



State Court Administrative Office

Friend of the Court Bureau

New Directors and Leaders Orientation Manual

Updated: August 1, 2022

INDEPENDENCE · ACCESSIBILITY · ENGAGEMENT · EFFICIENCY



# New FOC Directors and Leaders Orientation

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## TABLE OF CONTENTS

<b>1. RELATIONSHIPS.....</b>	<b>1</b>
1-01 National – State Interactions .....	1
1-02 State Government, Three-Branch Interaction .....	1
A. Legislative .....	1
B. Executive .....	2
C. Judicial.....	2
1-03 County Government and Circuit Court.....	3
1-04 Non-governmental FOC Relationships.....	5
A. General .....	5
<b>2. FRIEND OF THE COURT ADMINISTRATION .....</b>	<b>7</b>
2-01 FOC Office Management.....	7
A. General .....	7
2-02 Human Resources / Staffing and Compensation .....	9
A. Human Resources Administration.....	9
2-03 Budgeting.....	11
A. Budgeting .....	11
B. Local Funding for FOC Offices.....	11
2-04 Risk Management .....	14
A. Liability Protection and Legal Representation .....	14
B. Lawsuits.....	14
C. Program Audits.....	15
D. Complaints.....	15
E. Employee Requirements.....	16
2-05 Reporting.....	17
A. OCS Reporting – Current .....	17
<b>3. FOC Case Management .....</b>	<b>18</b>
3-01 Opening and Maintaining a Friend of the Court Case .....	18
A. Duties.....	18
B. Record Keeping Requirements.....	19
C. Required Forms .....	19
3-02 FOC Case Closure.....	19
A. General Closure .....	19

## New FOC Directors and Leaders Orientation

---

B.	IV-D Case Closure .....	20
C.	IV-D Closure – effect .....	20
3-03	Record Management .....	20
A.	Records Maintenance .....	20
B.	Access to Records.....	21
<b>4.</b>	<b>Support Determinations .....</b>	<b>22</b>
4-01	Support Determinations - General .....	22
A.	Mandatory Use of the Michigan Child Support Formula.....	22
B.	MiCSES Calculator Use .....	22
C.	Support Investigations .....	23
D.	Post-Judgment Reviews and Modification .....	23
E.	Retroactive Modification.....	26
F.	Interstate Review .....	27
<b>5.</b>	<b>Support Enforcement .....</b>	<b>27</b>
5-01	Child Support Enforcement .....	27
A.	Enforcement Responsibility .....	27
B.	Income Withholding.....	28
C.	Civil Contempt - Orders to Show Cause .....	29
D.	License Suspensions.....	31
E.	Surcharge.....	32
F.	Financial Institution Data Match (FIDM) .....	32
G.	Tax Offsets .....	32
H.	Passport Denial.....	32
I.	Consumer Credit Reporting.....	32
J.	Bonds and Liens .....	33
K.	Miscellaneous Other Enforcement Actions.....	33
L.	Access to Law Enforcement Information System .....	34
M.	Location.....	34
N.	Actions to Set Aside Fraudulent Conveyances.....	34
O.	Evidentiary Rule in Enforcement Proceedings.....	34
P.	Interstate Enforcement.....	34
Q.	Felony Non-Support .....	35
5-02	Health Care Enforcement.....	36

## New FOC Directors and Leaders Orientation

---

A.	Enforcing Health Care Coverage.....	36
B.	Enforcing Uninsured Medical Expenses .....	36
5-03	Relief and Exemptions .....	36
A.	Administrative Discharge of Arrears.....	36
B.	Surcharge.....	37
C.	Statute of Limitations .....	37
D.	Documented Payments Withheld .....	38
E.	Retroactive Arrears Created .....	38
F.	National Guard Exemption.....	38
G.	Bankruptcy .....	38
5-04	Enforcement of Employer/Source of Income Responsibilities.....	39
A.	Disclosing Information to FOC .....	39
B.	Income Withholding.....	39
C.	Income Withholding Liability .....	40
D.	Fee for Withholding .....	40
<b>6.</b>	<b>Financials.....</b>	<b>40</b>
6-01	General Accounting .....	40
6-02	Banking and Accounting Safeguards.....	40
6-03	Allocation and Distributions, Accounts and Audits .....	42
A.	Receipt Allocation and Distribution.....	42
B.	Disbursements .....	42
C.	Audit.....	43
6-04	Credits, Abatements, Redirections.....	43
A.	Credits .....	43
B.	Abate and Redirect .....	44
6-05	Order Maintenance.....	45
A.	General .....	45
<b>7.</b>	<b>Custody and Parenting Time.....</b>	<b>45</b>
7-01	Custody and Parenting Time.....	45
A.	General .....	45
7-02	Custody and Parenting Time Investigations .....	46
A.	General .....	46
7-03	Custody and Parenting Time Enforcement.....	48

# New FOC Directors and Leaders Orientation

---

A. Custody Enforcement .....	48
<b>8. Referees .....</b>	<b>52</b>
8-01 Referees – General .....	52
A. Referee [MCL 552.507 and MCR 3.215] .....	52
<b>9. Alternative Dispute Resolution .....</b>	<b>53</b>
9-01 Alternative Dispute Resolution and Mediation .....	53
A. FOC Alternative Dispute Resolution (ADR) [MCR 3.224] .....	53
B. FOC Domestic Relations Mediation .....	53
C. FOC facilitative and information-gathering conference .....	54
D. Joint Meeting .....	54
<b>10. Facilities .....</b>	<b>55</b>
10-01 Facilities – General .....	55
A. Office Space .....	55
B. Public Access .....	56
<b>11. Security .....</b>	<b>56</b>
11-01 Security .....	56
A. General .....	56
<b>12. Technology .....</b>	<b>56</b>
12-01 Technology .....	56
A. General .....	56
B. Websites and Social Media .....	57
<b>Index .....</b>	<b>61</b>

## 1. RELATIONSHIPS

### 1-01 National – State Interactions

While domestic relations is generally a state issue, the federal government has become involved in domestic relations cases by passing laws providing funding to states that pass state-specific laws regarding domestic relations. These laws appear in Title IV, Section D of the Social Security Act, and are primarily related to child support establishment and enforcement.

All states have passed laws in accordance with the Title IV-D requirements. This enables each state to receive federal funds to provide child support establishment and enforcement services. [See [42 USC 666](#)]

Other sources of federal requirements come in the form of the child support regulations and policy documents that the federal Office of Child Support Enforcement (OCSE) issues. Policy Interpretation Questions (PIQ) are OCSE's official answers to questions that state IV-D partners ask. Dear Colleague Letters (DCL) are OCSE's announcements conveying general information about changes, reports, and other documents. Action Transmittals (ATs) describe actions that the state child support program must take. <https://www.acf.hhs.gov/css/policy>

### 1-02 State Government, Three-Branch Interaction

The state government is split into three separate branches: Legislative, Executive, and Judicial. The friend of the court (FOC) office is a part of the judicial branch, partially funded through a contract with the executive branch to ensure that the laws passed by the legislative branch are followed. Thus, the FOC is integrally tied to all three branches.

#### A. Legislative

The Michigan Legislature has passed laws in accordance with federal requirements to ensure some national funding for the state's child support establishment and enforcement program. Primarily, these laws are:

- [The Friend of the Court Act, MCL 552.501 et seq.](#)
- [The Support and Parenting Time Enforcement Act, MCL 552.601 et seq.](#)
- [The Office of Child Support Act, MCL 400.231 et seq.](#)

The Legislature also passed laws related to the state's domestic relations program that include additional requirements.

- [Child Custody Act, MCL 722.21 et seq.](#)
- [Status of Minors Act, MCL 722.1 et seq.](#)
- [Divorce Act, MCL 552.101 et seq.](#)
- [Paternity Act, MCL 722.711 et seq.](#)

## New FOC Directors and Leaders Orientation

---

- [Revocation of Paternity Act, MCL 722.1431 et seq.](#)
- [Uniform Interstate Family Support Act, MCL 552.2101 et seq.](#)
- [Uniform Child Custody Jurisdiction and Enforcement Act, MCL 722.1101 et seq.](#)
- [Collection of Alimony or Support and Maintenance, MCL 552.151 et seq.](#)

### **B. Executive**

#### **1. State Executive**

The executive branch is required to implement and enforce the laws through its administration. In Michigan, the Department of Health and Human Services (MDHHS) is the executive branch agency assigned to comply with all of the Title IV-D requirements established by Congress and the federal government. Within MDHHS, the Office of Child Support (OCS) is the primary agency that administers the state's IV-D program.

#### **2. Office of Child Support** To assure Michigan meets the federal requirements, OCS:

- Oversees and maintains the Michigan Child Support Enforcement System (MiCSES), the single statewide case management system that OCS, FOC, and prosecuting attorney (PA) staff must use to track case-specific activities.
- Manages and oversees the Michigan State Disbursement Unit (MiSDU), the single location for processing all child support payments. OCS contracts with private vendors to operate MiCSES and MiSDU.
- Provides child support establishment services on IV-D cases by contracting with local PAs.
- Provides local child support enforcement services on IV-D cases by contracting jointly with counties and trial courts for the FOC to (and in some instances for establishment services).

These contracts under OCS' Cooperative Reimbursement Contract program requires that the court comply with Title IV-D requirements as set forth in the contract and in [OCS' Michigan IV-D Child Support Manual](#).

### **C. Judicial**

#### **1. General**

The Michigan Constitution establishes the judicial branch in the Supreme Court (MSC). The MSC is responsible for both adjudicative and administrative functions.

Under authority of the Constitution, the MSC also appoints a state court administrator to aid in trial court administration. Through regional

administrators and staff in the State Court Administrative Office (SCAO), the state court administrator aids trial courts in judicial administration. Statute created the Friend of the Court Bureau (FOCB) within the SCAO. It provides direct administrative support to FOC operations.

The MSC appoints a chief judge for each trial court. The MSC vests the chief judge with administrative authority within that court. The MSC provided direction about the chief judge's authority in [Administrative Order 1998-5](#), and in [MCR 8.110 the Chief Judge Rule](#).

### 2. Friend of the Court Bureau Duties

The Bureau has the responsibility to develop and recommend guidelines for the conduct, operations, and procedures for FOC offices, which then become mandatory FOC duties. [[MCL 552.519\(3\)](#)] FOCB duties include:

- a. Development and maintenance of policy and procedures for FOC office operation, and forms and instructions for processing cases.
- b. Development and maintenance of the [Michigan Child Support Formula](#).
- c. Gather and monitor relevant statistics. Annually, the FOCB compiles financial and operational statistics from FOC offices using [SCAO 41](#).
- d. Develop and maintain an [FOC Model Handbook](#).
- e. Develop and maintain brochures. These brochures are available on line at <https://www.courts.michigan.gov/administration/offices/friend-of-the-court-bureau/resources-by-topic/>.
- f. Annually gather statistics and issue a report to the legislature summarizing the types of grievances received by each FOC office.
- g. Coordinate the provision of title IV-D services by the FOC and cooperate with the OCD in providing those services.

### 1-03 County Government and Circuit Court

County Commissioners provide local funding and pass the local budget. The county is responsible for funding FOC activities. [[MCL 600.591](#) and [MCL 552.527](#)] Procedures for resolving funding disputes are specified by Supreme Court administrative order. [Admin Order 1998-5](#). Supreme Court Administrative Orders are available at: <https://www.courts.michigan.gov/siteassets/rules-instructions-administrative-orders/administrative-orders/aos-responsive-html5.zip/index.html#t=AOs%2Ftitle%2Ftitle.htm> .

The County (Administrator/Executive) provides local services, and facilities, and may assist by providing equipment, managing benefits, and human resources.

The FOC also may work with other departments like the sheriff, county clerk or treasurer, DHS, Michigan Department of Community Health, etc.



### 1. Chief Judge

The MSC appoints a chief judge and vests the chief judge with administrative authority within that court. The MSC has direction about the chief judge's authority in [Administrative Order 1998-5](#), and in [MCR 8.110 the Chief Judge Rule](#). Ultimately, the chief judge ensures that the FOC office fulfills its statutory responsibilities. [[MCL 552.503\(5\)](#)]

As presiding officer of the court, a chief judge shall: “(c) initiate policies concerning the court's internal operations and its position on external matters affecting the court. . . (e) represent the court in its relations with the Supreme Court, other courts, other agencies of government, the bar, the general public, and the news media, and in ceremonial functions; [and] (f) counsel and assist other judges in the performance of their responsibilities.” [[MCR 8.110\(C\)\(2\)](#)]

As director of the administration of the court, a chief judge shall have administrative superintending power and control over the judges of the court and all court personnel with authority and responsibility to: . . . (c) determine the hours of the court . . . coordinate and determine the number of judges and court personnel required to be present at any one time to perform necessary judicial administrative work of the court, . . . (d) supervise the performance of all court personnel, with authority to hire, discipline, or discharge such personnel, . . . (e) coordinate judicial and personnel vacations and absences . . . (f) supervise court finances, including financial planning, the preparation and presentation of budgets, and financial reporting; . . . (h) effect compliance by the court with all applicable court rules and provisions of the law; and (i) perform any act or duty or enter any order necessarily incidental to carrying out the purposes of this rule. [[MCR 8.110 \(C\)\(3\)](#)]

Courts should ensure that their operations are conducted in a way that provides good customer service, fair access to services, and that do not unduly tax resources in a way that limits access to the court. The court rules, statutes, administrative orders, and SCAO policies and guidelines encourage collaboration, efficiency, and stakeholder input to ensure good customer service. The chief judge of each trial court, the other judges of that bench, and the court administrator must establish and maintain an environment that promotes and protects equal opportunity, bias free attitudes, and fair treatment.

Each chief judge hires a court administrator to manage the daily operations of the court.

### 2. Friend of the Court

The chief judge hires an FOC to manage the administrative enforcement of the court's domestic relations orders (sometimes, the circuit court administrator is also the FOC). The FOC is employed by, and answers to, the court through the chief judge. Even though [MCL 552.523](#) and [MCL 552.525](#) state that approval by “a majority of the circuit, probate, and district court judges serving in all circuits that have any area in common with the geographic area

served by that friend of the court” is required to appoint or remove an FOC director. However, [MCR 8.110](#) gives responsibility for court personnel to the chief judge, therefore, the chief judge has the final authority for choosing the FOC.

The circuit court employs FOC staff. FOC Staff are not employees of the county, nor are they employed by the IV-D program or MDHHS’s OCS. Each office operates under the supervision and direction of the chief judge for the circuit court that office serves. [[MCL 552.503](#)(5)]

### 1-04 Non-governmental FOC Relationships

#### A. General

Having informational materials available reduces the number of phone calls, letters, and general contacts. It also helps educate litigants on what the FOC can and cannot do. The FOC office must provide services to the general public to complete the functions of the office.

##### 1. Hours of Operation

[MCL 552.503](#)(8) requires that FOC offices remain open to the public at least 20 nontraditional hours each month, and that offices provide all services during those hours. Many offices remain open over the lunch hour. The court should specify the 20 non-traditional hours within the local administrative order required by to [MCR 8.110](#)(D).

