

JON A. VAN ALLSBURG
CHIEF CIRCUIT JUDGE
FAMILY DIVISION / BUSINESS COURT

JON HULSING
CIRCUIT JUDGE - TRIAL DIVISION

KAREN J. MIEDEMA
CIRCUIT JUDGE - TRIAL DIVISION

KENT D. ENGLE
CIRCUIT JUDGE - FAMILY DIVISION

MARK A. FEYEN
CHIEF PROBATE JUDGE - FAMILY DIVISION

STATE OF MICHIGAN



TWENTIETH JUDICIAL CIRCUIT COURT
OTTAWA COUNTY
FRIEND OF THE COURT

JENNEL L. CHALLA
FRIEND OF THE COURT

MATTHEW J. SCHMID
ASSISTANT FRIEND OF THE COURT

KATHY E. WINSTON
ASSISTANT FRIEND OF THE COURT

Administrative Order ~~2020-07~~ 2020-08

FRIEND OF THE COURT ALTERNATIVE DISPUTE RESOLUTION

Previous Friend of the Court Alternative Dispute Resolution Local Administrative Order 2019-05 is by this Order *rescinded.*

IT IS ORDERED:

Pursuant to MCR 3.224, the following is adopted at the 20th Circuit Court as the Friend of the Court Alternative Dispute Resolution Plan:

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

The 20th 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 20th Circuit Court will use the following ADR practices:
 - (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,
 - (c) the 20th Circuit Court has established the following additional FOC ADR processes: diversion conference to facilitate resolution of post judgment custody motions and facilitative and information-gathering conference specific to establishment of paternity/support.
 - (d) an online dispute resolution platform which includes online processes to assist parties in the resolution of parenting time issues and complaints and may include assisting parties in the resolution of other domestic relations issues, such as custody and child support.

- 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 parties do not resolve some or all of the issues in a facilitative and information-gathering conference, 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/or 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: miottawa.org/FOC

(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 post judgment custody, parenting time, or support issue in a domestic relations case to mediation by written order.
 - (a) All prejudgment custody, parenting time and support issues are ordered to a facilitative and information-gathering conference.
 - (b) 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 facilitative and information-gathering conference.
 - (c) 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 diversion conference post judgment.
 - (d) The FOC may schedule a diversion conference 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:
 - 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) **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 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 also:
 - (a) Prepare and forward a recommended order to the court within seven days from the date of the conference. The court may enter the recommended order if it approves the order and must serve it on all parties and attorneys of record within seven days from the date the court enters the order. Accompanying the order must be a notice that a party may object to the order by filing a written objection with the court within 21 days after the date of service, and by scheduling a hearing on the objection. If there is a

timely objection, the court will hold a hearing within 21 days after the objection is filed. If a party objects, the order remains in effect pending a hearing on a party's objection unless the court orders otherwise.

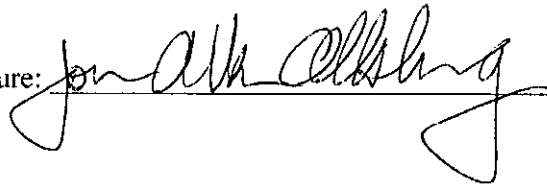
(b) Prepare and serve a recommended order on the parties within seven days from the date of the conference along with a notice that the recommended order will be presented to the court for entry unless a party objects by filing a written objection within 21 days after the date of service, and by scheduling a hearing on the objection. If neither party files a timely objection, the court may enter the order if it approves.

(c) 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.

(D) Additional FOC ADR processes, as attached, are also permissible.

Dated: 10-27-2020 Chief Judge signature:



Effective date: November 1, 2020

2020 - 08

ATTACHMENT TO ADMINISTRATIVE ORDER ~~2020-07~~

ADDITIONAL FOC ADR PROCESSES

(A) FOC Facilitative and Information-Gathering Conference Procedures Specific to IV-D Paternity and Support Order Establishment:

Pursuant to 42 U.S.C. section 602, the Ottawa County FOC IV-D office initiates cases for the purpose of establishing paternity and child support. As part of this process, the FOC will meet with the parties to discuss the resolution of custody and parenting time issues. Referrals to the FOC shall be made through IV-D processes and procedures set forth by the Michigan Department of Health and Human Services (MDHHS) and/or the Office of Child Support (OCS).

The FOC will use a variation of the FOC facilitative and information-gathering conference specific to establishment cases which includes the following procedures:

(1) All FOC establishment 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 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.

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 may submit an order or recommendation to the court;
- b) How information gathered during the conference, including DNA testing, 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. The proposed consent order will be set for hearing and entry of a final order.
- 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:
 - (a) Prepare and forward a recommended order to the parties and attorneys of record. The recommended order will be set for hearing and entry of a final order. Accompanying the order must be a notice that a party may object to the order by filing a written objection with the court within 21 days after the date of service.
- 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.

(B) FOC Diversion Conference

A prejudgment or post judgment motion to modify custody shall be referred to the FOC for Diversion Conference in an effort to resolve custody issues and may also include facilitating resolution of issues regarding parenting time and child support. Appointments may be scheduled separately or jointly.

- 1) **Diversion Conference Procedures:** Diversion conferences shall be conducted as follows:
 - (a) A diversion conference 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, a diversion conference 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 diversion conference, the FOC employee conducting the diversion conference must make reasonable efforts to screen for the presence of coercion or violence that would make the diversion 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 diversion conference, the FOC employee conducting the diversion conference shall do the following:
- i. Advise the parties that statements made during the diversion conference are not confidential and can be used in other court proceedings;
 - ii. Explain how the FOC employee will conduct the diversion conference;
 - iii. Advise the parties that the purpose of the diversion conference is for the parties to discuss custody, parenting time, and child support.
- (d) At the conclusion of the diversion conference, the FOC employee conducting the diversion conference may do one of the following:
- i. If the parties reach an agreement, submit a consent order to the court. A party who consents to the 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.
 - ii. If the parties do not reach an agreement, the FOC employee may make a recommendation to the court regarding whether or not the threshold to modify custody has been met and recommend whether a custody investigation shall be ordered. This recommendation may also include recommendations to modify parenting time, and/or child support. Either party has the opportunity to file an objection to the FOC recommendation within 21 days from the certificate of mailing date and request a hearing on the objection.
- (e) Diversion conferences may also be conducted on-line using an online dispute resolution platform. The goal of the online dispute resolution platform is to assist the parties in resolution of their domestic relations issues and upon resolution, to assist the parties in drafting a stipulation and order reflecting their agreement. If the parties are unable to resolve their issues, the FOC employee will provide the parties with additional information regarding options for moving their issues forward, including the option to file a motion with the court.