



Michigan Supreme Court

State Court Administrative Office

Friend of the Court Bureau

Michigan Hall of Justice

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Steven D. Capps
Director

MEMORANDUM

DATE: January 29, 2025

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

FROM: Steven Capps, FOCB Director

RE: Opting Out of Friend of the Court Services (Updates SCAO Administrative Memorandum 2004-16)

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

The parties to a domestic relations case may refuse all services provided by the FOC. Many refer to this provision as the "opt out" law. FOC offices must open and maintain an FOC case file for all domestic relations matters unless the parties opt out of FOC services. [MCL 552.505a](#).

This memorandum updates SCAO Administrative Memorandum 2004-16 to outline the procedural issues the FOC should consider when parties opt out of FOC services. FOC's with any questions may contact Steve Capps at CappsS@courts.mi.gov, Nikki Withrow at WithrowN@courts.mi.gov, or call the FOCB at (517) 373-5975.

Requirement to Open FOC Case; Authorization for Parties to Opt Out

Michigan law requires the FOC to open and maintain a case for each domestic relations matter unless the parties opt out of FOC services. When parties opt out, they assume full responsibility for the administration and enforcement of the court's orders, and the FOC may no longer engage in those activities. [MCL 552.505a\(1\)](#).¹

A. Statutory Procedure to Opt Out

In new and existing domestic relations cases, parties who agree to manage their own case must file a motion with the court requesting an order exempting their case from all FOC services. Both parties must also sign the Advice of Rights Regarding Use of Friend of the Court Services ([FOC 101](#)), which lists services that the FOC provides. By signing the FOC 101, the parties acknowledge they will not receive the services.²

1. Existing Domestic Relations Case

MCL 552.505a(4) provides when the parties to an *existing* FOC case file a motion to opt out accompanied by a signed FOC 101, the court must approve the motion and enter an order directing the FOC to close its case file unless the court determines that one or more of the following are true:

- (a) A party objects to the motion.
- (b) A party is eligible for Title IV-D services because the party is receiving public assistance (see Section 3, "Public Assistance," below).
- (c) A party is eligible for Title IV-D services because the party formerly received public assistance and an arrearage is owed to the governmental entity that provided the assistance.
- (d) The record shows that a child support arrearage or a custody or parenting time order violation occurred within the previous 12 months.³
- (e) Within the previous 12 months, a party to the case reopened this or another FOC case.
- (f) There is evidence of domestic violence or uneven bargaining positions and evidence that a party's decision to opt out of FOC services is against the best interests of the party or a child.

¹"Except as required by this section, an office of the friend of the court shall open and maintain a friend of the court case for a domestic relations matter. If there is an open friend of the court case for a domestic relations matter, the office of the friend of the court shall administer and enforce the obligations of the parties to the friend of the court case as provided in this act. If there is not an open friend of the court case for a domestic relations matter, the office of the friend of the court shall not administer or enforce an obligation of a party to the domestic relations matter."

² The FOC 101 is not a motion, nor is it intended to be a separate pleading. It does not, therefore, contain the captions found on pleadings and other court papers. It is intended to be filed as an attachment to the motion like any other supporting document.

³ The statute does not specify whether the 12 months in (d) and (e) is from the date of the motion or the date of the court's consideration of the motion. Therefore, courts are free to adopt their own standards. The SCAO suggests that courts count back from the date of the motion.

- (g) The parties have not filed an FOC 101 acknowledging that the parties are choosing to do without those services.

2. New Domestic Relations Case

MCL 552a(2) requires parties to a *new* domestic relations case to file the motion to opt out and signed FOC 101 with the *initial* pleading. When the parties file a motion and FOC 101, the court must order the FOC not to open a case file unless it determines that one or more of the following are true:

- (a) One of the parties is eligible for Title IV-D services because of that party's current or past receipt of public assistance (see Section 3, "Public Assistance").
- (b) One of the parties applied for Title IV-D services.⁴
- (c) One of the parties asks the FOC to open and maintain a case, even though the party might not be eligible for Title IV-D services.⁵
- (d) There is evidence of domestic violence or uneven bargaining positions and evidence that a party's failure to apply for title IV-D services is against the best interests of the party or a child.
- (e) The parties have not filed an FOC 101 acknowledging that the parties are choosing to do without those services.

