

**THIRD JUDICIAL CIRCUIT  
OF MICHIGAN**

TIMOTHY M. KENNY  
CHIEF JUDGE

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**LOCAL ADMINISTRATIVE ORDER 2019 – 15**

**STATE OF MICHIGAN  
THIRD JUDICIAL CIRCUIT**

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**SUBJECT: FRIEND OF THE COURT ALTERNATIVE DISPUTE RESOLUTION**

This Administrative Order rescinds and replaces Third Circuit Court LAO 2005-04, Pilot for Referring Selected Parenting Time Disputes to the Community Dispute Resolution Center for Mediation, and Third Circuit Court LAO 2014-20, Referrals of Selected Parenting Time Disputes to the Community Dispute Resolution Center for Mediation. Further, this Administrative Order is in addition to Third Circuit Court LAO 2018-05, Plan for Alternative Dispute Resolution (ADR) Including Civil Division Case Evaluation and Mediation and Family Division Domestic Relations Mediation.

**IT IS ORDERED:**

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

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

The Third 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 Third Circuit Court will use the following ADR practices:
  - a. FOC domestic relations mediation as established in MCL 552.513 and MCR 3.224, and
  - b. The Third Circuit Court has established the following additional FOC ADR process: Prejudgment Case Establishment Interview Process, as allowed under MCR 3.224(A)(9).

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 timely under MCR 3.224(E), must be based on one or more of the factors listed in MCR 3.224(D)(2), and allege facts in support of the objection. The factors in MCR 3.224(D)(2) are:
  - 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. If a protected party requests FOC ADR, the Court may order FOC ADR without holding a hearing.
6. The FOC may exempt cases from ADR based on one or more of the factors in 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, or if possible the case may be taken directly to the Judge or Referee for the Judge or Referee to make a determination as to whether ADR shall proceed.

7. The parties must be present, physically or telephonically, for FOC ADR, and attorneys of record will be allowed to attend, and participate in all FOC ADR processes. Attorneys may elect not to attend if their own client approves and if they reach a mutual agreement not to attend with opposing counsel.
8. Participants in a FOC 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 when the proposed order involves child custody or parenting time.
10. Qualifications: FOC ADR providers have met the training and qualifications established by SCAO and approved by the Chief Judge of the Third Circuit Court or have been approved subject to conditions established by SCAO. FOC Domestic Relations Specialists conducting prehearing interviews with parties to DS, DP, and inter-governmental cases on the Third Circuit Court Case Establishment Docket shall meet the SCAO standards for Friend of the Court Facilitative and Information Gathering Conference Facilitators, as provided in the Attachment to this LAO.
11. Public Access to FOC ADR Plan: The FOC will make the FOC ADR plan available on the Third Circuit 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 or post-judgment custody, parenting time, or support issue in a domestic relations case to FOC mediation by written order.
2. Parties to state-initiated support and/or paternity cases (DS and DP case types, et al.) and inter-governmental cases on the Case Establishment Prejudgment Docket shall meet with a Domestic Relations Specialist for a prehearing interview for the purpose of gathering information to establish child support, child custody, parenting time and/or paternity, if applicable.

#### **C. ADR Procedures**

1. FOC Domestic Relations Mediation

FOC domestic relations mediation is a process in which a neutral third party facilitates confidential communications 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

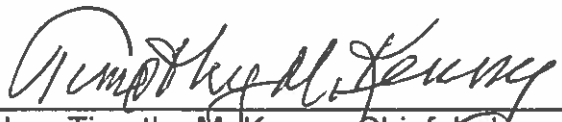
mediation and a notice of hearing of the motion, and serve a copy on all parties or their attorneys of record within 14 days after receiving notice of the order. The motion must be set for hearing within 14 days after it is filed, unless the hearing is adjourned by agreement of counsel or the Court orders otherwise. A timely objection must 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. Prejudgment Case Establishment Interviews

Third Circuit Court Prejudgment Case Establishment Interviews shall be conducted by Friend of the Court Domestic Relations Specialists, in the manner set forth in the Attachment to this LAO.

Date: December 12, 2019

  
Hon. Timothy M. Kenny, Chief Judge  
Third Judicial Circuit of Michigan

Date Approved by SCAO: December 17, 2019

## ATTACHMENT to Third Circuit Court LAO 2019 – ---

**Prejudgment Case Establishment Interview Process.** A process in which a Wayne County Friend of the Court Domestic Relations Specialist [hereinafter DR Specialist] assists the parties in a domestic relations case that has been initiated at the request of the State of Michigan Department of Health and Human Services, or through an inter-governmental process, to establish custody, parenting time, child support, and paternity as necessary.