##### 2. Public Information, and Education

The office should have informational materials publicly available, both as hard copies in the office (e.g., on a rack or table near the customer service window or in the waiting area), as well as on the office’s [website or social media page](#).

- a. Many brochures and other materials are available at <https://www.courts.michigan.gov/administration/offices/friend-of-the-court-bureau/>, including the model FOC handbook required by [MCL 552.505](#)(1)(c).
- b. The office should make available forms and instructions to petition to modify a support, custody, or parenting time order. The office should also have grievance forms and change of information forms available. The SCAO produces a number of forms for public use. <http://courts.mi.gov/Administration/SCAO/Forms/Pages/Friend-of-the-Court-Index.aspx>
- c. The National Association for Court Management has produced a guide, [Developing Comprehensive Public Information Programs for Courts \(1996\)](#).

### 3. **Public/Media Relations**

- a. Public relations, information, and education are referred to in the [Michigan Court Administration Reference Guide \(CARG\)](#). Part of public relations involves contact with the media. As the chief judge is primarily responsible for stating the court's positions, the office's contact with the media should only be to the extent approved by the chief judge. Each court should have a media plan. [CARG 1-10\(B\)](#)
- b. Exercise caution and do not discuss anything related to a specific case.

### 4. **Access to FOC Records**

Judicial (including FOC) records are not subject to the Freedom of Information Act (FOIA). [\[MCL 15.232\(d\)\(v\)\]](#)

Access by parties and their representatives is allowed under [MCR 3.218](#).

[For more information go to section on Access to Records.](#)

### 5. **Legal Self Help**

The SCAO's website contains a self-help center. The center provides links to Michigan laws and rules, court forms, and other resources, and in some instances, provides details about how to complete forms and proceed with a case, including service of process, noticing requirements, preparing for and attending hearings, and preparing and serving orders.

The Michigan Legal Help website is managed by staff at the Michigan Poverty Legal Program (MPLP). The domestic relations module assists people in filling out forms and understanding when an attorney's assistance might be useful. For more information, see <http://michiganlegalhelp.org>.

### 6. **Public opportunity to comment on FOC office performance**

Anyone with issues relating to FOC operations may submit written comments to the chief judge in response to the annual review of the FOC office. The chief judge must include this information in the FOC director's annual review. [\[MCL 552.524\]](#)

### 7. **Other External Relations**

The FOC office is responsible for external relations with local funding unit, Legislature, local bar association, other institutions, and the general public, through authority delegated from the chief judge. [\[MCR 8.110\(C\)\(2\)\]](#) See [Administrative Order 1998-5](#).

## 2. FRIEND OF THE COURT ADMINISTRATION

### 2-01 FOC Office Management

#### A. General

The FOC office's duties are performed under the direction of the [chief judge](#). The director is an employee of the circuit court and is responsible for the office's day-to-day operations. Staff assignments should reflect office priorities.

By statute, the FOC office is required to provide assistance to the family division of the circuit court in accordance with the court's jurisdiction. [[MCL 600.1043](#)] The office must also take all necessary steps to adopt office procedures to implement statutory and court rule requirements, as well as recommendations of the SCAO's FOCB. [[MCL 552.503\(7\)](#)]

In this capacity, the FOC director is responsible for assuring that the office meets all mandated responsibilities related to the investigation and enforcement of custody, parenting time, and child support.

In an atmosphere of continual change, it is essential that each FOC establish plans to ensure that every relevant legal change is addressed in a timely manner. The director should also establish plans to ensure that funding changes are promptly recognized, and that the chief judge and funding unit are informed of the impact that those changes may have on local finances.

The office should continually examine procedures to determine whether services can be provided more efficiently while maintaining appropriate levels of customer service.

As a court agency, the FOC's role must be neutral, and provide facts that allow the court to determine an appropriate outcome. To recommend or advocate for specific outcomes based on opinion invites the perception that the FOC is representing a party's interest or advocating against one party.

#### 1. General FOC Office Duties

FOC offices must:

- a. Neutrally investigate and furnish the court with accurate information in recommendations related to custody, parenting time, and support. Without advocating for any party, neutrally facilitate the entry and maintenance of appropriate orders.
- b. Uphold the authority and integrity of the court, impartially assure compliance with lawful orders; and as permitted by law, objectively fulfill its duty to enforce court-ordered custody, parenting time, and support provisions.
- c. Each FOC must take all necessary steps to adopt office procedures to implement the recommendations of FOCB. [[MCL 552.503\(7\)](#)] The SCAO issues policies in a number of forms:

- [Administrative Memoranda](#) and associated [FAQs](#)
- [SCAO Standards and Guidelines](#) (like case file management, digital imaging, facility, security, etc.)
- Michigan [CARG](#)

### 2. Local Processes and Policy

When developing processes and local workflow, the court's primary focus for the office should be to uphold the law and efficiently perform its required duties in a timely manner.

Relevant legal changes should be addressed with FOC staff timely, and the chief judge and funding unit should be updated about the impacts of those changes, as appropriate. The FOC should continually examine current procedures to determine whether services can be provided more efficiently while maintaining appropriate levels of customer service.

Local policies should be in writing and approved by the chief judge. Certain types of local policy must be established through local administrative order or local court rule.

#### a. Local Administrative Orders

Local administrative orders (LAO) are required when establishing internal court management procedures (e.g., delegations of authority, and directions to court staff). The procedures for obtaining them are outlined in [MCR 8.112\(B\)](#), and [Section 1-09 of the Michigan CARG](#). As part of the court, FOC office should be included in applicable LAO

#### b. Local Court Rules

Local court rules (LCR) may be used to govern local procedures for using the court system that are not regulated by the Michigan Court Rules (MCR). The use of local court rules is extremely limited. The procedures for using them are outlined in [MCR 8.112\(A\)](#), and [Section 1-09 of the CARG](#).

#### c. Office Policies

Some policies do not rise to the level needing an LAO or LCR. Policies may take the form of memorandum, or a manual.

### 3. Staff Conduct

#### a. Public Trust and Ethics

All Michigan court employees hold highly visible positions of public trust. Court staff must conduct the judiciary's business in an environment and manner that favorably reflects the fundamental values of Michigan's judicial system. At all times, staff actions should uphold and increase the public trust and confidence in the judicial branch, and always reflect the highest degree of integrity. The court may adopt SCAO's Model Code of

Conduct for Michigan Trial Court Employees as its local policy for court staff to follow.

### **b. Bar from Giving Legal Advice and Unauthorized Practice of Law**

Court staff must not give legal advice. [MCL 600.916](#) makes unauthorized practice of law a misdemeanor.

According to *Dressel v Ameribank*, 467 Mich 557 (2003), a person engages in unauthorized practice of law when that person counsels or assists another in matters that require use of legal discretion or profound legal knowledge. See also Michigan Judicial Institute (MJI) [training on legal terminology and legal advice](#).

### **c. Involvement and practices in court proceedings**

FOC employees should not advocate for any particular result in a hearing, nor recommend sanctions specifically for contempt. The office should neutrally provide facts to the court to allow the judge to determine which sanctions are appropriate. To recommend specific sanctions, such as jail, invites the perception that the FOC is advocating against one party.

Staff not licensed to practice law in Michigan should only play a limited role in any hearing. When in court, FOC staff members who are not attorneys should not advocate for any outcome, ask questions of the parties, nor “represent” the office. [MCR 3.208\(B\)\(5\)](#) says that the court may hold a show cause hearing without FOC office staff present.

## **2-02 Human Resources / Staffing and Compensation**

### **A. Human Resources Administration**

#### **1. Generally**

- a. Michigan trial courts are the employer of record of court employees. The circuit court employs all FOC staff. The office operates under the supervision and direction of the chief judge for the circuit court that office serves. [[MCL 552.503\(5\)](#)] Thus, the court has the sole authority to make personnel decisions regarding its employees, such as hiring, disciplining, resolving court employee grievances, etc.
- b. Circuit courts can work cooperatively with county administrations, but any agreements or use of county services or materials should **clearly delineate the court’s sole authority** to make personnel decisions regarding its employees.
- c. Section 5 in the [CARG](#) covers Human Resources Management. More specifically, section 5-02 covers matters involving the local funding unit, including [MSC Administrative Order \(AO\) 1998-5](#) (as amended effective June 4, 2014).

#### **2. Supervision**

##### **a. Office Director**

## New FOC Directors and Leaders Orientation

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[MCL 552.523](#) and [MCL 552.525](#) state how FOC directors are appointed. Those procedures conflict with [MCR 8.110](#), which states that the chief judge has controlling authority regarding hiring, selection, and supervision of court staff. [MCR 8.110](#) controls.

The FOC director is under the supervision of the chief circuit judge. [\[MCL 552.503\(5\)\]](#)

The chief judge is responsible for the FOC Director's annual review, due by August 1. A review is not necessary if the director has not served for an entire year. [\[MCL 552.524](#), and FOCB Policy and Procedures Memo 1984-2]. Use SCAO forms [FOC 17](#) and [FOC 18](#).

### 3. **Contract Negotiations/Collective Bargaining**

- a. The court should take an active role in contract negotiations. At times funding unit representatives have different priorities than the judiciary.
- b. While it is not necessary that the judges negotiate directly, it is advisable for the judiciary to have a representative present at the negotiations. See [MSC AO 1998-5](#) (as amended effective June 4, 2014), Section V – Contract Negotiations.

### 4. **Training and Development**

#### a. **New Employee Orientation**

Each office should provide new staff with an orientation program that provides a broad overview of office, court, and county operations and helps employees better identify and understand their role within the office. New employees should sign a checklist (detailing all items covered in orientation).

#### b. **Ongoing Employee Development**

Staff must regularly receive updated information regarding policy or legislative changes, and other available resources.

Staff should attend training opportunities offered through MJI, MFSC, and OCS, among others, to improve job knowledge and performance.

Given financial constraints and restrictions on travel, the offices may consider collaborating with the nearby friend of the court offices to coordinate and arrange training opportunities.

The OCS is implementing Contract Performance Standards, and one standard relates to training.

### 5. **Employing Relatives**

[MSC Order 2016-05](#) established an anti-nepotism policy for all courts statewide. See [CARG 5-04\(E\)](#).

- a. The policy bars relatives of judges, court administrators, and friends of the court from working within the same court. Relatives of other employees cannot work where a relative would have any direct or indirect degree of

authority over them: where the employment would create favoritism, the appearance of favoritism, or a conflict of interest; or for reasons of confidentiality

- b. The bar applies to current employees as well as new hires.
- c. If two employees become relatives while working for the court, a transfer or resignation should occur within 30 days.

### 2-03 Budgeting

#### A. Budgeting

The county funds FOC activities through a mix of county dollars, office revenue in the FOC 215 fund, federal incentives, and federal dollars received under the cooperative reimbursement contract.

1. The chief judge sets the office budget. [[MCL 552.527](#)] Budgeting is controlled by [MSC AO 1998-5](#), and is covered by [CARG 6-03](#).
2. The chief judge presents (or delegates presentation of) the budget to the county commissioners. The county commissioners fund the FOC. [[MCR 8.110](#) (C)(2)(e), [MCR 8.110](#) (C)(3)(f)]
3. When the chief judge presents the budget, the commissioners see that the court supports the budget and understands its detail. The chief judge's presence allows resolution of potentially controversial issues prior to submission and further promotes the unified administration of the court.

#### B. Local Funding for FOC Offices

##### 1. Responsibility to Fund.

The county board of commissioners funds FOC operations. FOC activity and expenditures on office functions generate revenue through reimbursement programs and statutory fees to offset most of the actual local costs.

##### 2. Sources of Funding

Section 6-12 in the [CARG](#) covers FOC Office Funds.

- a. *County General Fund.* By statute, the county must fund the FOC at no less than the budget level in 1982 to receive the state incentive, which is placed in the FOC Fund (see FOC Fund below). [[MCL 600.2530](#)(2)]
- b. *Friend of the Court Fund (215 fund).* [MCL 600.2530](#)(2) created a FOC fund in each county to assist with FOC funding. When properly separated from other funding sources, money in the 215 Fund can be designated to pay for nonfederally funded services, including custody and parenting time activities.
- c. *Circuit Court Counseling.* Each circuit has a counseling fund to be used at the discretion of the chief judge for certain services (including mediation



## New FOC Directors and Leaders Orientation

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and custody or parenting time evaluations) as mandated by statute. [\[MCL 551.331 et seq\]](#)

- d. *Child Support Program Incentives.* The current formula is based on five performance factors, then multiplied by the collections base amount (a figure derived from the amount of support disbursed on the FOC's cases). The five performance factors are:
- The percentage of cases with paternity established.
  - The number of cases with support ordered.
  - The percentage of current support collected.
  - The percentage of arrears collected.
  - The program's cost effectiveness (support collected/dollar spent).

Full performance on the 5 performance factors results in 4.5 times the collections base amount. The result of the factors times the collections base amount is called the county's maximum incentives base amount.

Each county's maximum collection base amount is added together to obtain a statewide maximum collections base amount. Each county's maximum collection base amount is recorded as a percentage of the statewide maximum base amount.

This percentage multiplies against the incentive pool available to the counties (recently estimated annually \$13.5 million). A final adjustment incentive payment is made two years later, when OCSE finalizes the total amount of incentives earned by the state.

### 1) Incentive Reinvestment

All incentive monies received under the IV-D program must be spent on the IV-D program and not used to supplant other funding. [42 USC 658A(f); 45 CFR 305.35] See OCS IV-D Memorandum 2011-020.

### 2) Maximum Incentive

The incentive formula provides that the maximum total incentive will be set in law. Payments to the states during the year are projected based on the previous year's performance.

- e. *Cooperative Reimbursement Program (CRP).* Each FOC office enters into a contract with the OCS to provide services partially funded by the federal government. Through the CRP, for every 1 dollar appropriated by the county and spent by the FOC office on federally funded activities, OCS will reimburse the county \$0.66. [CARG 6-09](#) covers the IV-D Cooperative Reimbursement Program.
- f. *Medical Support Incentive.* The funding unit receives a medical support incentive that represents 15% of the medical support that the FOC collects as medicaid reimbursement. See the SCAO

memorandum on the [Medical Support Incentive](#). The memo recommends the payments be deposited into the FOC fund (*215 Fund*) and that it be used use it to enhance FOC services eligible for IV-D funding instead of supplanting current county funds.

