SCLSPR 94.04(c)(3) ALTERNATIVE DISPUTE RESOLUTION REQUIRED IN FAMILY LAW

Comments

Commenter: Family Support Deputy Prosecuting Attorneys
Date Received: 06/10/2021
Comment:

SCLSPR94.04(c)(3)(C)(4): Does the amended rule remove the mandatory Notice of ADR compliance report...in non support only cases?

Commenter: Family Support Deputy Prosecuting Attorneys
Date Received: 06/10/2021
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Proposed language:
"Either party may, by motion on the Commissioner's Domestic Motions Calendar, seek a court order requiring ADR in a case where it would not be required as set forth in (3)(b) above, if the moving party believes that the parties would be able, through ADR, to resolve their dispute fairly under the particular circumstances of the case"

(3)(b) outlines when mediation is NOT appropriate, specifically when there is domestic violence or a protection order or no contact order between the parties in the last year.

I'd respectfully ask this amendment to the rule, allowing a party to make a motion to allow mediation when not allowed, to be stricken. By adding this rule, additional pressure will be placed on domestic violence survivors to mediate when they do not want to. Often survivors in traumatic situations suffer an inability to voice their fears or concerns to explain why they cannot mediate or work cooperatively with their abusers. Survivors will feel obliged to agree to mediation even when they do not want because the court will be telling them to. The court is also inviting coercive use of this rule by abusers and danger to victims. Abusers will use this rule as a means to communicate with their victims, and they will manipulate facts in order to force their victims to comply with mediation. Finally, this proposed amendment is more liberal than RCW 26.09.016 which states as follows:

> RCW 26.09.016
> Mediation in cases involving domestic violence or child abuse.
> Mediation is generally inappropriate in cases involving domestic violence and child abuse. In order to effectively identify cases where issues of domestic violence and child abuse are present and reduce conflict in dissolution matters: (1) Where appropriate parties shall be provided access to trained domestic violence advocates; and (2) in cases where a victim requests mediation the court may make exceptions and permit mediation, so long as the court makes a finding that mediation is appropriate under the circumstances and the victim is permitted to have a supporting person present during the mediation proceedings.
> [2007 c 496 § 301.]

Commenter: Alexandra Kory
Date Received: 06/11/2021
Comment:

Northwest Justice Project joins the Family Support Deputy Prosecuting Attorneys in respectfully requesting that the proposed amendment to this rule be stricken.
In addition to the comments proffered by the Family Support Deputy Prosecuting Attorneys, we are concerned that this amendment gives adjudicated domestic violence abusers a free pass to compel their victim to return to court once again and relitigate an established issue. Further, if the petitioner is successful in compelling mediation, it forces a domestic violence victim to attempt negotiation with the person who victimized them, as if they are on equal footing. The legislature recently recognized the harm of coercive control by including it in

the definition of domestic violence under the new protection order law (ESHB 1320) passed this session. The state legislature has also taken steps to prevent abusive litigation by enacting RCW 26.51 in 2020. This amendment could provide a loophole in furtherance of abusive litigation and coercive control.
If a domestic violence victim chooses to mediate with their abuser, after consultation with an attorney, there is nothing preventing them from doing so even after initially waiving mediation. However, there is no reason a victim should be compelled to present the same concerns to the court in front of their abuser multiple times, which would be permitted under this amendment.