



## Michigan Supreme Court

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### MEMORANDUM

DATE: October 23, 2019

TO: Friends of the Court  
cc: Chief Circuit Judges  
Presiding Family Division Judges  
Circuit Court Administrators  
Family Division Administrators

FROM: Steven D. Capps

RE: SCAO Administrative Memorandum 2019-05  
Implementing Friend of the Court Alternative Dispute Resolution Plans

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The State Court Administrative Office (SCAO), and specifically SCAO's Friend of the Court Bureau, develops guidelines for the conduct, operations, and procedures of all the friend of the court (FOC) offices. Each FOC must take all necessary steps to adopt office procedures to implement the recommendations of the bureau. [\[MCL 552.503\(7\).1\]](#)

MCR 3.224 was approved by the Michigan Supreme Court and is effective January 1, 2020. MCR 3.224 requires courts to adopt an FOC alternative dispute resolution (ADR) plan. The plan must be consistent with SCAO standards and include minimum qualifications and training requirements. This memorandum provides guidance for courts submitting FOC ADR plans to SCAO for approval.

If courts or FOC staff have any questions, or would like additional information or clarification regarding this memorandum, please contact Timothy Cole at [ColeT@Courts.mi.gov](mailto:ColeT@Courts.mi.gov) or (517) 373-9663.

Attachments: Standards for conducting FOC alternative dispute resolution

## **A. Introduction**

To comply with MCR 3.224, each circuit court must submit an FOC alternative dispute resolution (ADR) plan to the State Court Administrative Office (SCAO) for approval as a local administrative order. The plan must include procedures for all ADR processes used by the FOC. MCR 3.224 includes three FOC ADR processes: facilitative and information-gathering conferences, mediation, and joint meetings. Courts are only required to provide FOC domestic relations mediation; they may provide facilitative and information-gathering conferences, joint meetings, or other FOC ADR processes, but all FOC ADR processes must be included in the FOC ADR plan.

## **B. Guidelines**

This administrative memorandum identifies topics that are required to be addressed in each FOC ADR plan and outlines elements that are recommended for consideration in developing the plan.

## **C. Format**

Plans must follow the numerical listing similar to the listing provided for in the model FOC ADR plans.

## **D. Due Date**

The FOC ADR plan should be submitted to the SCAO regional administrator for approval by close of business December 2, 2019. This is to afford ample time for a thorough review of the local ADR plan and to permit sufficient time for the court to be prepared to refer domestic relations cases to the FOC for ADR services.

## **E. Plan Amendment**

Future amendments to the plan will be made by issuing a new local administrative order that rescinds the current order and creates a new FOC ADR plan.

## **F. Plan Contents**

FOC ADR plans must include the following:

- 1) The legal authority for each FOC ADR process and a brief description of each process.
- 2) A requirement that 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 procedure by which 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) A provision that states that 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) A provision under which 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) A provision that 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) A statement that participants in an ADR process may not record the ADR proceeding.
- 9) A requirement that 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) A provision explaining that when the parties do not resolve some or all of the issues in a facilitative and information-gathering conference or 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) A statement that FOC ADR providers have met the training and qualifications established by SCAO and approved by the chief judge and/or have been approved subject to conditions established by SCAO and the chief judge.
- 12) An explanation of how the circuit court will make the plans available to the public.

13) A description of the manner in which the court will refer parties to ADR.

### **G. Model Plans**

A model plan is at: <https://www.courts.michigan.gov/4ae8c3/siteassets/court-administration/model-local-administrative-orders/required/lao49-model.rtf>. Courts can delete sections of the model plan that are not applicable and choose among options indicated by brackets. For example, if the FOC is going to provide only facilitative and information-gathering conferences and mediation, then joint meeting sections of the model FOC ADR plan can be deleted. An attachment to the model plan describing any additional ADR services should be included with the model plan. The word “attachment” should be typed under the chief judge’s signature. Courts may develop their own FOC ADR plans. However, all FOC ADR plans and processes must include items 1-13 listed in Section F and be in compliance with MCR 3.224.

