

Michigan Judicial Institute/ Friend of the Court Bureau Webinar

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Domestic Violence Screening for Friend of the Court Alternative Dispute Resolution Staff

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The Purpose of Today's Presentation

The purpose of today's presentation is to review the domestic violence screening requirements for friend of the court (FOC) alternative dispute resolution (ADR) services.

Today's presentation will count towards the required eight hours of continuing education each two-year period for FOC ADR providers.

MCR 3.224 Domestic Violence Definition

- MCR 3.224(B)(1) “Domestic violence” means the **presence of coercion or violence that would make friend of the court ADR physically or emotionally unsafe for any participant**, or that would impede the achievement of a voluntary and safe resolution of issues.

Protected Party Definition

- MCR 3.224(B)(6) “Protected party” means a person who has a personal protection order or other protective order against another party to the case or a person who, due to the presence of coercion or violence in a relationship with another party to the case, could be physically or emotionally unsafe.

Domestic Violence Screening Requirements- For FOC ADR Plans

- MCR 3.224(A)(1): **Require the use of the domestic violence screening protocol provided by the SCAO to identify domestic violence**, the existence of a protection order as defined in MCL 552.513 between the parties or other protective order, child abuse or neglect, and other safety concerns. The plan shall provide a method to address those concerns.

Cases Exempt from FOC ADR (Cases Referred from the Court)

- MCR 3.224(D)(1) 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 friend of the court ADR** without a hearing to determine whether friend of the court ADR is appropriate. The court may order ADR if a protected party requests it without holding a hearing.

FOC May Exempt Cases From ADR

- MCR 3.224(D)(2)(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.

MCR 3.224 (F)(1)(b), MCR 3.224(G)(1)(b), and MCR(H)(1)(b)

If domestic violence is identified or suspected, the **FIG/mediation/joint meeting** may not proceed 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. Throughout the **FIG/mediation/joint meeting** the person conducting the **FIG/mediation/joint meeting** must make reasonable efforts to screen for the presence of coercion or violence that would make the **FIG/mediation/joint meeting** physically or emotionally unsafe for any participant or that would impede achieving a voluntary and safe resolution of issues.

Is the Screening Document Confidential?

Answer: MCR 3.224: Except for communications made during domestic violence screening under (A)(1),(F)(1)(a), and H(1)(a) communications made during a friend of the court facilitative and information-gathering conference or joint meeting are not confidential and may be used in court proceedings.

What Does the FOC do if a Party Refuses to Complete a Screening Document?

Answer: If a party refuses to complete the domestic violence screening protocol, the matter would have to be set for a hearing or FOC staff can inform the judge and attorneys that a party or parties refused to complete the screening document, thus the FOC could not proceed with conducting the FOC ADR session.

What Do you Do if the ADR Session has been Scheduled and One or Both Parties have not Completed the Domestic Violence Screening?

- The FOC ADR session cannot begin until the case has been screened for domestic violence.
- 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.

Does the FOC Have to Use the FOC 124?

Answer: MCR 3.224:
mediation/conference/joint meeting may not begin until the friend of the court case has been screened for domestic violence using a screening protocol provided by the State Court Administrative Office as directed by the Supreme Court.

What Does the FOC Do When Domestic Violence is Identified Before or During an Alternative Dispute Resolution (ADR) Session?

- Answer: MCR 3.224: If domestic violence is identified or suspected, the ADR session may not proceed unless the **protected party submits a written consent** and the friend of the court takes additional precautions to ensure the safety of court staff and the protected party. Throughout the ADR process, the facilitator/mediator must make reasonable efforts to screen domestic violence that would make the ADR session physically or emotionally unsafe for any participant or that would impede achieving a voluntary and safe resolution of issues.

Should FOCs Schedule Separate ADR Sessions if Domestic Violence is Discovered Before the ADR session?

- Answer: The FOC can schedule separate ADR sessions if domestic violence is discovered before the ADR session is held. However-the FOC must have the victim sign a consent form and the FOC must provide additional safety precautions the victim needs.

What Does the FOC do When the Completed Screening Documents Indicates There is No Domestic Violence, but During the ADR Session, Safety Concerns are Raised?

- Answer: If there are no indications of domestic violence on the completed screening documents, but safety concerns are raised during the ADR session, FOC staff should stop the session and speak to the protected party: ask if the person wants to continue, have that person sign a consent form, and implement additional safety precautions.

Does the Court Have to Hold a Hearing if the FOC Discovers Domestic Violence?

- Answer: No. The victim would have to sign a consent form and additional safety precautions would need to be taken. A hearing would not need to be held.

What Are Some Examples of Additional Safety Precautions?

Answer:

- Attorney of record present.
- Advocate present.
- Separate appointments.
- Separate rooms.
- Conducting the ADR session by phone or remotely.

Why was the FOC 124 Developed if SCAO Already had Domestic Violence Screening Protocols?

- Answer: At the request of FOCs, SCAO developed a screening protocol that could be mailed, used by phone, used remotely, or used in person. The protocols used before the development of the FOC 124 could only be used by phone.

Remember

- All cases must be screened for domestic violence before an FOC ADR session can begin.
- Do not send any documents to the defendant before the defendant is served.
- Must use a screening protocol produced by SCAO.
- Must have a written consent signed by the protected party and additional safety precautions must be taken if domestic violence is discovered before or during an FOC ADR session if the session is to continue.
- Cases cannot be referred to the FOC by the court when there are signs of domestic violence without a hearing first being held.

Remember-Continued

- The screening document is confidential.
- FOC staff should always review screening document with each party before the FOC ADR session begins.
- Must warn the protected party if information contained within the report or order may result in safety concerns for the protected party.

Will There Be Additional Information Distributed by SCAO About Domestic Violence Screening for FOC ADR

- Answer: Yes. SCAO will develop a FAQ document that will address domestic violence screening for FOC ADR sessions.

Domestic Violence Resources Webinars

Webinars

- [A Domestic Violence-Informed Approach to Child Custody Decision-Making \(bwjp.org\)](http://bwjp.org)
- [What Can We Learn From Turned-Around Cases \(bwjp.org\)](http://bwjp.org)

Domestic Violence Resources Continued

- Association of Family and Conciliation Courts
Guidelines for Examining Intimate Partner Violence:
A Supplement to the AFCC Model Standards of
Practice for Child Custody Evaluation [Guidelines for
Examining Intimate Partner Violence.docx](#)
(afccnet.org)
- Resource Center on Domestic Violence: [Custody
Mediation and Domestic Violence: A Resource
Guide for Mediators \(rcdvcpc.org\)](#)

FOC ADR Forms

- FOC Domestic Violence Screening: [FOC 124](#)
- FOC Summary Report: [FOC 125](#)
- FOC Order Regarding Custody: [FOC 89](#)
- Mediation Status Report: [MC 280](#)