- A. Court Action Referral and Filing of Complaint.** Via a Court Action Referral [hereinafter CAR] sent to the Special Assistant Prosecuting Attorneys for Wayne County [hereinafter SAPAs], the State of Michigan requests that a specific type of domestic relations case be initiated between alleged parents or custodial/noncustodial parties regarding their child(ren). The SAPAs are FOC attorneys who perform the county prosecutor function for domestic relations case establishment pursuant to a contract between the FOC and the Wayne County Prosecutor's Office. Upon receipt of the CAR, the Special Assistant Prosecuting Attorney for Wayne County files a conforming complaint and a court hearing is scheduled on the FOC Case Establishment Docket.
  
- B. Prejudgment Case Establishment Interview.** On the scheduled date of the court hearing, when the parties come to the FOC, they are directed to meet with the DR Specialist for a pre-hearing Interview. The Interview is conducted as follows:
  - 1. Objections to Case Establishment Interview.** If, at the start of the Interview, a party raises an objection to the Interview, either orally or in writing to the DR Specialist, the case shall immediately proceed to the Case Establishment Courtroom for the Hearing, after the party(ies) provide(s) the DR Specialist with the Verified Financial Information Form and supporting documents showing their respective incomes.
  
  - 2. Cases Subject to a DR Specialist Interview.** All Paternity (DP), Family Support (DS) and inter-governmental cases proceed with a Case Establishment Interview, except for those matters when one party to the case is in prison or is participating via telephone. The FOC may exempt cases from ADR based on one or more of the factors in MCR 3.224(D)(2). If the FOC exempts a case from ADR, the case shall proceed directly to the Case Establishment Courtroom for a hearing before the Referee.
  
  - 3. Attorneys.** Attorneys of record will be allowed to attend, and participate in the Case Establishment Interview.
  
  - 4. Domestic Violence Screening.** The Interview 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.
    - a. If domestic violence is identified or suspected, the Interview 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 Interview, the DR Specialist conducting the Interview must make reasonable efforts to screen for the presence of coercion or violence that would make the Interview physically or emotionally unsafe for any participant or that would impede achieving a voluntary and safe resolution of issues.
  
    - b. At the beginning of an Interview, the DR Specialist conducting the interview shall do the following:

- i. Advise the parties that, except for communications made during domestic violence screening, communications made during statements made during the Interview are not confidential and may be used in other court proceedings;
  - ii. Advise the parties that they may not record the Interview;
  - iii. Describe how the DR Specialist will conduct the Prejudgment Case Establishment Interview and advise the parties that the purpose of the Interview is to assist the parties to reach an agreement, if possible, on any unresolved issues involving paternity, custody, child support or parenting time, if applicable, and
  - iv. Advise the parties that they are expected to provide information as required by MCL 552.603 to the FOC and the consequences of not doing so.
- c. At the conclusion of the Interview, the DR Specialist conducting the Interview may do one of the following:
- i. If the parties resolve all issues, the DR Specialist shall complete and submit a report to the Court pursuant to MCR 3.224(l) and shall complete and provide a consent order to the Court that is signed by the parties and sets forth the parties' agreements regarding paternity, custody, child support, and parenting time, if applicable.
  - ii. If the parties do not resolve all contested issues at the Interview or the parties agree to resolve all or some contested issues but do not sign the proposed order, the DR Specialist shall complete and submit a Case Establishment Tracking Form to the Case Establishment Referee that details the agreed upon issues and notes the issues on which the parties disagree. The case will be sent directly to the Case Establishment Courtroom for a hearing before the Referee in which the Referee will make his or her recommendation pursuant to MCR 3.215.

**C. Qualifications for Case Establishment Department DR Specialists Performing Prejudgment Case Establishment Interviews.**

1. DR Specialists conducting prehearing interviews with parties to DS, DP, and inter-governmental cases on the Third Circuit Court Case Establishment Docket shall meet the SCAO standards for Friend of the Court Facilitative and Information Gathering Conference Facilitators that are established by SCAO under MCR 3.224(J) and stated in SCAO Administrative Memorandum 2019-05.