joint meeting must make reasonable efforts to screen for the presence of coercion or violence that would make the joint meeting physically or emotionally unsafe for any participant or that would impede achieving a voluntary and safe resolution of issues.

- 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 submit a report within seven days pursuant to MCR 3.224(I) and may do one of the following:
 - 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 person must submit a proposed order to the court. If the court approves the order, the court shall enter it; or
 - ii. Submit an order to the court stating the person'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 within seven days to the court, the FOC must serve the parties and attorneys of record 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 within 21 days after the notice is sent;
 - ii. When and where a written objection must be submitted;
 - iii. That a party may waive the 21-day objection period by returning a signed copy of the recommended order; and
 - 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 can be recorded.

(E) FOC Peacemaking

FOC peacemaking in domestic relations cases adopts the protections and process of traditional mediation and is informed by Native American principles of healing and restoration. The purpose is to avoid adversarial litigation and avoid further deterioration of the relationship between the parties. FOC peacemakers are trained mediators and meet the requirements of the SCAO in terms of qualifications and have received additional training in the peacemaking process. Peacemaking is a mediation process in which a neutral third party facilitates confidential communication between parties to explore solutions to settle custody and parenting time or support issues. Peacemaking is a completely voluntary process available only through informed consent of the parties. Peacemaking can include family and members of the community selected by the parties.

- 1) **Peacemaking Referral:** On written stipulation of the parties or on the court's initiative the process of peacemaking shall be considered, provided BOTH parties consent to the process. Peacemaking cannot be ordered.
- 2) **Objection to Peacemaking:** Again, peacemaking cannot be ordered. If parties wish to stop the peacemaking process they need only communicate their desire to withdraw from the process.
- 3) **Peacemaking Procedures:** The peacemaking process will be conducted by a mediator/peacemaker at the direction of Washtenaw County Trial Court Judge Timothy P. Connors and upon the further agreement of the parties themselves.
 - a. The peacemaking process 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 peacemaking 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 peacemaking process, the peacemaker must make reasonable efforts to screen for the presence of coercion or violence that would make peacemaking 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 peacemaking, the peacemaker will advise the parties and their attorneys, if applicable, of the following:
 - i. The purpose of peacemaking;
 - ii. How the peacemaker will conduct peacemaking;

- iii. Except as provided for in MCR 2.412(D)(8), statements made during the peacemaking process are confidential and cannot be used in court proceedings and cannot be recorded;
- d. If the parties reach an agreement, the peacemaker shall submit a proposed order and a report pursuant to MCR 3.224(I) within 7 days.
- e. If the parties do not reach an agreement within 7 days of the completion of peacemaking, the peacemaker shall so advise the court stating only the date of completion of the process, who participated in the peacemaking, whether settlement was reached, and whether additional friend of the court ADR proceedings are contemplated.
- f. With the exceptions provided for in MCR 2.412(D), communications during FOC domestic relations peacemaking process are confidential and cannot be used in court proceedings and cannot be recorded.

Dated: 12/11/2019 Chief Judge Signature: 