

STATE OF MICHIGAN



ST. CLAIR COUNTY COURTS

201 McMORRAN BLVD.
PORT HURON, MICHIGAN 48060
Circuit Court (810) 985-2031
District Court-Port Huron (810) 985-2076
District Court-Marine City (810) 765-4057
Adult Probate (810) 985-2066
Family Division (810) 985-2155

HON. DANIEL KELLY
CHIEF JUDGE
HON. ELWOOD BROWN
PROBATE JUDGE
HON. JOHN TOMLINSON
PROBATE JUDGE
HON. CYNTHIA LANE
CIRCUIT JUDGE

HON. JOHN MONAGHAN
CHIEF JUDGE PRO TEM
HON. MICHAEL HULEWICZ
DISTRICT JUDGE
HON. CYNTHIA PLATZER
DISTRICT JUDGE
HON. MICHAEL WEST
CIRCUIT JUDGE

ADMINISTRATIVE ORDER C31-2019- 03

FRIEND OF THE COURT ALTERNATIVE DISPUTE RESOLUTION

IT IS ORDERED:

Pursuant to MCR 3.224, the following is adopted at the 31st Circuit Court as the Friend of the Court Alternative Dispute Resolution Plan:

(A) Alternative Dispute Resolution (ADR)

The 31st Circuit 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 31st Circuit 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 31st Circuit Court and the State Court Administrative Office have approved the 31st Circuit Court FOC ADR Plan.

(B) General Provisions of FOC ADR

- 1) The 31st Circuit Court will utilize FOC domestic relations mediation as established in MCL 552.513 and MCR 3.224 and facilitative and information-gathering conference (also known as resolution conference in the 31st Circuit) as established in MCR 3.224. The 31st Circuit 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 a protection order 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 postjudgment 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 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.
- 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 sufficient 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 resolution conference, 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: X Prejudgment X Post-judgment
 - Resolution Conferences: X Prejudgment X Post-judgment
- 16) Public Access to FOC ADR Plan: The FOC will make available the FOC ADR plan:
 - On the court's website

(C) FOC Domestic Relations Mediation

The 31st Circuit 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 31st 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, 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 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.
 - 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) Resolution Conference

An FOC resolution 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.

- 1) **Referral to Resolution Conference:** The 31st Circuit Court may, by an order or through this FOC ADR plan, provide that the parties are to meet with a person conducting a resolution conference concerning custody, parenting time, and support issues, unless otherwise provided by statute or court rule.
- 2) **Objections to a Resolution Conference:**
 - a. To object to a FOC resolution 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, 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 resolution conference unless the court orders a conference after motion and hearing or the objecting party withdraws the objection
- 3) **FOC Resolution Conference Procedures:** An resolution conference shall use the following procedures:
 - a. The 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, 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 resolution conference process, the facilitator 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 facilitator will advise the parties and their attorneys, if applicable, of the following:
 - i. 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);
 - 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 facilitator shall submit a report pursuant to MCR 3.224(I) and may provide a proposed order to the court setting forth the parties' agreements.
- e. 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).
 - i. 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 to 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 hearing must be held 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.
 - ii. 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.
 - iii. Submit a recommendation to the court for further action the court might take to help the parties resolve the remaining contested issues in the case, or alert the court there are contested issues that might require the court's immediate attention.
- f. 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.

- g. Except for communications made during domestic violence screening communications made during a resolution conference are not confidential and may be used in court proceedings.

Effective Date: January 2, 2020

Date: 12-12-19

Chief Judge Signature: _____

Daniel J. Kelly