3. Public Assistance

The law prohibits parties from closing their FOC case if they are receiving or have received public assistance and an arrearage is owed to the state.⁶ MCL 552.505a(9) defines public assistance as Temporary Assistance for Needy Families (TANF), Medicaid, Food Assistance Program (FAP), or foster care.

4. Domestic Violence

If there is a history of domestic violence or uneven bargaining positions between the parties, a party may feel coerced to opt out of FOC services even though doing so is against the party's or the child's best interests. The court may not allow the parties to opt out if these circumstances exist.⁷

⁴ MCL 552.503(6) limits the FOC's responsibilities to perform activities to *cases in which a party has requested Title IV-D services*.

⁵ Most child support cases are eligible for IV-D services. It often happens that IV-D services could be available but neither party has applied for them. A party might not be eligible for IV-D services if, for example, the case involves only spousal support, child custody, and/or parenting time.

⁶ Arrears owed to the state include permanently assigned arrears (PAA), conditionally assigned arrears (CAA), or IV-E Foster Care (IVEF).

⁷ The court may want to check for indications of domestic violence such as personal protection orders or through having the FOC screen the case for domestic abuse.

B. FOC Procedure after Opt Out

1. IV-D Case Closure

The SCAO has developed an Order Exempting Case from Friend of the Court Services ([FOC 102](#)) for courts to use to direct the FOC to close a case file. The order contains a checklist to assure that all statutory requirements are met; it also specifies that the case file can be opened or reopened in the future and what the parties must do in that event. The opt out order should include a provision to require a party to file a Verified Statement ([FOC 23](#)) when reopening an FOC case. The FOC 23 will provide the FOC with the most recent contact and employment information for the other party, if known, to allow the FOC to effectively administer and enforce the order.

2. Notifying Employer

When an FOC case file is closed and support payments are paid through income withholding, the FOC must send a Notice of Closure of Friend of the Court Case ([FOC 103](#)), along with a copy of the FOC 102, to the payer's employer. This will notify the employer that the FOC is no longer involved in managing the case. Depending on the court's order, the notice will either explain the income withholding procedures to follow if the Michigan State Disbursement Unit (MiSDU) will continue to process the support payments or direct the employer to terminate income withholding.

3. Support Payments through MiSDU

If a party wants to ensure that all child support payments made after the FOC case is closed will be considered in a possible future FOC enforcement action, the opt-out order should require that those support payments be made through the MiSDU. If the MiSDU will remain involved, then the FOC cannot close its case file until the parties provide the necessary information for MiSDU to process the support payments.⁸

If the parties do not choose to have payments made through MiSDU, and they subsequently opt back into the FOC, the FOC will monitor only those support payments that fall due after the FOC case file is reopened (see Section C, "Opening or Reopening an FOC Case").

4. Services the FOC Cannot Provide

Once an order exempting a case from FOC services enters, the parties assume full responsibility for the administration and enforcement of the court's orders. The

⁸ MCL 552.505a(6). See [Section 6.03, "Income Withholding,"](#) of the *Michigan IV-D Child Support Manual* for more information.

FOC then cannot be involved in enforcement, investigation, or accounting functions for support, custody, or parenting time. This prohibition exists regardless of whether the support payments are being made through the MiSDU.

C. Opening or Reopening an FOC Case (Opt In)

Parties who have opted out of FOC services may change their minds. If either party requests services from the FOC, or applies for public assistance, the FOC is required to open (or re-open) its case file.

A party should file a Request to Reopen Friend of the Court Case ([FOC 104](#)) and a Verified Statement ([FOC 23](#)) with the FOC (if the order requires a Verified Statement to be filed upon opt in), and send a copy of the FOC 104 to the other party's last known address and to the court. The case file will be reopened when the FOC receives this information. The other party cannot object to the case being reopened.