### 3. Revenues

- a. *Statutory Fees.* [MCL 600.2538](#) requires a \$3.50 per month fee on all cases where a person is required to make payments through the FOC or MiSDU, some of which is transmitted to the county general fund. Amounts transmitted to the county's general fund should be used to fund the provision of FOC services that are not reimbursable under Title IV-D.
- b. *Custody or Parenting Time Sanctions.* [MCL 552.644](#)(6) permits a court to impose sanctions against a party who has acted in bad faith regarding custody or parenting-time matter (\$250 first offense; \$500 second offense; \$1,000 subsequent offenses). These monies should be designated as non-IV-D revenue in the FOC 215 Fund.
- c. *Fines.* When a person is found in contempt of court for custody and parenting-time violations or for nonpayment of support, fines may be imposed. Upon finding a person in contempt for violating a parenting-time order, the court may assess a \$100 fine, and when collected, designated as non-IV-D revenue. [[MCL 552.644](#)(1)(d)] Upon finding a person in contempt for failure or refusal to obey or perform a support order, the court may assess a \$100 fine, which when collected on a IV-D case is IV-D revenue. [[MCL 552.633](#)(1)(g)]
- d. *Bench Warrant Costs.* The court must assess the costs of issuing a bench warrant to the party being brought before the court for failure to appear. [[MCL 552.631](#)(3)] Half the bench warrant costs collected under [MCL 552.631](#), [MCL 552.632](#), and [MCL 552.644](#) are deposited into the FOC 215 Fund and half is paid to the law enforcement agency that executes the warrant and makes the arrest. [[MCL 600.2530](#)(1)-(4)]
- e. *Custody and Parenting Time Fee/Support Fee.* [[MCL 600.2529](#)(1)(d)] Paid at the time of filing to the clerk of the court, unless waived by the court. In addition to other filing fees, in actions when custody or parenting time (and possibly support) is to be determined, \$80, and in actions when child support is to be determined or modified, \$40. These were previously referred to as "order entry fees."
- f. *Drivers License Clearance Fee (FOC).* When a licensee pays \$45 to the clerk of the court to reinstate an administratively suspended driver's license, \$15 is paid to the Secretary of State and \$30 is deposited into the Friend of the Court fund.
- g. *Custody/Parenting Time Investigation Costs.* [MCL 552.503](#)(3) allows charging a party requesting a custody or parenting time investigation

an amount based on a LAO and [SCAO Administrative Memorandum 2010-05](#).

### 2-04 Risk Management

Potential claims and liability for judges and court employees is an important consideration of the chief judge and court administrator. In anticipation of potential claims, there are two important considerations: attorney representation and liability coverage by way of insurance or indemnification.

#### A. Liability Protection and Legal Representation

The [CARG 5-07\(B\)](#) suggests that potential claims and liability are important considerations of the chief judge and local administration. In anticipation of potential claims, the court should investigate the need for attorney representation and indemnification or insurance coverage for liability protection of judges and court employees. If a claim arises, there are two important considerations: attorney representation and liability coverage by way of insurance or indemnification.

See [CARG 5-07\(B\)](#) concerning representation by the attorney general.

#### B. Lawsuits

For information about legal representation, indemnification, and liability insurance, see [CARG 5-07\(B\)-\(D\)](#).

##### 1. Immediate Notice

The office should immediately notify the chief judge and court administrator if served. The chief judge should immediately notify the SCAO regional administrator. See [CARG 1-05\(E\)](#).

##### 2. Government immunity

FOC employees have governmental immunity against possible legal actions while acting within a job responsibility or legitimate activity. [MCL 691.1407\(3\)](#) “A governmental employee must raise governmental immunity as an affirmative defense and establish that (1) the employee’s challenged acts were undertaken during the course of employment and that the employee was acting, or reasonably believed he was acting, within the scope of his authority, (2) the acts were undertaken in good faith, and (3) the acts were discretionary, rather than ministerial, in nature.” [Odom v Wayne Co. 482 Mich 459 \(2008\)](#).

A FOC acting in an official capacity is shielded from liability encompassing fraud on the basis of quasi-judicial immunity. . . . (a negligence claim could survive). [Denhof v Challa 311 Mich. App. 499 \(2015\)](#).

A 1996 unpublished case suggests that when a party that fails to follow the grievance procedure to resolve a dispute regarding office operations or

employees, that the trial court is without jurisdiction to resolve the dispute with the office. [Radcliff v Weichmann, MiCOA #164732](#)

A 2006 unpublished case suggests that FOC duties are quasi-adjudicative absolute immunity would apply to FOC employees fulfilling their duties. [Donkers v Calandro, Wayne County FOC, et al, MiCOA #268403](#). Cites [Tidik v Ritsema, 938 F Supp 416, 422-423 \(ED Mich 1996\)](#).

### C. Program Audits

FOC offices, as recipients of federal funds are subject to federal audit requirements. One requirement is that the county auditors include an audit of the child support program as part of its annual single audit. The office is also subject to audit by the state OCS to determine compliance with IV-D requirements as well as the auditor general.

Limited audits to determine compliance with IRS safeguarding rules, Supreme Court financial audits, and other agencies that provide information to the FOC are possible.

### D. Complaints

#### 1. Statutory Grievance Process

- a. Parties to FOC cases who have complaints concerning FOC office operations or FOC employees may use a grievance procedure to ensure that their complaints come to the attention of the FOC director or the chief judge. [\[MCL 552.526\]](#)
- b. Grievances can only address an office policy, process, or procedure, or wrongdoing by an employee.
- c. Grievances are any written complaint that the FOC receives from a party alleging either misfeasance or malfeasance of an FOC employee or that an office operation is improper. While it may be on a form designed for that purposes ([FOC1a](#)), the complaint only needs to be in writing. Grievances include any such complaint by a party, whether sent directly to the office or forwarded to the FOC by another agency (e.g., SCAO, OCS, or any other executive branch or legislative branch office).
- d. The FOC director is responsible for investigating grievances and making a determination. Responses are due within 30 days of receipt.
- e. A party who disagrees with the FOC' director's response may file the same grievance with the chief judge.
- f. A 1996 unpublished case suggests that when a party that fails to follow the grievance procedure to resolve a dispute regarding office operations or employees, that the trial court is without jurisdiction to resolve the dispute with the office. [Radcliff v Weichmann, MiCOA #164732](#).
- g. For additional detail and explanation, see [SCAO Administrative Memorandum 2003-03](#).

### 2. Friend of the Court Citizen Advisory Committees

- a. Each county's board of commissioners (or executive, where appropriate) may appoint a citizen advisory committee for the FOC office serving that county. [[MCL 552.504](#)]
- b. The SCAO has developed an informational brochure and other materials for citizen advisory committees. Citizen advisory committees (CACs) are required to carry out their duties in accord with any policies developed by the SCAO for FOC offices.
- c. FOCB [Memorandum 2014-01](#) contains information on CAC access to FOC records.

## E. Employee Requirements

### 1. Criminal History Checks

- a. CRP contracts between DHS, the county, and the circuit court relating to FOC services require courts to conduct a criminal history background check (CHBC) on new and existing employees and contractors funded in whole or in part by the CRP.
- b. See [SCAO Administrative Memorandum 2009-01](#) on CHBC for prospective and existing FOC employees and associated [FAQ 2009.01](#).

### 2. Bonding Employees

- a. A bond must cover every person with access to, or control over, funds collected. [[CARG](#) Section 5-11(E); 45 CFR 302.19]. OCS has the requirement to determine the amount of the bond necessary for each office. OCS enforces this provision through the cooperative reimbursement contract. There is no set "amount" for each office; rather, OCS makes a determination that the bond amount is adequate to cover the risk of loss based on the office's receipts, distributions, and controls. Many counties cover the employees through a "blanket bond" with the county's insurance company. (e.g., \$2,000)
- b. The [CARG 5-07](#) covers required performance bonds. In determining employee bonds, FOCs may review the Trial Courts Performance Bond Requirements chart linked there to see what is recommended for a variety of positions where the SCAO was required to set bonds. FOC staff/positions are not ones that the SCAO was mandated to set. When considering comparable risk of loss based on financial volume, the FOC staff is likely closest to district court staff.
- c. Between 2006 and 2015, the average known embezzlers in FOC offices took about \$4,000 before being caught. The highest took nearly \$10,000. The funding unit has to fund any losses that are not covered by a bond.

### 3. Oath of Office

- a. [MCL 15.151](#) requires all public employees to take an [oath of office](#). A judge, clerk of the court, or notary public must administer oaths and affirmations. [[MCL 600.1440](#)] Some individuals and groups have challenged the legitimacy of the actions of a public employee who has not taken the oath. See [CARG 5-04\(F\)](#)
- b. The office should maintain a copy of signed oaths in an employee's personnel file.

### 4. Mandated Reporter

Any person employed in a professional capacity in any office of the FOC is required to report suspected child abuse and neglect. [[MCL 722.623](#)] The SCAO's recommended procedures for mandated reporters can be found at <https://www.courts.michigan.gov/4a8510/siteassets/court-administration/focb-memoranda/2012/mandatedreporters.pdf>.

## 2-05 Reporting

The FOC must submit a variety of reports that help monitor its performance and reduce the possibility of intentional or unintentional misconduct.

### A. OCS Reporting – Current

1. **The following reports are required to be submitted to DHS-OCS.**
  - a. **DHS-286** - Title IV-D Cooperative Reimbursement Expenditure (monthly billing).
  - b. **DHS-820** - Support Collection Refund/Reimbursement (as necessary to correct erroneous disbursements to foster care or Medicaid).
  - c. **DHS-316 or collection report requesting correction** of distributed support collections.
  - d. **OCS Tax Data Confidentiality Questionnaire** – Due annually by January 31. To: MDHHS, submitted through EGrams or its successor unless otherwise instructed by OCS.
  - e. **Central Paternity Register (CPR) and Birth Register System (BRS) Report:** Due semiannually. FOCs report users of CPR and BRS twice a year. FOC offices are required to report their CPR/BRS users' activity and statuses to OCS by submitting the User Verification Report in EGrAMS.
  - f. **Quarterly Arrears Management Log-** Arrears Management Log is submitted to OCS on a quarterly basis and is used to track arrears that have been discharged. Please refer to [OCS Manual Section 6.51](#).
  - g. **Criminal Background Check Plan Update/Notification of Completion.** The CRP requires FOC offices to conduct a CHBC on all FOC employees.

Those offices unable to immediately comply must notify OCS annually of their progress towards completing the task.

- h. **MiCSES Role Conflict Waiver** - Used when a sparsely-populated county does not have adequate staff to assign roles in MiCSES in a way that ensures financial security. (NOTE: Such a waiver does not remove the requirement to comply with the SCAO separation of cash handling guidelines.)
2. **The following reports must be submitted to the State Court Administrative Office (SCAO):**
  - a. **Friend of the Court/Chief Judge Grievance Log/Record ([SCAO 28](#))**

[MCL 552.526](#)(2) requires that the FOC office submit reports to the SCAO. Offices must submit reports by January 15.

The FOCB annually compiles the information in a report to the legislature. [[MCL 552.519](#)(3)(d)] The SCAO posts the annual grievance report on its website at <https://www.courts.michigan.gov/administration/offices/friend-of-the-court-bureau/annual-reports/>. [[MCL 552.526](#)(2)]
  - b. **Office of the Friend of the Court Statistical Report ([SCAO 41](#))**

Statute requires FOC offices to report data to the SCAO, under the supervision and direction of the Supreme Court. [[MCL 552.528](#)]

The SCAO will send out the [SCAO 41](#) reporting form with the MiCSES data provided. FOCs are expected to complete the non-MiCSES data sections and return the form by February 15th.
  - c. **Annual Statutory Review**

The chief judge is responsible for the FOC director's annual review, due by August 1st. A review is not necessary if the director has not served for an entire year. [[MCL 552.524](#)]. Use forms FOC 17 and [FOC 18](#).

### 3. FOC Case Management

#### 3-01 Opening and Maintaining a Friend of the Court Case

##### A. Duties

1. FOC offices have responsibilities as outlined in statute (primarily, the FOC Act and Support and Parenting Time Enforcement Act) and court rule on domestic relations cases in which the parties have not opted out of FOC services. [[MCL 552.505](#)] See the [SCAO Administrative Memorandum 2004-16](#) on opting out of FOC services.
2. FOC can refuse services in a non-IV-D FOC case that is eligible for IV-D funding. [[MCL 552.503](#)(6)]
3. [MCR 3.208](#)(D) allows the FOC to refuse to perform activities under the FOC Act and the Support and Parenting Time Enforcement Act if the case is no

longer eligible for federal funding because (1) a party fails or refuses to take action to allow the friend of the court's activities to receive federal IV-D funding or (2) the IV-D child support case is closed. Also, when a case is no longer eligible for federal funding, the office may inactivate (close) its case.

4. The FOC should refrain from contacting the defendant in a case before service has been completed. Review your scheduling procedures to ensure that they take into account the potential negative consequences that could arise when notices are sent before service has been completed on the defendant. See [SCAO Memorandum dated May 12, 2011](#).

### B. Record Keeping Requirements

See [Records Maintenance Section](#) below.

### C. Required Forms

Use of certain forms is mandated in FOC Cases.

1. **Verified Statement (FOC 23)** In actions involving a minor, child support, or spousal support, the party seeking relief must provide this form to the FOC and must attach a copy to papers served on the other party. [[MCR 3.206\(B\)](#)]
2. **Judgment Information Form (FOC 100):** The party submitting an initial or modification of an order awarding custody, parenting time, or support must submit a copy of this form to the FOC and other party. Orders that change prior support, custody or parenting time orders must report changes on the judgment information form. [[MCR 3.211](#)]
3. **Uniform Support Order (USO) (SCAO form FOC 10):** The court is required to use this form when ordering child support and spousal support. [[MCR 3.211\(D\)](#)] Every order that deviates from the formula must include the deviation addendum ([FOC 10d](#)). Refer to SCAO Administrative Memorandum [2014-03](#). [FAQ 2018-01](#) provides additional detail on determining obligation end dates in a USO.

If an order other than a USO contains a support provision or an outdated form is used, see [FAQ 2011-01](#).

[Model LAO 37](#) should be entered to provide FOC direction on how to handle or correct improperly submitted orders.

## 3-02 FOC Case Closure

### A. General Closure

See FOC administrative case closure criteria [in SCAO Administrative Memorandum 2020-01](#).

Other grounds for closure – See also [Statute of Limitations](#).

[MCR 3.208\(D\)](#) allows the FOC to close (inactivate) its case when it is no longer eligible for federal funding because (1) a party fails or refuses to take action to



allow the friend of the court's activities to receive federal IV-D funding or (2) the IV-D child support case is closed.

### **B. IV-D Case Closure**

See IV-D Case Closure Criteria. [45 CFR 303.11 and OCS Policy]

### **C. IV-D Closure – effect**

When a case's IV-D status is closed, IV-D requirements do not apply and there is no reimbursement for activities on the case. Because Michigan law requires support related activities to be performed on both IV-D and non-IV-D support cases, closing an eligible case's IV-D status without closing the support case increases an FOC's unreimbursed costs.

Maintaining an open FOC case when the associated IV-D case is closed to collect non-child support debt (like costs, fees, sanctions, etc.) permits collection when the amounts are not counted as IV-D program income.

## **3-03 Record Management**

Every court should have a program for managing the creation, maintenance, and disposition of all court records. Any records management program should consider the handling of a file from case initiation to destruction.

