



# Frequently Asked Questions

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

**FAQ 2021-01**

**November 1, 2021**

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## **Friend of the Court Alternative Dispute Resolution (ADR)**

This FAQ answers common questions and clarifies policy related to the SCAO Administrative Memorandum 2019-05, Implementing Friend of the Court Alternative Dispute Resolution Plans. The FOCB will continue to update this FAQ as it receives additional questions. 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](mailto:colet@courts.mi.gov) or 517 373-5975.

- 1. Q. What can a court do if a person who provides ADR does not currently meet the SCAO's ADR training and qualification requirements?**
  - A.** MCR 3.224(J)(2) allows trial courts to request a waiver of ADR training and qualification requirements from the 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 the SCAO training and qualification requirements is not reasonably available and the proposed ADR provider has experience, training, and qualifications equivalent to those established by the SCAO. The other is when an ADR provider does not meet all the training and qualifications, but will soon complete the requirements. If the 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 the SCAO's observation qualifications?**
  - A.** Yes. Individuals who attend ADR training, observe, and are observed during simulated facilitative information-gathering conferences will meet the SCAO's observation requirements.
- 3. Q. MCR 3.224(F)(2), MCR 3.224(G)(1)(d), (G)(1)(e), and MCR 3.224(H)(1)(d) require 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.** No. Because the report may contain sensitive information, it should be placed in a nonpublic file.

- 4. Q. With the implementation of MCR 3.224(G)(1), 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.
- 5. Q. What efforts must FOCs make to accommodate attorneys when scheduling ADR sessions?**
- A. MCR 3.224(A)(8) 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 the 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 p.m. to 5:00 p.m. 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.
- 6. 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.
- 7. Q. Can FOC offices require attorneys of record to notify the office if the attorneys plan to attend an FOC ADR session?**
- A. To require attorneys to notify the FOC of their attendance, the FOC ADR plan or the appointment letter for the ADR session must include a statement that attorneys are required to notify the office if they plan to attend an FOC ADR session.
- 8. Q. Can the FOC prohibit an attorney of record from attending an FOC ADR session if the other party is not represented by an attorney?**
- A. No. The FOC cannot deny an attorney access to an FOC ADR session because the opposing party does not have an attorney. MCR 3.224(A)(8) provides that attorneys of record will be allowed to attend, and participate in, all friend of the court ADR processes, or elect not to attend upon mutual agreement with opposing counsel and the clients. The

fact that the opposing party does not have an attorney prevents the attorney from reaching a mutual agreement but it does not prevent the attorney from being allowed to attend an FOC ADR session.

**9. Q. FOC ADR staff must meet the 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, the SCAO is asking local FOC offices to record training standards and continuing education requirements.

**10. Q. Can an FOC employee receive continuing education credit if employees view the following MJI training videos?**

- [Facilitative and Information-Gathering Conference video](#)
- [Assisting Parents in Reaching Custody and Parenting Time Decisions.](#)
- [Domestic Violence Screening for Friend of the Court Alternative Dispute Resolution Staff](#)

A. Yes. FOC employees can meet continuing education requirements if they viewed these training videos.

**11. Q. Will the SCAO develop an FOC ADR checklist that FOCs can use to ensure that all ADR court rule and statutory requirements were met?**

A. Yes. The SCAO has developed the following FOC ADR checklists:

- [Mediation Check List.](#)
- [Facilitative and Information-Gathering Conference Check List.](#)
- [Joint Meeting Check List.](#)

**12. Q. Should FOCs provide ADR services if there are allegations of child abuse and neglect?**

A. MCR 3.224(D)(2)(a) provides that the FOC may exempt cases from ADR due to child abuse and neglect. FOC cases should be exempt from ADR services if the Michigan Department of Health and Human Services Child Protective Services has substantiated the child abuse and neglect or there is potential risk to the child as determined by [MCL 722.628d](#) categories I-IV.