When parties opt out of FOC services, they may have support orders that do not satisfy statutory requirements for FOC cases. If the court order does not contain a provision that is required by either the Friend of the Court Act ([MCL 552.501 et seq.](#)), the Support and Parenting Time Enforcement Act ([MCL 552.601 et seq.](#)), or court rule, upon opening or reopening an FOC case file, the court must issue an order or amended order that includes the statutory provisions. FOC offices should use the Uniform Child Support Order ([FOC 10](#)) or the Order Correcting Omission in Order ([FOC 94](#)), as appropriate, to add the necessary provisions to the support order. The FOC 102 that initially exempted the case from FOC services should provide that these new orders could later be entered ex-parte.

If there is a dispute about support payments made during the time the case was not an FOC case, and the payments were not made through the MiSDU, the parties must ask the circuit court to resolve the dispute. Because the disputed payments were to have been made directly between the parties, the FOC does not have any evidence of those payments. The FOC cannot intervene other than to let the parties know they will need a judicial determination of the payment history.

Due to funding and staff limitations, courts should avoid using the FOC to recalculate support when the parties have not provided for record-keeping during an opt-out. A court should consider appointing an independent examiner or auditor, paid for by the parties, to determine if support is overdue. The court can then order a sum-specific due at the time the opt in occurs.

D. Prohibition on Fees Charged to Opt In or Opt Out

The court may charge a motion fee when a party files a motion to opt out of FOC services. There is no statutory authority for the FOC to charge any fees in addition to the motion to parties who opt out.

No statute or court rule authorizes the FOC to charge a fee to re-open a case file. In some circumstances, charging such a fee would violate federal regulations.⁹ Re-opening a case does not require that a motion be filed when the [FOC 102](#) is used; therefore, no motion fees may be charged to a party opting back into FOC services.

E. IV-D Application Required for FOC Services

[MCL 552.503\(6\)](#) limits the FOC's responsibilities to perform activities under the Friend of the Court Act and Support and Parenting Time Enforcement Act to *cases in which a party has requested Title IV-D services*, unless the FOC activity is required by federal law. A party who does not sign an application for IV-D services is not opting out of FOC services. The procedure for parties to opt out is clearly prescribed in the law and outlined above. Rather, for cases that do not sign the application, the FOC can determine:

- What services it may provide on the case if federal requirements are met, or
- Whether the FOC is excused from providing services under the Friend of the Court Act or Support and Parenting Time Enforcement Act.¹⁰

Similarly, when the IV-D case closes, [MCR 3.208\(D\)](#) provides:

The friend of the court may inactivate its case and is not required to perform activities under the Friend of the Court Act, MCL 552.501 *et seq.*, and the Support and Parenting Time Enforcement Act, MCL 552.601 *et seq.*, when the case is no longer eligible for federal funding because a party fails or refuses to take action to allow the friend of the court's activities to receive federal funding or because the federal child support case is closed pursuant to Title IV, Part D of the Social Security Act, 42 USC 651 *et seq.*

The court rule is not intended to be an alternative way for parents to opt out of FOC services. Rather, it is designed to cover cases where FOC involvement becomes impractical because the services and tools Title IV-D provides are no longer available. When the rule applies, the FOC may continue to provide non-IV-D services required by state and federal law,¹¹ refuse to provide services if Title IV-D is still an option for the parties, or perform other services at its discretion.

⁹ [42 USC 654\(6\)\(B\)](#) authorizes only certain fees in IV-D cases.

¹⁰ MCL 552.503(6) provides that, "Except as otherwise required by federal law on cases that are eligible for funding under title IV-D, the friend of the court is only required to perform activities under this act or the support and parenting time enforcement act when a party in that case has requested title IV-D services."

¹¹ Examples of federally mandated non-IV-D services include Federal Case Registry requirements ([42 USC 654a\(f\)\(1\)](#)) and income withholding ([42 USC 666\(a\)\(8\)](#)). Examples of state-mandated non-IV-D services include custody and parenting time.