### **A. Records Maintenance**

#### 1. Generally

- a. For every domestic relations case filed with the circuit court, the FOC must open and maintain a friend of the court case, unless the parties have properly opted out of friend of the court services. [[MCL 552.505a](#)]
- b. Records created by court and FOC staff are court records, however, FOC records of IV-D activities in IV-D cases may dually serve as documentation in an IV-D case. [45 CFR 303.2(c)]
- c. Case records must be supplemented with all information and documents pertaining to the case, as well as all relevant dates, actions taken, contacts made and results in the case.
- d. Record maintenance is referred to generally in Michigan Trial Court Records Management Standards and is also controlled by [Chapter 4 of the Michigan CARG](#).

[3.3.1.4](#) discusses the physical file including the size of the file, the type of folder, how to fasten papers, and how to mark the folders. Color-coded numbering is optional but recommended to make file retrieval easier and to avoid misfiling.

[3.3.1.7](#) discusses how to maintain documents in a file (fastened in chronological order with the most recent in front).

## New FOC Directors and Leaders Orientation

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[3.1.2](#) contains standards for storing records and recommendations that will assist in avoiding unintentional destruction or loss of records. In addition to the physical requirements, the standard recommends limiting access to authorized court records personnel, use of a charge-out card for persons accessing stored records, and not allowing files to leave courthouse facilities.

- e. Mandated MFederal law requires that IV-D agencies and workers utilize the single statewide computer system. The offices must use the system to control and monitor all processes and activity on cases. [42 USC 654a]

### 2. Record Retention

- a. See Michigan Michigan Trial Court Records Management Standards.
- b. New General [Schedule 15](#), Records Retention and Disposal Schedule for Michigan Trial Courts. The following apply to FOC records.

15.100 - OTHER CASE RECORDS (CONFIDENTIAL) - MCR 8.119

15.300 - ADMINISTRATIVE AND FISCAL RECORDS [like accounting records, checks, etc.]

15.400 - NON-RECORD MATERIALS

Case files where an arrearage is owed comes under 15.105 – retain 10 years after the later of when the obligation for support ends (youngest child 18 – 19.5) and FOC case closes.

Case files where NO arrearage is owed comes under 15.106 – retain 6 years after the later of when the obligation for support ends (youngest child 18 – 19.5) and FOC case closes.

Case files where NO arrearage is owed comes under 15.107 – if a notice was sent to parties advising them of the administrative closing and the intent to destroy the file) retain 1 year after the later of obligation for support ends (youngest child 18 – 19.5) and FOC case closes.

Other items in FOC files can be culled and destroyed at an earlier interval. “Friend of the court copies of records contained in the court's case file may be destroyed 1 year after the friend of the court case is administratively closed. [e.g., copies of pleadings, orders, motions, etc.] 15.401 covers print outs and other things that may be used and put in an FOC file.

- c. Case records are distinct from IV-D records, although the FOC record may dually serve as the IV-D case record.

### **B. Access to Records**

Judicial (including FOC) records are not subject to the Freedom of Information Act (FOIA). [\[MCL 15.232\(d\)\(v\)\]](#)

Access by parties and their representatives is allowed under MCR 3.218. Confidential material is not released to the parties. See [SCAO 2014 Administrative Memorandum on Confidentiality and Access to Records Under MCR 3.218](#).

See the model Local Administrative Order (LAO) webpage for model [LAO 1](#) on access to FOC records.

Copy fees are only permitted if included in the court's LAO (model [LAO 8](#)).

Federal law limits the access parties or their representatives have to IV-D information. [45 CFR 303.21]

## 4. Support Determinations

### 4-01 Support Determinations - General

#### A. Mandatory Use of the Michigan Child Support Formula

1. FOC offices must use the formula developed by the Bureau (MCSFM) in all child support recommendations. [[MCL 552.505](#); [MCL 552.517](#)] When imputing income, the FOC must report all evidence regarding the individual's ability to earn imputed income. [[MCL 552.517\(3\)](#)]
2. Alternative recommendations, only mentioned in prejudgment investigations, must include specific deviation information. [[MCL 552.505\(h\)](#)]
3. Because child support cannot be retroactively modified, courts should enter prospective or temporary orders (anticipating modification) and preserve the ability to modify to the date petitioner was served with notice of the modification. [[MCL 552.603\(2\)](#)],[[Fisher v Fisher 276 Mich App 424 \(2007\)](#)] For considerations in preserving dates for modification, see [FOCB FAQ 2020-01](#) and the correlating [Support Modification Order Checklist](#).

#### B. MiCSES Calculator Use

The SCAO issued a memorandum on [Improving Child Support Calculations](#). This memo explains how to determine the correct result when faced with multiple recommendations.

1. FOC staff should exclusively use MiCSES's MiChildSupport Calculator to calculate support obligations, and use MiCSES to track support investigations, review, and modification, and to create support orders.
2. The SCAO recommends that local courts maximize the benefits of using the same calculations as the FOC by implementing the use of the public [MiChildSupport Calculator](#) locally by judges and court staff, in legal self-help centers, and adding links on local court webpages.

### C. Support Investigations

1. Statute only authorizes the FOC to conduct a “support investigation,” when ordered by the court, whether pre-judgment or post-judgment, or review and modification when certain statutory criteria are met (see section 4-01.D.2.).
2. The FOC office must investigate relevant facts and make a written report and recommendation to the court regarding child support. The written report and recommendation from the investigation must be placed in the court file, and the office must provide copies to the parties and their attorneys. [\[MCL 552.505\(h\)\]](#)
  - a. A copy of each recommendation, and any supporting documents or summary of supporting documents, must be made available to each of the parties and their attorneys before the court takes any action on a recommendation by the office. [\[MCL 552.507a\(1\)\]](#)
  - b. Following an investigation, the office does not have a duty to petition for modification, nor to seek entry of an order.
3. Only on request, investigations must include a meeting with the party.
4. Recommendations for alternative amounts when the MCSF produces unjust or inappropriate results must include specific elements, even when the parties agree. [\[MCL 552.505\(h\)\]](#)

### D. Post-Judgment Reviews and Modification

1. **If neither party nor a child remains in Michigan** do not initiate a review or modification, unless requested by the parties in a record. [\[MCL 552.2205\]](#)  
[\[28 USC 1738B\]](#)
2. **When Reviews are Required**
  - a. The FOC office must initiate a review of child support when **all** the following are true:
    - In an open FOC case a party has requested IV-D services,
    - After a final judgment entered (on MI entered orders where either party or the child resides in MI or another state’s order registered for modification),
    - Michigan retains jurisdiction to modify, and
    - A statutory condition triggers the review.
  - b. The FOC office must initiate a review of child support or a request that another state review the support order<sup>1</sup> under any of the following conditions:

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<sup>1</sup> See following subsection on Interstate Reviews.

## New FOC Directors and Leaders Orientation

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- Not less than once each 36 months, when a child is supported by public assistance (unless good cause not to proceed with the review exists AND neither party has requested a review);
- Where there are reasonable grounds to believe that the amount of support should be modified. Reasonable grounds include changes in financial circumstances (could be on or off from: disability, unemployment, public assistance, etc.), unordered changes in physical custody, increased or decreased need of the child, probable access by a parent to dependent health care coverage that is accessible to the child and available at a reasonable cost, and changed dependent health care coverage costs. [SCAO Memorandum on [Adjusting Current Support Due to Incapacitation](#) covers many issues related to disabling physical and mental illnesses, and injuries, as well as incarceration. Most qualify as mandatory reviews, however some may be discretionary];
- Upon receipt of a request from either party, but not more than one request from each party each 36 months;
- If a child is receiving medical assistance and the order does not provide for health care coverage (unless good cause exists not to proceed AND neither party has requested a review);
- Not less than once each 36 months if requested by the initiating state for a recipient of IV-D services in that state [[MCL 552.517\(1\)](#)];
- At the court's direction; and
- If a party presents evidence of a substantial change in circumstances as set forth in the child support formula guidelines. [[MCL 552.517b\(9\)](#)] The MCSF-Supplement includes conditions that indicate a substantial change in circumstances when the office must review an order. [[2021 MCSF-S 3.01](#)]

### 3. Discretionary Reviews

- a. In circumstances when the FOC office may not be required to conduct a review, the office always has discretion to start a review.

For instance, if a payer is incarcerated, the office may begin a review before the payer is convicted or knowing the length of time the payer will be held. [See SCAO Memorandum on [Adjusting Current Support Due to Incapacitation](#)]

Even if the office completed a review a few months earlier, the office may choose to initiate another one before statute would mandate it.

### 4. Notice to Parties and Completion of Review

- a. Upon determining that conditions exist to warrant a review, the FOC must send notice of the review to the parties.

## New FOC Directors and Leaders Orientation

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- b. The FOC cannot begin a review until 21 days after sending the parties notice.
- c. When completed, the FOC office must notify both parties with a written recommendation. [\[MCL 552.517b\]](#) If the recommendation is for no change, the FOC must notify parties of their right to object and have a court hearing. [\[MCL 552.517b\]](#)
- d. The entire review and modification process must be completed within 180 days after determining that review is required (must send notice, conduct a review, through entry of an order, if appropriate). [\[MCL 552.517\(2\)\]](#)

### 5. Seeking Modification

The FOC office must recommend modification when the projected modification exceeds the minimum threshold (as stated in the Child Support Formula Manual, 10%, and \$50 whichever is greater) or unless the reasons for prior deviation remain unchanged. [\[MCL 552.517\]](#) If the threshold is not met, the office has discretion to recommend modification.

- a. The written recommendation serves as a petition to modify support.
- b. Before the court modifies a support order, the FOC office must make available a summary of the information used to recommend support, and allow the parties 21 days to object to the proposed order. [\[MCL 552.517b\]](#)
- c. If a court awards custody to a previous payer, the court must modify the support order to exclude support for that child. [\[MCL 552.619\]](#)

### 6. Joint Meetings

- a. At the office's discretion, statute permits resolution of certain issues through a joint meeting scheduled by the office with both parties. A joint meeting and its associated proceedings must follow all the requirements of [MCL 552.642a and MCR 3.224\(H\)](#).
- b. Joint meetings should be used in cases where the parties will likely reach an equitable agreement or accept the meeting moderator's recommendation for an order.
- c. The time and resources spent on the joint meeting process should not exceed the resources needed for other remedies.
- d. This process is not an appropriate means handling for all support reviews. For instance, a support review conducted by the parties submitting information, and staff calculating and recommending a new amount without a meeting would likely take fewer resources than would be involved with a joint meeting. However, if one party requests a meeting to discuss additional income information, because the office must meet with one of the parties and will likely have to recalculate support, conducting a joint meeting may be warranted.

### 7. Incapacitated Parties

- a. [MCL 552.517f](#) mandates that offices abate support upon notification of incarceration or notification of release from sentences to a term of 180 days or more. When incarceration ends, the office is required to conduct a support review.
- b. SCAO Memorandum on [Adjusting Current Support Due to Incapacitation](#) covers many issues related to support obligations when a parent cannot pay support due to illness, injury, incompetency, or incarceration.
- c. The FOC office should initiate a review when a parent is incapacitated (i.e., unable to pay the ordered support obligation caused by a parent being temporarily or permanently unable to earn an income for a period that will likely last 180 days or longer and due to disability, mental incompetency, serious injury, debilitating illness, or incarceration).

SCAO Memorandum on [Adjusting Current Support Due to Incapacitation](#) recommends initiating a review within 14 days of learning that the parent's circumstances may have changed.

FOC offices may initiate a review when the incapacitation could last less than 180 days or when the length of incapacitation is difficult to determine.

- d. All review requirements apply to incarcerated parties. No legal basis exists for offices to submit an exparte order abating, suspending, modifying, or waiving the support charges.

### E. Retroactive Modification

1. Support orders are not subject to retroactive modification, except for fraud or (when issuing an order) back to the date the non-moving party was given notice of the petition. [[MCL 552.603](#)]

Appellate courts found that changing the amount owed after it accrued equates to retroactive modification, and therefore barred for any period prior to when the respondent received the petition (social security - [Fisher v Fisher 276 Mich App 424 \(2007\)](#), surcharge - [Adams v Linderman, 244 Mich App 178 \(2000\)](#), imprisonment [McLaughlin v McLaughlin 255 Mich App 475 \(2003\)](#)).

FOC Offices may not retroactively adjust or seek modification in a manner that violates [MCL 552.603\(2\)](#). During the statutory review process, the petition is the notice that indicates the calculated result and a proposed effective date that is filed with the court and is served on the parties.

[[MCL 552.517\(6\)](#)] Unless the office or a party previously filed a petition that has not been decided, the recommendation's effective date cannot predate when it is sent to the parties.

2. **No "Relief from Judgment" in child support:** Court rule to grant relief from judgment does not permit the court to retroactively modify the obligation contrary to the statutory prohibition. [Malone v Malone, 279 Mich App 280 \(2008\)](#).

### 3. Exceptions

- a. The parties may agree to modify support retroactively, including forgiving arrears due under the order. [[MCL 552.603\(5\)](#)]
- b. The bar to retroactive modification does not apply to ex parte interim support orders or temporary support orders entered under court rules. [[MCL 552.603\(3\)](#)]
- c. The SCAO Memorandum on [Adjusting Current Support Due to Incapacitation](#) suggests adding prospective language to all support orders if the payer were to become incapacitated. The memo also recommends using a temporary order in circumstances when a final decision depends on a future outcome (like receipt of disability payment, a settlement, or earnings after a parent's release).
- d. **Retroactive Correction:** Following notice and an opportunity for hearing, the court may enter an order to retroactively correct a current obligation where “an individual who is required by the court to report his or her income to the court or the office of the friend of the court and intentionally fails to report, refuses to report, or knowingly misrepresents that income . . .” [[MCL 552.603b](#)]
- e. Discharge or Abatement of Surcharge accruing after June 30, 2005. [[MCL 552.603d](#)]

### F. Interstate Review

1. If Michigan is the initiating state, the FOC must determine whether a review is required using the same criteria as for Michigan orders. [[MCL 552.517c\(1\)](#)]
2. If a review is appropriate, the FOC office must obtain income, expense, and other information needed from the requesting party or recipient of public assistance. [[MCL 552.517c\(2\)](#)]
3. After information is collected from the party, the FOC office must initiate a request for review to another state within 20 days. [[MCL 552.517c\(3\)](#)]
4. The FOC office must forward to the party in Michigan a copy of each notice issued by the responding state in conjunction with the review and modification. [[MCL 552.517c\(4\)](#)]
5. Within 20 days of determining that the absent parent is in another state, the FOC office must refer investigation in the appropriate manner to the other state's interstate central registry. [45 CFR 303.7(b)]

## 5. Support Enforcement

### 5-01 Child Support Enforcement

#### A. Enforcement Responsibility

1. The FOC office must initiate enforcement when:



- a. Arrearage is equal to support payable for one month under the support order (except for ex parte orders where the FOC office has not received a proof of service),
  - b. A parent fails to maintain court ordered health insurance coverage, or
  - c. Someone who is legally responsible incurs uninsured medical expenses. [\[MCL 552.511\(1\)\]](#)
2. The FOC is responsible for initiating proceedings to enforce an order or judgment for support. [\[MCR 3.208\(B\)\]](#)
  3. **FOC Mandated**
    - a. The FOC office must immediately serve a notice of income withholding on any new source of income.
    - b. The office must implement consumer reporting when arrearage is two or more months of support.
    - c. If a payer's whereabouts or employer is unknown, the office must attempt to locate the payer, and take the next appropriate enforcement action.

