



Frequently Asked Questions

(And answers from the
State Court Administrative Office
Friend of the Court Bureau)

FAQ 2020-04

November 5, 2020

Friend of the Court Alternative Dispute Resolution

This FAQ answers common questions and clarifies policy related to [SCAO Administrative Memorandum 2019-05](#), Implementing Friend of the Court Alternative Dispute Resolution Plans. If staff have questions or would like additional information about this memorandum or [MCR 3.224](#), please contact Tim Cole at colet@courts.mi.gov or 517 373-5975.

- 1. Q. What if a person who provides ADR does not currently meet SCAO's ADR training and qualification requirements?**
 - A.** MCR 3.224 allows trial courts to request a waiver of ADR training and qualification requirements from SCAO. The chief circuit court judge must complete the waiver form for each ADR provider who does not meet the requirements. There are two situations when the chief judge would request a waiver. One is when a person who meets SCAO training and qualification requirements is not reasonably available and the proposed ADR provider has experience, training, and qualifications equivalent to those established by SCAO. The other is when an ADR provider does not meet all the training and qualifications, but will soon complete the requirements. If SCAO approves the waiver, it may be conditioned on further training and qualifications, or the proposed ADR provider may be approved subject to limitations on the type of ADR the person can provide. The waiver request form is available at [FOC exemption](#) and should be submitted to the appropriate regional administrator for approval.
- 2. Q. Does observing or being observed during ADR training meet SCAO's observation qualifications?**
 - A.** Yes, individuals who attend ADR training and observe and are observed during simulated facilitative information-gathering conferences will meet SCAO's observation requirements.
- 3. Q. MCR 3.224 requires FOCs to complete reports after ADR, both when parties reach an agreement and when they do not. Does that report have to be placed in the court file?**
 - A.** Because the report may contain sensitive information, it should be placed in a nonpublic file.

4. Q. MCR 3.224 requires proper screening for the detection of PPOs and protective orders. Would this include any PPOs and protective orders involving one of the parties, or just those between the parties?

A. ADR cannot begin until the FOC case has been screened for domestic violence using the FOC 124, which asks: “Is there currently or has there ever been a personal protection order or a no contact order issued against the other parent or you by someone else?” The form has other questions to help determine if either party feels unsafe around the other. If a party feels unsafe because of any PPO, non-contact order, or for other reasons, the FOC must have the party sign a consent form to participate in ADR and take additional precautions. When conducting searches for PPOs or non-contact orders, FOCs should focus on protective orders between the parties within its own jurisdiction and seek information about other PPOs and non-contact orders from the parties themselves.

5. Q. With the implementation of MCR 3.224, may FOC offices still send referrals to community dispute resolution centers?

A. Yes, FOCs can refer cases to community dispute resolution centers for mediation. If the parties are required to attend mediation, the court must enter an order for mediation.

6. Q. What does the FOC do when a party or parties do not return the Domestic Violence Screening document ([FOC 124](#)) before an ADR session?

A. MCR 3.224 requires the FOC to screen the case before the ADR session begins. The FOC must use a screening protocol (FOC 124) developed by SCAO. If the FOC 124 is mailed but not returned, the FOC may do one of the following:

- Call the party to ask the questions listed on the FOC 124.
- E-mail the questions listed on the FOC 124 to the party or parties.
- Have the party or parties complete the FOC 124 while at the FOC office and before the ADR, session begins.
- For ADR sessions held with Zoom, put each party in the waiting room while the FOC asks the questions from the FOC 124 of the other.

7. Q. Does the FOC 124 have to be signed by a party before the ADR session can begin?

A. No, MCR 3.224 only requires that the FOC case be screened using a screening protocol provided by SCAO. The FOC 124 has a signature line to identify the party completing the form. If the FOC obtains answers orally or electronically and can identify the answers as those of the party, there is no need for a party to sign the form.

8. Q. If domestic violence is identified before or during an ADR session, is a verbal consent by the protected party satisfactory to continue with the ADR session.

A. MCR 3.224 requires the protected party to submit a written consent, and the FOC must take additional precautions to ensure the safety of court staff and the protected party.

9. Q. What efforts must FOCs make to accommodate attorneys when scheduling ADR sessions?

A. MCR 3.224 provides that attorneys of record are allowed to attend and participate in all ADR processes or elect not to attend upon mutual agreement with opposing counsel and their client. FOC offices should make a reasonable effort to accommodate attorneys’ schedules and should consider the following when scheduling ADR sessions:

- Contact attorneys as soon as possible and ask about their availability.

- Have consistent days and times for conducting the ADR sessions, for example, Mondays and Thursdays from 1:00 pm to 5:00 pm. Attorneys will then know not to schedule other appointments during those days and times.
- Select days and times that do not conflict with other court schedules. For example if your circuit court’s motion days are Wednesdays, avoid scheduling ADR sessions that day.
- Have an FOC employee attend local bar meetings to discuss ADR session scheduling.

10. Q. What should FOCs do when attorneys become overly involved in an ADR session?

- A. FOC employees who conduct ADR sessions may occasionally encounter an attorney who becomes very involved (e.g., answering questions for his or her client). The following are recommendations for some ground rules that will benefit both attorneys and parties:
- Attorneys and their parties should meet before the ADR session to discuss the custody, parenting time, and support issues. This may reduce tension and escalation of the issues during the ADR session.
 - FOC staff should inform the parties and their attorneys that the purpose of the ADR session is for the parties to attempt to reach an agreement. For this to occur, the FOC employee must ask and have each party answer questions relevant to the custody, parenting time, and support dispute.
 - The ADR session can be stopped periodically so that attorneys can speak to clients privately.
 - Attorneys will have an opportunity to review the recommended order during the objection period.

11. Q. FOC ADR staff must meet SCAO training standards, including eight hours of continuing education. Once these requirements are met, who is responsible for recording them?

- A. Currently, and until further notice, SCAO is asking local FOC offices to record training standards and continuing education requirements.

12. Q. Can an FOC employee receive continuing education credit if the employee watches the September 10, 2020 Facilitative and Information-Gathering Conference video?

- A. Yes, FOC employees can meet continuing education requirements if they viewed the September 10, 2020 [Facilitative and Information-Gathering Conference video](#), and did not view the training live.

13. Q. Will additional information be given to FOCs and courts about implementing ADR plans, training, and MCR 3.224 issues?

- A. Yes, SCAO will update this FAQ as it receives more questions from the courts.