### **H. Additional Recommendations**

Courts can structure FOC ADR processes to effectively serve both the court and parties to domestic relations cases. Once the court identifies types of FOC ADR processes that would be most effective, it should then determine who should conduct the process (e.g., FOC staff, private mediators, domestic relations referees, or community dispute resolution centers). Attached to this memorandum are FOC ADR qualifications as established by SCAO. Courts should review those qualifications to determine what ADR processes can be provided and what additional training will be necessary. Once these tasks are completed, the court should refine the FOC ADR plan and submit the plan to the SCAO regional administrator.

Local administrative orders for referring selected domestic relations disputes involving only custody, parenting time, and support to office of dispute resolution centers should be rescinded and any referral process should include the FOC ADR local administrative order that is submitted to SCAO for approval.

## Friend of the Court Alternative Dispute Resolution Standards

Friend of the court domestic relations mediators, friend of the court facilitative and information-gathering conference facilitators, and joint meetings facilitators shall meet the following minimum standards unless the state court administrator grants an exception under MCR 3.224(J).

A. *Friend of the Court Domestic Relations Mediators.* A friend of the court domestic relations mediator, at the time of appointment, shall possess the following qualifications:

1. *Minimum Education Standards.* Bachelor's degree in social sciences, education or a related field, or a juris doctorate.
2. *Experience and Skills.*
  - a. Two years of experience as a caseworker working with families, or similar work as a court employee or in a related field.
  - b. Ability to relate effectively to the public.
  - c. Ability to speak and write effectively.
3. *Training.* The applicant must have completed a training program approved by the State Court Administrator providing the generally-accepted components of domestic relations mediation skills, including:
  - a. Custody, parenting time, and child support principles and concepts;
  - b. Interest-based negotiations;
  - c. Diversity and cultural competency;
  - d. Experiential learning (i.e. role-playing);
  - e. General knowledge of domestic relations statutes, court rules, and case law;
  - f. Domestic violence training; and
  - g. Report writing.
4. *Additional Training.* In addition to the training listed in (A)(3), a friend of the court domestic relations mediator shall:
  - a. Observe two mediations conducted by an approved mediator;
  - b. Be observed while conducting one mediation to conclusion under the direction and supervision of an approved mediator;
  - c. Obtain eight hours of advanced mediation training each two-year period; and
  - d. Meet any additional qualifications determined by the chief judge.

B. *Friend of the Court Facilitative and Information-Gathering Conference Facilitators.* A friend of the court facilitative and information-gathering conference facilitator, at the time of appointment, shall possess the following qualifications:

1. *Minimum Education Standards.* Bachelor's degree in social sciences, education or a related field, or a juris doctorate.

2. *Experience and Skills.*

- a. Two years of experience as a caseworker working with families, or similar work as a court employee or in a related field.
- b. Ability to relate effectively to the public.
- c. Ability to speak and write effectively.

3. *Training.* The applicant must have completed a training program approved by the state court administrator providing training on:

- a. Custody, parenting time, and child support principles and concepts;
- b. Interest-based negotiations;
- c. Diversity and cultural competency;
- d. Experiential learning (i.e. role-playing);
- e. General knowledge of domestic relations statutes, court rules, and case law;
- f. Domestic violence training;
- g. Report and order writing; and
- h. Providing testimony.

4. *Additional Training.* In addition to the training listed in (B)(3), a friend of the court facilitative and information-gathering conference facilitator shall:

- a. Observe two facilitative and information gathering conferences or mediations;
- b. Be observed while conducting one alternative dispute resolution conference or mediation;
- c. Obtain eight hours of advanced alternative dispute resolution training each two-year period; and
- d. Meet any additional qualifications determined by the chief judge.

C. *Joint Meeting Facilitators.* Joint meeting facilitators shall possess the following qualifications:

1. *Minimum Education Standards.* Bachelor's degree in social sciences, education, or a related field or an associate degree and two years of experience working with families.

2. *Experience and Skills.*

- a. Ability to relate effectively to the public.
- b. Ability to speak and write effectively.

3. *Training.* The facilitator must receive training in the dynamics of domestic violence and in handling domestic relations matters that have a history of domestic violence. [MCL 552.519(3)(b)].