### **B. Income Withholding**

1. All support orders contain an income withholding order, which is immediately effective. [\[MCL 552.604\(3\)\]](#)
2. The FOC office must immediately serve notice of the order on any new source of income determined.
3. State law requires that sources of income honor *notice* of the order (not only when an order is received).
4. Use of the federal income withholding notice form is mandated.
5. "Source of income" means:
  - a. An employer or successor employer (any person or entity that hires and pays an individual for his or her services),
  - b. A labor organization, or
  - c. Another individual or entity that owes or will owe income to the payer. [\[MCL 552.602\]](#)

#### **6. Amount to Withhold**

The withholding notice must direct withholding of an amount sufficient to pay support and service fees, and to defray arrearages that exist when the notice takes effect. [\[MCL 552.609\]](#)

The FOC must use the child support formula's [\[2021 MCSF 4.03\]](#) arrearage repayment to administratively adjust arrearage payment schedules. When making the administrative adjustment, the FOC must follow procedures to afford the payer due process. [\[MCL 552.517e\]](#)

### 7. **Maximum Withholding**

The maximum amount of net disposable earnings withheld for current support, past-due support, fees, and child's cost of health care coverage, cannot exceed 50% of disposable income. [[MCL 552.608](#)]

### 8. **Duration of Withholding**

The court must terminate an income withholding order when the current support ends and any arrearage is paid. [[MCL 552.619\(1\)](#)]

The court must also suspend or terminate the order under any of the following circumstances: 1) the location of the child and custodial parent cannot be determined by the FOC office for a period of 60 days or more, and the FOC case is closing; 2) there is no further support obligation; 3) upon a showing of good cause where the termination or suspension would not be contrary to the best interests of the child; or 4) where the parties have entered a written agreement reviewed and entered by the court. [[MCL 552.619\(2\)](#)]

### 9. **Improperly Withheld Monies**

Statute requires that the FOC promptly refund improperly withheld monies. [[MCL 552.619\(6\)](#)]

### 10. **Incarcerated Parties- [ADM 2006-05](#) and [FAQ 2007-02](#)**

Incarcerated parties may be ordered to remit payment through their prison account.

## **C. Civil Contempt - Orders to Show Cause**

1. A support recipient or FOC may commence a civil contempt proceeding (as allowed by [MCR 3.208\(B\)](#)) when a person ordered to pay support fails or refuses to obey and perform the order, and if an order of income withholding is inapplicable or unsuccessful.
2. [MCR 3.208\(B\)](#) allows the FOC to commence a proceeding by using a Motion and Order to Show Cause for Contempt ([FOC2](#)) or a Notice of Contempt Hearing ([FOC2b](#)).
3. **Failure to Appear at Hearing** [[MCL 552.631](#)]
  - a. If the payer fails to appear at the hearing, a bench warrant may be issued and a bond amount set. The payer must be allowed to post bond if a hearing will not be held within 48 hours of arrest. [[MCL 552.632](#)]  
  
The receipt for bond must be in a specified form. [[MCL 552.632](#)]  
  
If the payer is unable to post bond, a hearing must be held within 48 hours of the arrest. [MCR 3.221](#) and [SCAO Memorandum 2004-01 on implementing MCR 3.221](#)
  - b. The court must order costs related to the hearing, issuance of the warrant, arrest, and further hearings. [[MCL 552.631\(2\)](#)]

- c. Note: In a divorce or separate maintenance proceeding, a party may also move for immediate arrest of a delinquent payer to have him or her immediately brought before the court to answer for the neglect to pay. [[MCL 552.152](#)]

- d. Booting Vehicles

When the court issues a bench warrant for failing to appear at a contempt proceeding, the court may order that a law enforcement agency render any vehicle owned by the payer temporarily inoperable, subject to release on deposit of an appropriate bond. [[MCL 552.631](#)(5)]

#### 4. Determinations

- a. **Failure to exercise diligence** - If the court determines that with exercise of diligence the payer could pay all or part of amount due; the court may commit the payer to jail with work release. The payer must be released if the payer has completed two consecutive weeks of employment and an income withholding is effective.
- b. [Sword v. Sword 399 Mich. 367 \(1976\)](#): This case identifies several different questions to help the court determine why the court's order were not obeyed.

If the judge concludes from the testimony of defendant and others that defendant has "sufficient ability to comply with" the order or "by the exercise of due diligence could be of sufficient ability, and has neglected or refused" to comply, defendant may be found in contempt of court.

#### 5. Sanctions [[MCL 552.633](#)]

- a. **Commitment to Jail** [[MCL 552.637](#)]

The court may commit a payer to jail only if other remedies are unlikely to cure the failure or refusal to pay support. The order must state the amount of arrearage and the amount needed for release. Commitment may not exceed 45 days for the first contempt and 90 days for subsequent contempt. [[MCL 552.637](#)(4)] The court may also authorize daily release for employment.

- b. **License Suspension**

The court may order the conditional suspension of a payer's occupational, driver's, recreational, or sporting license, suspended upon noncompliance with an order for payment of the arrearage [as other remedy under [MCL 552.633](#)(2)(d)].

- c. **Supervision By FOC Office**

Place the payer under the supervision of the office for a term fixed by the court with reasonable conditions [as other remedy under [MCL 552.633](#)].

For more information about payment plans see [SCAO Administrative Memorandum 2010-06](#).

### d. **Work Activity**

The court may order the payer to participate in a work activity or seek employment [as other remedy under [MCL 552.633](#)].

### e. **Community Corrections**

The court can order the payer to participate in a community corrections program.

### f. **Fines and Costs**

Except as provided by federal law and regulations, the court may order the payer to pay a fine of not more than \$100.00, to be deposited in the friend of the court fund. [

Unless good cause is shown on the record, the court must order the party appearing under the bench warrant to pay the costs related to the hearing, issuance of the warrant, arrest (including transportation), and further hearings. Costs ordered for failure to appear must be deposited in the FOC fund. [[MCL 600.2530](#); [MCL 552.631\(3\)](#)]

## **D. License Suspensions**

1. An FOC office may petition to suspend a payer's occupational, recreational, or sporting license, or initiate administrative suspension of a driver's license if (a) the payer has an arrearage greater than the amount of periodic support due for two months, (b) the payer holds a license (or is required to hold one), and (c) an withholding is inapplicable or has been unsuccessful in assuring regular payments. [[MCL 552.628\(1\)](#)]. [See [FOCB Memorandum 2021-03](#).]
2. A petition to suspend an occupational or recreational license, or notification of suspension of license, may not be filed unless the payer has been sent a notice stating the arrearage, and that a suspension order will be entered and sent to the licensing agency unless the payer responds by paying the full arrearage or requesting a hearing within 21 days. [[MCL 552.628\(3\)](#)]

If a hearing is requested, entry of the suspension order must be delayed pending outcome of the hearing. [[MCL 552.629\(1\)](#)]

3. Notice: a payer's driver license may be suspended if both of the following additional circumstances are true:
  - (a) The court has conducted an ability to pay assessment and determined that the payer has an ability to pay the support but is willfully not making his or her support payments.
  - (b) The office of the friend of the court determines that no other sanction would be effective in assuring regular payments on the support obligation and regular payments on the arrearage. [[MCL 552.528\(2\)](#)]

If the payer fails to request a hearing within 21 days, the FOC may send a notice to the Secretary of State to suspend the license. [[MCL 552.629\(4\)](#)]

4. If pursuant to an order to show cause, the court finds the payer in contempt, the court may suspend the payer's license conditioned upon payments in accordance with an ordered schedule [as other remedy under [MCL 552.633\(2\)\(d\)](#)].

### **E. Surcharge**

1. If a court finds that a payer willfully failed to pay, the court may add a variable surcharge to support arrearage. Under current statute, surcharge is only assessed following a judicial order requiring the assessment, and even then, surcharge is not assessed if the payer has paid at least 90% of the most recent semiannual obligation. [[MCL 552.603a](#)] Before January 1, 2011, the surcharge assessment was mandatory.

### **F. Financial Institution Data Match (FIDM)**

1. Monies in financial institution accounts are subject to levy. [[MCL 552.625a-i](#)].
2. OCS matches with select financial institutions to locate accounts to levy. [[MCL 400.234a](#)]

### **G. Tax Offsets**

1. OCS automatically selects cases that meet minimum criteria for federal and state tax refund offset. [45 CFR 303.72]
2. The FOC office may request that OCS initiate offset proceedings against a payer's qualifying federal and state tax refunds, if OCS has not already initiated them. [[MCL 552.624](#); MCL 400.233a, and 45 CFR 303.6(c)(3)].

### **H. Passport Denial**

1. Done under federal law as part of the tax offset program.

### **I. Consumer Credit Reporting**

1. The FOC office must report to a consumer-reporting agency the arrearage amount for each payer with a support arrearage of two or more months. [[MCL 552.512\(1\)](#)]
2. The FOC office may also make support information available to a consumer-reporting agency if requested by the support payer. [[MCL 552.512\(1\)](#)]
3. Before reporting an arrearage, the FOC office must provide notice of the proposed action and an opportunity to object on the basis of mistake of fact. [[MCL 552.512](#) (2) & (3)]
4. The office must timely respond to complaints and validate reports. The office should check at least weekly and confirm arrears. The “confirmation” involves confirming the total amount due on MiCSES matches the amount

reported to the credit reporting agency – the office need not conduct a detailed, charge-by-charge audit.

### **J. Bonds and Liens**

#### **1. Bonds**

The FOC office may petition for a bond to secure payment of support that is past due or due in the future. [[MCL 552.625](#)] For more information, see [FOCB Memorandum 2021-01](#) Securing and Processing Bonds for Child Support Payments.

#### **2. Liens**

- a. Liens in the amount of past due support arise by operation of law against the real and personal property of support payers. [[MCL 552.625a](#) & [MCL 552.27](#)] See [SCAO Administrative Memorandum 2017-03](#).
- b. The FOC office may perfect a lien when the payer has an arrearage which exceeds the amount of periodic support payments payable for two months under the support order. The FOC must notify the payer and support recipient when a lien has been perfected. [[MCL 552.625b\(1\),\(7\)](#)] Notice of Lien  
<http://www.courts.mi.gov/Administration/SCAO/Forms/courtforms/domesticrelations/administrativeliens/foc90.pdf> which is sent with Notice of Perfection of Lien  
<http://www.courts.mi.gov/Administration/SCAO/Forms/courtforms/domesticrelations/administrativeliens/foc91.pdf>
- c. If within 21 days of the notice of perfection the payer fails to request a review, or at the time of the review fails to appear or to establish a mistake of fact, the FOC may levy on the property to convert it to child support. [[MCL 552.625b\(7\)](#)] Notice of Intent to Levy  
<https://www.courts.michigan.gov/4aa86a/siteassets/forms/scao-approved/foc93.pdf>
- d. The OCS sends notices of intent to lien to financial institutions and insurers (for monies paid as a result of a claim or suit for negligence, injury, or death, or for worker's compensation, based on FIDM or ICDM information).
- e. The SCAO lien policy discusses forms of execution (garnishment, or using a sheriff or court officer) for untitled tangible personal property. Following lien notice and notice of perfection, the FOC requests "Request and Order to Seize Property" ([MC 19](#)) [formerly known as writ of execution]. The sheriff or court officer seizes personal property and liquidates it. The fees are deducted from the sale - no cost to FOC.

### **K. Miscellaneous Other Enforcement Actions**

1. The FOC may have other enforcement remedies available through this statute, and any other applicable laws, including the divorce act, family support act,

paternity act, emancipation of minors act, and the child custody act.  
[[MCL 552.627](#)]

### **L. Access to Law Enforcement Information System**

1. LEIN policy council must promulgate rules that ensure FOC access to information needed by FOCs for enforcement of child support, including motor vehicle registration information. [MCL 28.214; MCL 257.221]
  - a. **LEIN (Law Enforcement Information Network)**

Warrant Validation – Respond to reports and confirm active warrants. LEIN validator review the mi-support [https://mi-support.state.mi.us/MiCSES\\_Documentation/HowTo\\_Work\\_LEINRec\\_Report.pdf](https://mi-support.state.mi.us/MiCSES_Documentation/HowTo_Work_LEINRec_Report.pdf). Failure to validate results in warrants removed from LEIN.

LEIN Information use – restrictions on use. [See email in added material.]

Segregated Storage of LEIN Information to limit access and Records of Destruction.

### **M. Location**

1. Within 75 days of determining that location is necessary, access all appropriate location sources. [45 CFR 303.3(b)(3)] Repeat location attempts quarterly or immediately upon receipt of new information which may aid in location. [45 CFR 303.3(b)(5)]

### **N. Actions to Set Aside Fraudulent Conveyances**

1. If a support arrearage has accrued and there is reason to believe the payer transferred title or ownership of real or personal property without fair consideration, the IV-D agency can initiate proceedings to have the transfer set aside as provided in the fraudulent conveyance act [MCL 566.11 to 566.23] or obtain a settlement for repayment that is in the best interest of the recipient of support. [MCL 552.624a]
2. Ethical and separation-of-powers considerations may make only the efforts to obtain a settlement appropriate as an FOC activity.

### **O. Evidentiary Rule in Enforcement Proceedings**

1. MiCSES records are considered prima facie evidence of the amount due and may be admitted into any support hearing ([MCL 552.603](#)[13]) without first calling the custodian of the records.

### **P. Interstate Enforcement**

When enforcement action on an interstate case is required, numerous actions must be completed within 10 days. [45 CFR 303.7]

1. **Full Faith and Credit of Child Support Orders Act** (FFCCSOA) [28 USC 1738B].

This is a federal law that restricts when states may enter a support order and restricts when other states may modify an order.

2. **Uniform Interstate Family Support Act (UIFSA)** See MCL 552.2101, et seq. It has been enacted in the same basic form in all 50 states (as required by PRWORA).
3. UIFSA provides for registration of orders for enforcement. [MCL 552.2601] It also allows registration for modification. Registration for modification must occur in the state of the party not seeking the modification. [MCL 552.2611]

**One order at a time:** Only one state has jurisdiction to decide the amount of child support, eliminating the possibility of multiple orders as occurred under URESA. To achieve this goal, UIFSA specifies criteria for determining which order is the controlling order and which state has continuing exclusive jurisdiction (CEJ) for determining modifications of the support amount. [See MCL 552.2205.]

