



Berrien County Trial Court

Gary J. Bruce, Chief Judge – Carrie Smietanka-Haney, Administrator

Courthouse - 811 Port Street - St. Joseph, MI 49085

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www.berriencounty.org

Administrative Order 2019-06

FRIEND OF THE COURT ALTERNATIVE DISPUTE RESOLUTION

Previous Friend of the Court Alternative Dispute Resolution Local Administrative Orders Rescinded by this Order:

IT IS ORDERED:

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

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

The Berrien County Trial 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 Berrien County Trial Court will use the following ADR practices:
 - FOC domestic relations mediation as established in MCL 552.513 and 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) Qualifications: FOC ADR providers have met the training and qualifications established by SCAO.
- 11) Public Access to FOC ADR Plan: The FOC will make the FOC ADR plan available on the court's website.

(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 postjudgment custody, parenting time, or support issue in a domestic relations case, including postjudgment matters to FOC mediation by written order.


(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.

Date: 12-12-19


Hon. Gary J. Bruce, Chief Judge