Chief Judge
Miriam A. Cavanaugh

Circuit Court Judges
L. Suzanne Geddis
Michael P. Hatty
Matthew J. McGivney

District Court Judges
Daniel B. Bain
Shauna N. Murphy

Livingston County Trial Courts
204 S. HIGHLANDER WAY, HOWELL, MI 48843

Administrative Order C44- 2019- 19 for the 44th Circuit Court

FRIEND OF THE COURT ALTERNATIVE DISPUTE RESOLUTION

Previous Friend of the Court Alternative Dispute Resolution Local Administrative Orders Rescinded by this Order: C44-2008-01

IT IS ORDERED:

Pursuant to MCR 3.224, the following is adopted at the 44th Circuit Court as the Friend of the Court Alternative Dispute Resolution Plan:

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

The 44th 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 44th Circuit Court will use the following ADR practices:

   FOC domestic relations mediation as established in MCL 552.513 and MCR 3.224

   Facilitative and information-gathering conference as established in 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.

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 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:

On the FOC website and the court's website.

(B) Submitting Cases to ADR

On written stipulation of the parties, or on the court's initiative, the court may order any contested prejudgment parenting time or support issue in a domestic relations case, including post-judgment matters to FOC mediation by written order.

On a written request by either of the parties, on a stipulation of the parties, on a recommendation by an attorney referee and ordered by the court, on a settlement conference order, or on the court's own initiative, the court may order the parties in any contested prejudgment and post judgment custody, parenting time, or support issue in a domestic relations case to attend a facilitative and information-gathering conference.

(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

An 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:

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.

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.

Effective Date: January 1, 2020

Dated: 12/13/2019

Miriam A. Cavanaugh
Chief Judge, Livingston County Courts