4. **Revised Uniform Reciprocal Enforcement of Support Act (RURESA)**
  - a. RURESA was not repealed by the legislature when enacting UIFSA. Although no case has addressed the relationship of the two acts, it appears that RURESA cases are converted to or treated as UIFSA actions when procedures to modify or enforce support are instituted.
5. **Interstate Income Withholding**
  - a. UIFSA allows income-withholding orders to be sent directly to an employer in another state.
  - b. If an employer fails to comply with an income withholding order sent directly to it, UIFSA provides that the employer is subject to the same penalties as if it refused to honor an order of its state. [MCL 552.2505]

### Q. Felony Non-Support

1. Michigan law provides that it is a felony to do either of the following: 1) violate a support order [MCL 750.165]; 2) fail to support a family while having the resources to do so [MCL 750.161].
2. Federal law provides that it is a crime if the following occurs: (1) a payer having the ability to pay, (2) willfully fails to pay child support, (3) a known arrearage exists, (4) the arrearage has remained unpaid for longer than one year or is greater than \$5000, and the child resides in a different state from the payer. [18 USC 228]
3. Permissible FOC involvement relative to criminal prosecutions is outlined in [SCAO Administrative Memorandum 2008-03](#).



## 5-02 Health Care Enforcement

Many of the same laws for investigation and enforcement outlined above apply to medical support. In addition, if a payee is receiving medical assistance, the FOC office must investigate not less than once each 36 months. [[MCL 552.517\(1\)\(d\)](#)] When assigned medical support payments are paid to a non-AFDC Medicaid recipient, the FOC office must notify the Medicaid agency. [MCL 552.626d; 45 CFR 302.31(a)(3)]

### A. Enforcing Health Care Coverage

1. When a parent fails to obtain or maintain court-ordered health care coverage for a child, the office must initiate enforcement under the support and parenting time enforcement act [[MCL 552.511\(1\)\(b\)](#)].
2. If a parent fails to obtain court-ordered health care coverage, the office must either petition for an order to show cause or send a notice of non-compliance to the parent.
3. An order for dependent health care coverage applies to current and subsequent employers and periods of employment. [MCL 552.626]

### B. Enforcing Uninsured Medical Expenses

1. Uninsured medical expenses are paid as ordinary and extraordinary. Ordinary medical expenses are paid and enforced as part of the monthly support obligations. Extraordinary expenses (those in excess of ordinary) are paid by a party and enforced by the office.
2. Under [MCL 552.511\(1\)\(c\)](#), the FOC should initiate enforcement measures when a person legally responsible for the child incurs an uninsured health care expense and submits a written complaint that meets Section 11a requirements.
3. [SCAO Administrative Memorandum 2011-01](#) contains the Medical Policy for FOC offices.

## 5-03 Relief and Exemptions

### A. Administrative Discharge of Arrears

[Michigan IV-D Child Support Manual Section 6.51](#), Arrears Management.

1. A recipient of support must consent to discharge of his or her arrears. The FOC staff should take steps to ensure that any discharge of arrears is not under coercion or duress.
2. MCL 205.13(4) grants DHS the authority to forgive arrears owed to the state. DHS/OCS has delegated this authority to the FOC staff for administrative discharge of arrears owed to the state (e.g., PAA, IVEF).
3. Before discharging arrears owed to the state, OCS policy requires the FOC to determine the support payer's (NCP's) ability to pay, and engagement with

## New FOC Directors and Leaders Orientation

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the children and/or the IV-D program. After making this determination, the FOC office may discharge arrears.

4. To aid the FOC office in objectively evaluating these standards, the SCAO developed an excel spreadsheet, available through mi-support.
5. OCS policy allows the office either to use this spreadsheet, or to rely on other methods to determine if the payer/NCP has the ability to pay. SCAO policy recommends, but does not mandate, using the SCAO spreadsheet to comply with the OCS policy.
6. Under OCS policy, each office must designate an Arrears Management Coordinator. This person is an expert for those in that FOC office, and a contact for other FOC offices.

### B. Surcharge

1. For surcharge that accrued after June 30, 2005, a party or FOC may petition the court for a repayment plan order for discharge of amounts assessed as surcharge and for the waiver of future surcharge. [[MCL 552.603d](#)]  
[SCAO Administrative Memorandum 2010-06.](#)

### C. Statute of Limitations

1. For an action under the Support and Parenting Time Enforcement Act, the statute of limitations is ten years from the date that the last support payment is due under the support order whether or not the payment was made. [MCL 600.5809(4)]
2. Any payments on a child support debt, whether before or after the running of the period of limitations, acts to extend the limitations period. [ *Wayne County Social Services Director v Yates*, 261 Mich App 152 (2004)] A court continuing to exercise its jurisdiction in the case will also extend the limitations period. [ *Parks v Niemic*, 325 Mich App 717 (2018)]
- c. **MCL 600.5809(1) bars bringing or maintaining an action to enforce unless the period has NOT run.**
- d. Statute of Limitations is an affirmative defense and must be raised after the limitation period (or renewed period) has run. It does not contain any requirement that the debtor/defendant raise it.
- e. If on its face, it appears that ten years have passed since the last support payment was due, the FOC or party bringing the enforcement action has to show that the period was extended or tolled [based on non-support related COA decision in *Warren Consolidated Schools v WR Grace & Co*, 205 Mich App 580; 518 NW2d 508 (1994)].
- f. When acting as a responding state in an action to register another state's order, in "a proceeding for arrearages, the longer of the statutes of limitations of this [registration forum] or the issuing state applies."

For information about when child support should stop charging see [SCAO's Administrative Memorandum 2012-07](#).

### **D. Documented Payments Withheld**

The FOC shall not consider a payer to have an arrearage if the payer produces documentary evidence that money has been withheld from the payer's income in an amount equal to or greater than the amount required under the payer's support order. This documentation includes pay stubs, wage statements, or other written income information produced by the payer's employer. [[MCL 552.607a](#)]

### **E. Retroactive Arrears Created**

The FOC shall not consider a payer to have an arrearage for the purpose of initiating enforcement when an arrearage is created because an order retroactively sets support relating to a filing date unless the payer fails to become current within two months after entry of the order that creates the amount. [[MCL 552.511\(2\)](#)]

### **F. National Guard Exemption**

Under the Michigan Military Act, Army National Guard, and Air National Guard officers and enlisted personnel on active service<sup>2</sup> are privileged from arrest and imprisonment during the time of active service and for a period of six months after the service ceases, and their property is exempt from levy of execution, seizure, or attachment for debts contracted prior to or during the service. [[MCL 32.517](#)]

### **G. Bankruptcy**

#### **a. Actions**

Many noncustodial parents seek relief from their financial obligations by filing Federal Court actions under Bankruptcy Code.

Chapter 7 actions seek the relief by discharging from all dischargeable debts. Chapter 13 actions are for an adjustment of debts of an individual with regular income.

See Federal Courts – Bankruptcy Basics

<http://www.uscourts.gov/FederalCourts/Bankruptcy/BankruptcyBasics.aspx>

b. Changes in bankruptcy law have affected support enforcement and provided with challenges and a changing environment.

#### **c. Arrears**

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<sup>2</sup> Active service means service, including active state service and special duty required by law, regulation, or pursuant to order of the governor. Active service includes continuing service of an active member of the National Guard and the defense force in fulfilling that active member's commission, appointment, or enlistment.

Generally, a bankruptcy does not discharge support arrears. Support is a nondischargeable debt. [11 U.S.C. § 523(a)]

**The FOC should not file a proof of claim in the bankruptcy action.**

### **d. Enforcement**

If support arrears are paid within a chapter 13 plan, no additional action should be taken to enforce those arrears. It could be considered a violation of a federal order.

Current support accruing after the action is filed may be enforced.

## **5-04 Enforcement of Employer/Source of Income Responsibilities**

### **A. Disclosing Information to FOC**

1. Upon the FOC's request, the source of income must provide information the employer has regarding the payer, if the employer maintains the information, and the payer worked there in the last three years. [[MCL 552.518](#)]
2. The information obtained is confidential except for child support matters. However, information may be released to either parent upon request (unless a family violence indicator protects the party's information).
3. Employers or former employers must supply (pursuant to an administrative subpoena) any current employment information that is in the possession of the employer that pertains to the parent and is needed to establish, modify, or enforce a support order.

### **B. Income Withholding**

1. The source of income must implement the income withholding order within seven days of service of the notice of the order by ordinary mail. [[MCL 552.611](#)]
2. The source of income must pay withheld money to MiSDU within three days after the withholding. [[MCL 552.609](#)]
3. If there is more than one support income withholding order against a payer, the source of income must comply with each order to the extent allowed by law, currently 50% of the payer's disposable income. [[MCL 552.611a](#)]
4. The source of income must identify each withholding by payer name, social security number, case number, amount withheld, and the date on which support was withheld. [[MCL 552.611a\(3\)](#)] Payments from multiple payers may be combined into one payment as long as the identifying information is provided. [[MCL 552.611a\(4\)](#)]
5. The source of income must notify the FOC office if income is terminated. [[MCL 552.614](#)] If the source of income is an employer, the source of income must notify the FOC office when employment is interrupted for a period of 14

or more consecutive days; if a new source of income is known, the source of income must provide that information. [MCL 552.614]

6. Income withholding remains in effect until further order of the court and has priority over all other legal processes under state law against the same income. [MCL 552.611]
7. The FOC office must send notice of any modification to the income withholding order; the source of income must modify the amount withheld within seven days of receipt of the notice. [MCL 552.617]

### C. Income Withholding Liability

1. The source of income is liable for any amount that it intentionally fails to withhold from the payer's income after service of the order. [MCL 552.611a(2)] In addition, the court may find the source of income in contempt if it fails to comply with the order. [MCL 552.613]
2. The source of income is guilty of a misdemeanor if it refuses to employ, discharges, or penalizes a payer because of an income withholding order. The misdemeanor is punishable by fine of up to \$500 and full restitution, including reinstatement and back pay. [MCL 552.623]

### D. Fee for Withholding

1. A source of income may charge and collect from a payer a fee of up to \$4 per month in response to a notice of income withholding.
  - a. The fee authorized in subsection shall be collected separately and apart from the income withheld for child support. [MCL 552.623]

## 6. Financials

### 6-01 General Accounting

1. All records should be maintained on a current basis and balanced monthly. [(CARG) 6-05, A] See [SCAO Administrative Memorandum 2003-04](#).

### 6-02 Banking and Accounting Safeguards

1. Not following all required financial controls and safeguards leaves great potential for embezzlement or loss. In addition to support payments that the office processes, financial safeguards apply to all monies handled by the office, including fees and monies forwarded to the county treasurer.
2. Access to records should be restricted to the functions the employee performs. [CARG 6-05, A; 45 CFR 302.20]
3. The office must utilize different staff to maintain a separation of five financial functions: (1) opening the mail, (2) receipting, (3) daily balancing, (4) bank deposit, and (5) bank reconciliation process, should not perform any other

## New FOC Directors and Leaders Orientation

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listed function. [[CARG 6-05, B.1.a](#)] The following list includes some of those requirements:

- a. The staff member opening the mail must record all payments on a mail log or an adding machine tape prepared by the person who opens the mail. If a mail log is prepared, it should indicate the date received, payer's name, type of payment (check, money order, or cash), check/money order number, and amount; and the preparer should initial it. As payments are logged, checks and money orders should be endorsed for deposit.
  - b. The log should then be forwarded to the employee who balances receipts to the accounting records while the checks, money orders, and cash should be given to the employee who performs the receipt function.
  - c. The office should maintain separate secured drawers only accessible to one individual and receipt books for each employee who accepts payments. These employees should sign or initial a report reflecting the checks, money orders, and cash counted. The checks, money orders, and cash should then be forwarded to the employee who balances the accounting records.
  - d. Whenever the court is closed, all undeposited checks, money orders, and cash must be stored in a locked safe or other locked secure device with access limited to a few employees. The device's combination or lock should be periodically changed, and must be changed whenever someone terminates employment.
  - e. Deposits should be transported to the bank in a locked bag. Deposits should be made no less frequently than every two days.
  - f. A full reconciliation of each bank account needs to be completed monthly within 10 working days from receipt of the bank statement and maintained on a current basis.
  - g. Require staff to report irregularities to a manager. The director should receive regular reports regarding financials (amounts, balancing, current status of each function, and irregularities).
4. Cross-assigning staff as backup coverage in ways that violate the separation of financial functions create risks. The longer conflicting system roles remain active, the longer it may take to identify embezzlement.
  5. Other responsibilities are described in the [CARG 6-05](#), and the following subsections on Receipt Allocation and Disbursements, and Distribution.
  6. Every person with access to or control over funds collected must be covered by a bond. [[CARG 5-11](#); 45 CFR 302.19] Also see 1-02B Bonding Employees, above.
  7. **Suspected Embezzlement** Accounting irregularities and suspected embezzlement must be reported to the chief judge and not local law enforcement. The chief judge should immediately contact the SCAO regional administrator. The regional administrator will contact the appropriate law

enforcement agencies, usually the Attorney General and Michigan State Police. SCAO may also arrange for an audit and involve Supreme Court Auditors. [[CARG](#), 6-05-J]

### 6-03 Allocation and Distributions, Accounts and Audits

#### A. Receipt Allocation and Distribution

Directives regarding receipts are mentioned in a number of sources as follows:

1. The MISDU is the regular support payment collection point. If any support payments (cash, cashier's checks, or money orders only) are accepted, they must be immediately transmitted to the MISDU for disbursement and the payer informed that payments must be made through the MISDU. [[MCL 552.509\(3\)](#)]
2. Payments are allocated and distributed as required by OCS policy..  
Payments requiring allocation to a particular case or to a specified obligation must be paid through the FOC as a special instruction payment.
3. Deposits must be made at least every two days. In situations where the deposit will be less than \$1,000, the deposit can be delayed, but must be made at least weekly. [[CARG](#), Section 6-05.F.7.u.]
4. FOC offices should ensure procedures to deposit and "push" support to the MiSDU on the same day as the payment is receipted in the office.
5. Each office must maintain support order and account records necessary to enforce support orders and to record obligations, support and fee receipt and disbursement, and related payments. [[MCL 552.509\(4\)](#)]
6. Accounting records are only confidential records if Title IV-D so requires (e.g., federal tax refund offset amount information), and are accessible as permitted under [MCR 3.218](#).
7. Federal Tax Refund Offsets must be distributed as a collection against support arrearage. Tax offsets must pay off TANF arrearage first. [[45 CFR 302.51\(a\)\(3\)](#)] All other collections must be applied first to current child support and then to support arrearage owed the custodial parent.

#### B. Disbursements

Directives regarding disbursement are mentioned in a number of sources as follows:

1. The MISDU or the FOC office must pay all support to the recipient within two days of receipt. [[MCL 552.509\(1\)](#)]
2. Support payments must be distributed to appropriate accounts on the day of receipt and disbursed within two business days. [[MCL 400.236\(2\)](#)]; See also, [42 USC 654b\(c\)\(1\)](#), [45 CFR 302.32\(b\)\(3\)\(i\)](#), and ([CARG](#)) 6-05]
3. **Mandatory Electronic Disbursements**

State law [\[MCL 400.236\(4\)\]](#) requires all recipients of support to receive payments electronically, either through direct deposit to the recipient of support's financial institution account, or via a MiSDU debit card. There is an ability to opt out of the electronic disbursement requirement. Requests to receive non-electronic disbursements go through the MiSDU.

