



THE FORTIETH JUDICIAL CIRCUIT OF MICHIGAN

NICK O. HOLOWKA
Circuit Judge

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**LAPEER COUNTY 40TH CIRCUIT COURT
FRIEND OF THE COURT**

Administrative Order 2019-001

FRIEND OF THE COURT ALTERNATIVE DISPUTE RESOLUTION

IT IS ORDERED:

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

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

The State of Michigan 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 Lapeer County 40th Circuit Court will use the following FOC ADR practices:
 - a) Domestic relations mediation as established in MCL 552.642a and MCR 3.224;
 - b) Joint Meetings pursuant to MCL 552.513 and MCR 3.224; and
 - c) 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. MCR 3.224(C)(2).
- 2) All 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 additional precautions are taken 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 or refer parties to an approved ADR agency.
- 4) A party may object to FOC ADR under MCR 3.224(E). An objection must be timely based on one or more of the factors listed in MCR 3.224(D)(2), and must allege facts in support of the objection:
 - 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.
- 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 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, approved by the chief judge, and have been approved subject to conditions established by SCAO.
- 12) **Public Access to FOC ADR Plan:** The FOC ADR plan is available on the Lapeer County Friend of the Court webpage or upon written request to the FOC.

(B) Submitting Cases to ADR

- 1) **FOC Mediation:** The court may by written order refer any contested pre-judgment and post judgment custody, parenting time or support issue in a domestic relations case to FOC mediation. Cases may be submitted to FOC mediation upon written stipulation of the parties, on written motion of a party, or on the court's initiative.
- 2) **Joint Meetings:** Joint meetings may be conducted on post judgment custody, parenting time, and support disputes. The court may order a joint meeting upon a written stipulation of the parties, on motion of a party, or on the court's own initiative. Also, the FOC may schedule a joint meeting with parties to a post judgment custody, parenting time, and support dispute.

(C) ADR Procedures

1) 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 with the Lapeer County Clerk 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 or an approved ADR agency.

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; and
 - c) Except as provided for in MCR 2.412(D)(8) and MCL 552.513(3), 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. Further, the proceedings shall not be recorded.

2) Joint Meeting

Joint meetings are face-to-face meetings in which a person employed with the Lapeer County FOC discusses proposed solutions with the parties to a custody or parenting time complaint, or an objection to an FOC support recommendation. The intent of this process is to empower the parties to come to an amicable resolution of issues to serve the parties and their families without undue influence, hardship, financial outlay, or delay.

a) Objection to 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.

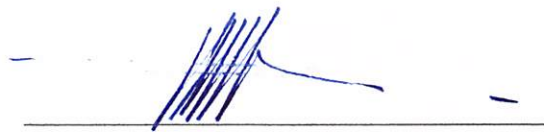
b) Joint Meeting Procedures: Joint meetings shall be conducted as follows:

- i) At the beginning of a joint meeting, the person conducting the meeting shall do the following:
 - a) Advise the parties that statements made during the joint meeting are not confidential and can be used in other court proceedings, however they may not be recorded;
 - b) 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
 - c) 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:
 - a) 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
 - b) 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:
 - a) That the court may enter the recommended order resolving the dispute unless a party object to the order in writing within 21 days after the notice is sent;
 - b) The objection must be sent to all parties and/or attorneys of record and be filed with the Lapeer County Clerk and the FOC;

- c) That a party may waive the 21 day objection period by returning a signed copy of the recommended order;
- d) 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; and
- e) 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, however they cannot be recorded.

Dated: _____

12/11/19.



Nick O. Holowka
Chief Judge - Lapeer