### **C. Audit**

1. Directives regarding auditing are as follows:
  - a. Provide annually to each party, upon request and without charge, a statement of account. The statement must be in addition to those prepared for administrative or judicial hearings. [\[MCL 552.509\(5\)\]](#)
  - b. Provide additional statements of account at a reasonable fee sufficient to pay the cost of reproduction. [\[MCL 552.509\(5\)\]](#) See 3-03B Access to Records.
2. In order to fulfill the statutory duty of maintaining the account records necessary to enforce order violations, any case or account record that appears inaccurate should be audited either at the office's own initiative, or upon an appropriate request of a party.
3. Many times when litigants do not understand their account, they will request an audit. Due to the cost of completing an audit, the circumstances under which one is conducted should be reasonably limited. Many times a computerized history and instructions for reading printouts can be used in lieu of completing an audit. The FOC can ask a person who disagrees with the records, to provide reasonable additional detail showing where the person believes the account is in error.
4. The FOC office should establish written non-punitive procedures and include objective guidelines to determine when the office will conduct an audit. Many times a computerized history and instructions for reading printouts can be used in lieu of completing an audit. If a person disagrees with the records, litigants can be asked to provide reasonable additional detail showing where they believe an error was made.
5. The office does not have any legal authority to assess a fee for an audit.
6. Federal distribution rules cause payments to be distributed towards support obligations first, usually leaving fees unpaid until the end of a case

## **6-04 Credits, Abatements, Redirections**

### **A. Credits**

#### **1. Documentation**

The FOC office must maintain records that document the basis of every credit and adjustment for auditing and accounting purposes.



### 2. **Retroactive Credits**

Generally, retroactive credits for things not permitted by order are considered retroactive modification, which is contrary to statute.

### 3. **Incarceration**

Administratively waiving support charges for periods a parent was incarcerated (direct abatement/incarceration credit) formerly permitted under [Pierce v Pierce, 162 Mich App 367\(1987\)](#) but was overturned by [McLaughlin v McLaughlin 255 Mich App 475 \(2003\)](#) as a retroactive modification of support.

### 4. **Parenting Time Abatements**

Support orders unmodified since October 2008 likely contain a provision that permits abatement of charges when a parent exercises parenting time for a series of consecutive overnights. If orders do not contain an abatement provision, do not abate the charges for parenting time.

### 5. **Credit Balances**

See [SCAO Administrative Memorandum 2010-03](#) on Credit Balances on FOC Cases. It contains important information on the Causes of Credit Balances, Preventing Credit Balances, Resolving Credit Balances, and Collecting Overpayments.

### 6. **Direct Payment Credits**

Courts should avoid giving credit for direct payments outside of the court-ordered payment method (i.e., through MiSDU or FOC). If done, the credit should only be allowed up to the amount of arrears owed the recipient at the time the credit is applied.

## **B. Abate and Redirect**

When a child changes residences and no longer lives with the “recipient” of support, statute provides a process for administratively abating current charges when child lives with payer or redirecting child support to a new recipient. [MCL 552.605d]

1. SCAO Administrative Memorandum 2005-04 provides an explanation of requirements for administrative abatement or redirect of support charges. <https://www.courts.michigan.gov/49aff1/siteassets/court-administration/administrative-memoranda/2005/2005-04.pdf>

### 2. **Order Provisions**

- a. Orders must contain provisions to:
  - Assign support to the State when a child is placed in state foster care.
  - Assign support to the county when a child is placed in county foster care.

- Permit the FOC to redirect support to a person legally responsible for the actual care, support, and maintenance of a child.
  - Abate support charges when a child resides full-time with the payer.
- b. Support orders in an FOC case entered before June 1, 2003, are deemed to include the above provisions by operation of law. [MCL 552.605d(2)]
3. The law also assigns child support to the state or county when a child enters foster care. [MCL 552.605d and MCL 400.115b(5)]

### 6-05 Order Maintenance

#### A. General

1. Each office must maintain support order and account records necessary to enforce support orders and to record obligations, support and fee receipt and disbursement, and related payments. [MCL 552.509(4)] Maintaining the order includes determining when the order ends due to events such as emancipation, death of a party, or child, or by terms of the order. For information on when orders terminate see [Administrative Order 2012-07](#).

## 7. Custody and Parenting Time

### 7-01 Custody and Parenting Time

#### A. General

1. **Joint applicability**

When so ordered by the court the FOC is to investigate all relevant facts, and to make a written report and recommendation to the parties and to the court, regarding child custody or parenting time, or both. If custody has been established by court order the court shall order an investigation only if the court first finds that proper cause has been shown or that there has been a change of circumstances. [[MCL 552.505\(1\)\(g\)](#)]

The enabling statutes for custody and parenting time are similar, but not identical. Unless otherwise specified, the rules identified in this section apply to both custody and parenting time, investigations or enforcement.

Also see [Custody and Parenting Time Investigation Manual](#).

If ordered in a FOC case, the FOC must investigate relevant facts and make a written report and recommendation. [[MCL 552.505\(1\)\(g\)](#)]

- a. [MCR 3.210\(C\)](#) requires that the court hold a hearing on a contested child custody matter within 56 days from the orders or after filing of notice that a custody hearing is scheduled. That means the office has a much shorter period to complete its custody or parenting time investigation (56 days minus the time it takes the office to receive notification of the order and

initiate the investigation, less the time provided for the parties and the court to review the report before the hearing).

- b. The law requires the court to consider the best interest factors set forth in [MCL 722.23](#), but the court may also consider the parenting time factors set forth in [MCL 722.27a](#). Accordingly, in any type of parenting time investigation, the FOC will need to consider the best interest factors as outlined in [MCL 722.23](#). There appears to be a split in the courts as to which best interest factors need to be addressed; some case law points to all factors being considered, and more recent case law indicates that the court must consider only the contested best interest factors

### 2. Jurisdiction

- a. The [Uniform Child Custody Jurisdiction and Enforcement Act](#) (UCCJEA) and the Full Faith and Credit of Child Custody Determinations ([28 USC 1738A](#)) control jurisdiction to establish or modify child custody (including parenting time) orders. UCCJEA is legislation adopted by every state for the purpose of determining which state has jurisdiction over, and authority to make decisions for, a child in a custody case.
- b. If another state has previously issued a child custody determination, restrictions exist on a different state modifying the order.
- c. If Michigan previously entered a child custody or parenting time order, jurisdiction to modify only exists as long as Michigan remains the child's home state or the child maintains significant ties to Michigan.

### 3. Notification of ADR and Joint Custody

When custody is in dispute, the FOC must inform parties of availability of ADR services and joint custody. [[MCL 552.505\(1\)\(e\) and \(f\)](#)]

## 7-02 Custody and Parenting Time Investigations

### A. General

#### 1. Investigation Content and Scope

- a. Investigations focus on information relevant to determining the “best interests of the child” and may include a finding whether an “established custodial environment” exists. The “best interests” are ultimately determined by the court based on the twelve Child Custody Act factors. [[MCL 722.23](#)]
- b. Parenting time investigations should center on an objective analysis of the facts to ensure that the best interests of the child are met, and to determine a schedule reasonably calculated to promote a strong relationship between the child and the parent granted parenting time. [[MCL 722.27a\(1\)](#)]
- c. Investigations may include reports and evaluations by outside persons or agencies if requested by the parties or the court. [[MCL 552.505\(1\)\(g\)](#)]

#### 2. Meeting with a party

If requested by a party, the investigation must include a meeting with the party. [[MCL 552.505\(1\)\(g\)](#)]

### 3. Written Report and Recommendation

- a. If the office conducts an investigation, the office must make a written report and recommendation. The report and recommendation must be based on the best interest factors of the Child Custody Act. [[MCL 722.23](#) and [MCL 552.505\(1\)\(g\)](#)] See also [MCL 722.717b](#) (for paternity cases). MCL 722.23 defines “best interests of the child” as the sum total of 12 factors to be considered, evaluated, and determined by the court.

For parenting time investigations, the report should include discussion of the factors used to determine the frequency, duration, and type of parenting time to be granted. [[MCL 722.27a\(6\)](#)]

- b. The report shall include documentation of alleged facts, where practicable. [[MCL 552.505\(1\)\(g\)](#)]
- c. Because [MCR 3.210\(C\)\(2\)](#) requires that the court hold a custody hearing within 56 days, the office has 56 days minus the time at the front (the FOC takes to start) and minus the time at the end (sufficient to provide the report to the parties and the court for review before hearing) to complete the investigation and deliver the report.
- d. When completing a post-judgment parenting time evaluation under [MCL 552.517d\(2\)](#), the office must prepare a written report and recommendation to accompany notice of the filing of the motion.
- e. A copy of each report, recommendation, and any supporting documents or summary of supporting documents must be made available to the attorney for each party and to each of the parties before the court takes any action on a recommendation by the office. [[MCL 552.507a\(1\)](#)]

The manner in which the information is made available is determined by court rule. [[MCL 552.507a\(4\)](#)]

Child’s preference. The office should inform the parties whether a child’s custody preference was determined, and considered, however the preference expressed should not be disclosed. [[MCL 552.507a\(2\)](#)] If a guardian is appointed for a child, the office must inform a *guardian ad litem* of any preference expressed by the child and how it was considered. [[MCL 552.507a\(3\)](#)]

- f. Judges may consider custody, parenting time, or child-support investigation reports submitted by the friend of the court as evidence. [[MRE 1101\(b\)\(9\)](#) *Dumm v Brodbeck*, 276 Mich App 460 (2007)] (Prior to the 2003 rule change, parties had to stipulate before the court could use the FOC report. [*Nichols v Nichols*, 106 Mich App 584, 588 (1981)])
- g. [MCL 722.27a](#) requires parenting time orders to contain a prohibition on exercising parenting time in a nation that is not a party to the Hague Convention on the Civil Aspects of International Child Abduction, unless

both parents provide the court with written consent to allow parenting time in a nation that is not a party to this Convention.

### 7-03 Custody and Parenting Time Enforcement

#### A. Custody Enforcement

##### 1. Initiation

In a FOC case, the office must initiate enforcement upon receipt of written complaint stating specific facts alleged to constitute a violation of the order, if the office determines that there is a reason to believe that a violation has occurred. [[MCL 552.511b](#)]

##### 2. Resolution

- a. The FOC must initiate an action if it determines that the facts as stated in the complaint submitted under [MCL 552.511b](#) allege an order violation that can be addressed by taking one or more of the following actions:
  - Apply makeup-parenting time under a policy established by [MCL 552.642](#).
  - Commence civil contempt proceedings under [MCL 552.644](#).
  - File a motion to modify existing parenting time provisions to ensure parenting time under [MCL 552.517d](#), unless modification is contrary to the best interests of the child.
  - Schedule mediation subject to [MCL 552.513](#).
  - Schedule a joint meeting subject to [MCL 552.642a](#). [[MCL 552.641](#)]
- b. If the FOC determines that a procedure for resolving a parenting time dispute authorized under [MCL 552.641](#) other than a civil contempt proceeding is unsuccessful in resolving a dispute, the office must initiate a civil contempt proceeding to resolve the parenting time dispute to show cause why either parent who has violated a parenting time order should not be held in contempt. [[MCL 552.644](#)]
- c. The office may decline to respond to an alleged violation, if:
  - The submitting party has previously submitted two or more complaints alleging order violations that were found to be unwarranted, costs were assessed against the party because a complaint was found to be unwarranted, and the party has not paid those costs;
  - The alleged violation occurred more than 56 days prior to submitting the complaint; or
  - The order does not include an enforceable provision that is relevant to the violation alleged in the complaint. [[MCL 552.541](#)]

##### 3. Joint Meetings [[MCR 3.224](#)]

## New FOC Directors and Leaders Orientation

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- a. At the office's discretion and as provided for in the court's FOC ADR Plan, the court rule permits resolution of certain issues through a joint meeting scheduled by the office with both parties. A joint meeting and its associated proceedings following must follow all the requirements of [\[MCR 3.224\]](#). Requirements include:
- The person conducting the meeting (moderator) must have completed domestic violence training (training referred to in the statute) and should receive some mediation or dispute resolution training. The Michigan Judicial Institute's [Domestic Violence Training](#) qualifies FOC staff to conduct joint meetings.
  - Parties may attend joint meetings in person or via telecommunications equipment, and need to be given the opportunity to do so.
  - The 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. [FOC Form 124](#)
  - If domestic violence is identified or suspected, the 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 joint meeting, the person conducting the joint meeting must make reasonable efforts to screen for the presence of coercion or violence that would make the joint meeting physically or emotionally unsafe for any participant or that would impede achieving a voluntary and safe resolution of issues.
  - At the beginning of a joint meeting, the person conducting the meeting shall do the following:
    - advise the parties that statements made during the joint meeting are not confidential and can be used in other court proceedings;
    - advise the parties that the purpose of the meeting is for the parties to reach an accommodation and how the person will conduct the meeting;
    - advise the parties that the person may recommend an order to the court to resolve the dispute; and explain to the parties the information provided for in subrules. [\[MCR 3.224\(H\)\(1\)\(d\)-\(e\)\]](#)
  - At the conclusion of a joint meeting, the person conducting the meeting shall submit a report within seven days pursuant to [MCR 3.224\(I\)](#) and may do one of the following:

## New FOC Directors and Leaders Orientation

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- If the parties reach an accommodation, record the accommodation in writing and provide a copy to the parties and attorneys of record. If the accommodation modifies an order, the person must submit a proposed order to the court. If the court approves the order, the court shall enter it; or
- Submit an order to the court stating the person's recommendation for resolving the dispute. The parties may consent by signing the recommended order and waiving the objection period in accordance with [MCR 3.224 \(H\)\(1\)\(e\)\(iii\)](#). If the court approves the order, the court shall enter it.
- If the person conducting the joint meeting submits a recommended order within seven days to the court, the friend of the court must serve the parties and attorneys of record a copy of the order and a notice that provides the following information:

that the court may enter the recommended order resolving the dispute unless a party objects to the order within 21 days after the notice is sent;

when and where a written objection must be submitted;

that a party may waive the 21-day objection period by returning a signed copy of the recommended order; and if a party files a written objection within the 21-day limit, the friend of the court office shall set a court hearing before a judge or referee to resolve the dispute. If a party fails to file a written objection within the 21-day limit, the office shall submit the proposed order to the court for entry if the court approves it.
- Except for communications made during domestic violence screening, communications made during a joint meeting are not confidential and may be used in other court proceedings and cannot be recorded.
- Joint meetings should be used in cases where the parties will likely reach an equitable agreement, or accept the meeting moderator's recommendation for an order.
- The FOC may schedule a joint meeting between the parties to attempt to expedite resolution of support parenting time denial issues. [[MCR 3.224](#)]
- This should be used in cases where the time and resources spent on the joint meeting process will not exceed the resources needed for other remedies. This process is not an appropriate means for handling for all support reviews or custody or parenting time violations.

### 4. Mediation

- a. Domestic relations mediation will be conducted by a mediator selected by the friend of the court.
- The mediation 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.
  - If domestic violence is identified or suspected, the mediation process may not continue 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 mediation process, the mediator must make reasonable efforts to screen for the presence of coercion or violence that would make mediation physically or emotionally unsafe for any participant or that would impede achieving a voluntary and safe resolution of issues.
  - At the beginning of the mediation, the mediator will advise the parties and their attorneys, if applicable, of the following:
    - the purpose of mediation;
    - how the mediator will conduct mediation;
      - except as provided for in [MCR 2.412\(D\)\(8\)](#), statements made during the mediation process are confidential and cannot be used in court proceedings.
  - If the parties reach an agreement, the mediator shall submit a proposed order and a report pursuant to within seven days.
  - If the parties do not reach an agreement within seven days of the completion of mediation, the mediator shall so advise the court stating only the date of completion of the process, who participated in the mediation, whether settlement was reached, and whether additional friend of the court ADR proceedings are contemplated.
  - With the exceptions provided for in [MCR 2.412\(D\)](#), communications during friend of the court domestic relations mediation process are confidential and cannot be used in court proceedings and cannot be recorded

### 5. **Petition for Modification**

In response to an alleged custody or parenting time order violation, and following an evaluation and required notice, unless contrary to the best interests of the child, the office may file a post-judgment motion under



[MCL 552.517d](#) to modify parenting time provisions to ensure parenting time.  
[\[MCL 552.641\(1\)\]](#)

**6. Makeup Parenting Time Policy**

- a. The circuit court must formulate a makeup parenting time policy.  
[\[MCL 552.642\]](#) The policy must include enumerated statutory items.
- b. Enforcement statutes permit the FOC office to choose from several remedies to address denied parenting time, of which, make up parenting time is one.
- c. When denied parenting time, the harmed individual must give the FOC office written notice. Before applying the policy to a case, the FOC office must send notice to both parties of the intent to apply the policy. If a timely objection is made after this notice, a hearing must be held before the court. [\[MCL 552.642\]](#)

## **8. Referees**

### **8-01 Referees – General**

#### **A. Referee [\[MCL 552.507 and MCR 3.215\]](#)**

Referees can be used to expedite relief. [\[MCL 552.508\]](#)

**1. Qualifications**

- a. The referee must be a licensed attorney.
- b. Courts must appoint referees by an LAO approved by the SCAO. [\[MSC Administrative Order 2009-6\]](#)

**2. Authority**

- a. Referees may hear all domestic relations cases except for the modification of spousal support.
- b. The chief judge may assign motions of a particular kind by local administrative order, or a trial judge may assign individual cases to be heard by referee. [\[MCR 3.215\(B\)\]](#)
- c. The LAO appointing a referee must describe the individual's scope of authority and contain contact information.

**3. Responsibilities**

**a. Conduct Hearing**

Michigan Rules of Evidence apply to referee hearings.

The referee must state at the hearing the right of the parties to a *de novo* review if an objection is filed within 21 days of service of the referee's recommended order.

**b. Prepare Recommended Order**

The referee must prepare a recommendation within 21 days of the hearing and submit a proposed order to the parties. The proposed order must give notice of right to file an objection to the referee's recommended order within 21 days of service.

**c. Reporting Information Changes**

Changes in a referee's authority and contact information must be effected through entry and approval of a new LAO. See [SCAO Administrative Memorandum 2009-05](#).

**4. Procedural Requirements for Referee Hearings**

**a. Notice of Hearing**

Notice of hearing must be given at least nine days by mail or seven days by personal service prior to hearing date. Generally, except for the initial pleading in a case, all papers may be served by first class mail.

**b. Record of Hearing**

An electronic or stenographic record must be kept of all hearings. [[MCR 3.215\(D\)](#)] [MCR 8.108](#) and [MCR 8.109](#) provide requirements and standards for recording.

**c. Recommendations and Entry of Order**

[MCR 3.215\(E\)](#) contains the requirements for entry of recommended orders.

## 9. Alternative Dispute Resolution

### 9-01 Alternative Dispute Resolution and Mediation

**A. FOC Alternative Dispute Resolution (ADR) [MCR 3.224]**

[MCR 3.224](#) requires each circuit court to 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. An FOC ADR session may not begin until an FOC case has been screened for domestic violence using a screening protocol provided by the SCAO. See [FOC Form 124](#).

**B. FOC Domestic Relations Mediation**

FOC Domestic Relations Mediation means a process in which a neutral third party facilitates confidential communication between parties to explore solutions

to settle custody and parenting time or support issues for friend of the court cases. FOC domestic relations mediation is not governed by [MCR 3.216](#), which relates to domestic relations mediation conducted without participation or supervision of the friend of the court. If the parties reach an agreement, the mediator shall submit a proposed order and report. If the parties do not reach an agreement within seven days of the completion of mediation, the mediator shall so advise the court stating only the date of completion of the process, who participated in the mediation, whether settlement was reached, and whether additional FOC ADR proceedings are contemplated.

### **C. FOC facilitative and information-gathering conference**

This is a process in which a facilitator assists the parties in reaching an agreement. If the parties fail to reach an agreement, the facilitator may prepare a report and/or recommended order. If the parties resolve all contested issues, the facilitator shall submit a report to the court and may provide a proposed order to the court setting forth the parties' agreements. If the parties fail to reach an agreement, the facilitator may do one of the following:

- Prepare a proposed order that is presented to the court that if the court approves the order has immediate effect. Either party may object to the order within 21 days and request a hearing.
- Prepare a proposed order that is served on the parties. If neither party files an objection within 21 days the court may enter the order if it approves.
- Submit a recommendation to the court for further action the court might take to help the parties resolve the remaining contested issues in the case, or alert the court there are contested issues that might require the court's immediate attention.

### **D. Joint Meeting**

Joint meeting means a process in which a person discusses proposed solutions with the parties to a custody or parenting time complaint or an objection to a support recommendation. At the conclusion of a joint meeting, the person conducting the meeting shall submit a report within seven days. If the parties reach an accommodation, record the accommodation in writing and provide a copy to the parties and attorneys of record. If the accommodation modifies an order, the person must submit a proposed order to the court. If the court approves the order, the court shall enter it; or submit an order to the court stating the person's recommendation for resolving the dispute.

## 10. Facilities

### 10-01 Facilities – General

#### A. Office Space

1. Required functional space includes private offices for the Friend of the Court, the Assistant Friend of the Court, enforcement officers, finance officer, and possibly referees.
  - a. A typical office should be 120 to 180 square feet, and furnished with a desk, credenza, bookcase, guest chairs, and a filing cabinet.
  - b. Offices should be near clerical support spaces and have access to conference rooms and interview spaces, if provided.
2. Clerical support should be located close to the offices they support and have convenient access to a copy area, worktables, and supply and equipment storage areas. Within the offices there should be a semi-private circulation pattern connecting spaces used by the attorneys and staff.
3. Because many people come to the office to make payments, a separate teller/cashier window should be provided for this purpose. If the volume is high enough, this window may be a full-time cashier's station.
4. All areas of the office should be accessible to persons with disabilities. This includes the counter and reception areas, staff offices, hearing or interview rooms, and office support areas.
5. The office should have a reception and waiting area for visitors. Because of the need to separate parties, separate waiting spaces may be provided. The accommodations should be comfortable and pleasant. Visitors in the waiting area should not be able to look into the work areas of the FOC's office and excessive noise from office and clerical spaces should be screened from the reception area. Approximately 20 square feet per person should be adequate. Furnishings should be durable and easy to maintain. The area should be furnished with chairs and a coat rack.
6. Ideally, all work and waiting areas should have natural lighting. This promotes a more pleasant environment for both the clients and staff. There should be a quiet and relaxing atmosphere because of the stressful nature of the work.
7. Additional areas include records storage space, a payment window/counter, adequate reception and waiting spaces, equipment and supply storage, mail sorting area, hearing rooms, conference or interview rooms, staff lounge, work room, and space for office equipment.

See [\*The Michigan Courthouse – A Planning and Design Guide for Trial Court Facilities\*](#).

## **B. Public Access**

1. There should be a secure separation between the public access area and the private work areas.
2. Clients must be escorted in and out of private areas if seen in caseworker offices.
3. The office should have a reception and waiting area for visitors. This may involve separate waiting areas for especially acrimonious parties.
4. The waiting area should be large enough to provide approximately 20 square feet of floor space per visitor expected, and furnished with durable, easy-to-clean chairs and a coat rack.
5. All areas of the office should be accessible to persons with disabilities. This includes the counter and reception areas, staff offices, hearing or interview rooms, and office support areas.

## **11. Security**

### **11-01 Security**

#### **A. General**

1. Security needs of the FOC are similar to those for probation officers.
2. Persons visiting the FOC office should be received at a supervised reception area, and entry to the office should be controlled.
3. There should be a secure cashier station or window with a duress alarm. The window should have security glazing.
4. Private offices should not be isolated and should permit internal observation from the outside, and be large enough to allow proper separation between staff and clients.
5. Access to the FOC private office area should be controlled by the receptionist with an electronic lock.

## **12. Technology**

### **12-01 Technology**

#### **A. General**

##### **1. Office Equipment**

Office equipment generally includes a paper shredder, facsimile machine, personal computers, network server, photo copiers, scanners, printers, work table, filing cabinets, and metal supply cabinets.

Office equipment should be organized in a way that provides easy access from all areas of the office.

### 2. Work Station Equipment

Each workstation should include a personal computer or terminal, at least one video display monitor, modem, and telephone, and may include a printer, camera for video conferencing, or a scanner.

All workstations and offices should be equipped with adequate electrical supply, two data terminals, and two voice terminals.

## B. Websites and Social Media

### 1. Standards

Pursuant to [MSC Administrative Order 2015-3](#), local courts must follow the [Michigan Trial Court Standards and Guidelines for Websites and Social Media](#) produced by the SCAO. As a court agency, these standards apply to the FOC office and staff.

- a. Because of the legal and ethical implications related to websites and social media the court should adopt the [Model Code of Conduct for Michigan Trial Court Employees](#) and implement its use by FOC offices. The court should have a local computer acceptable use policy as well.
- b. Beyond requirements and important things to consider for the court's website and social media accounts, it requires courts set boundaries for what court staff does on personal social media accounts.

### 2. Content

Courts should regularly maintain websites, and assure that all content (including forms, documents, and downloadable information) remains accurate and current, and that all internal and external links work.

# New FOC Directors and Leaders Orientation

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## A

Abatement, 46, 47  
Abatement, 46  
Accounting, 22, 43, 46  
Abate  
    Abate Payer Charges, 47  
Abatement, 27, 28  
Access to records, 23, 43  
Access to Records, 22  
Account Statement - free annual, 45  
Accounting, 42  
    Credit, 34, 46, 47  
    Credit Balances, 47  
    Disbursements, 18, 45  
    Receipts, 17, 43, 44  
    Safeguards, 43  
Allocation and Distribution, 44  
Alternative Dispute Resolution, 56  
Annual Statutory Review, 19  
Arrears  
    Created Retroactive, 40  
    Discharge, 38, 41  
    Withheld Payments Documented, 40  
Audit, 34, 46  
    Compliance, 15  
    Single, 15  
Audit Program, 15  
Audits, 45

## B

Background Checks - Staff, 16, 18  
Bankruptcy, 40  
Bonds, 17, 34  
    Employee, 44  
    Employees, 17  
Booting Vehicles, 31  
Budget, 3, 11  
Budgeting, 11

## C

Chief Judge, 3, 4, 6, 8, 9, 19, 55  
    Hires FOC, 5, 10  
Child Abuse - Mandated Reporting, 17  
Citizen Advisory Committee (CAC), 16  
Civil Contempt Actions, 31  
Collective Bargaining. *See*  
Complaints, 15, 51  
Consumer Credit Reporting, 34  
Contempt, 13, 31, 32, 33, 42, 51  
Contempt Sanctions, 32  
Contract, 1, 2, 10, 17  
Contract Negotiation, 10  
Cooperative Reimbursement Expenditure Report, 18  
Cooperative Reimbursement Program, 13  
Credit  
    Direct Payment, 47

Incarceration. *See* Incarceration Credit  
Credit Balances, 47  
Credit, retroactive. *See* Retroactive Modification  
Criminal History Checks, 16  
Custody  
    Enforcement, 50, 51  
    Investigation, 14  
    Investigations, 48

## D

Destruction - Records, 21, 22  
Direct Payment Credit, 47  
Disbursements, 2, 45  
Distribution, 44  
Due Diligence - Contempt, 31, 32

## E

Embezzlement, 43, 44  
    Suspected, 44  
Employed by Court, 5, 9, 17  
Employed by the Court, 5  
Employee  
    Bonds, 17, 44  
Employer  
    Disclosure of Information, 41  
    Liability for Withholding, 42  
    Responsibilities, 41  
    Responsibilities, 41  
Employer withholding Fee, 42  
Enforcement  
    Civil Contempt, 31  
    Consumer Credit Reporting, 34  
    Criminal, 37  
    Custody, 51  
    Health Care Coverage, 38  
    License Suspension, 32, 33  
    National Guard Exemption, 40  
    Show Cause, 31  
    Source of Income, 41  
    Statute of Limitations, 39  
    Support, 29  
    Uninsured Medical Expenses, 38  
Ethics, 8  
Executive Branch, 1, 2, 16

## F

Facebook, 60  
Fee  
    Custody and Parenting Time, 14  
    Employer for Withholding, 42  
    Order/Judgment Entry (prior), 14  
    Statutory, 11, 13  
    Support, 14  
Fees  
    Additional Account Statement, 45  
    Audit, not allowed, 46

# New FOC Directors and Leaders Orientation

---

Felony Non-support, 37  
Felony Non-Support, 37  
FFCCSO, 36

Financial  
    Separation of duties, 43  
Financial Institution Data Match, 34  
Financial Institution Data Match (FIDM), 35  
FOC Case  
    Closure, 19, 20  
    IV-D Case Closes, 20  
    IV-D Closes, 20  
    Management, 19  
    Opt Out, 19  
FOC Case Closure, 20  
FOC Cases  
    Limited Services, 19  
FOC Director, 10  
FOC Duties, 7  
FOC Fund  
    215 Fund, 12  
FOC Relationship  
    To Other Agencies, 1  
FOIA, 22  
Forms  
    JIF, 20  
    Mandated, 20  
    Public, 5  
    USO, 20  
    Verified Statement, 20  
Fraudulent Conveyance, 36  
Freedom of Information, 22  
Funding  
    Local Responsibility, 11  
    Sources, 12

## G

Governmental Immunity, 15  
Grievance Report, 18  
Grievances, 15

## H

Health Care  
    Enforcing Coverage, 38  
    Uninsured Medical Enforcement, 38  
Hours of operation, 5  
Human Resources, 9

## I

Incarcerated Parties  
    Withholding, 30  
Incarceration. *See* Incapacitation  
    Support Credit, 46  
Incarceration  
    Support Modification, 27  
Incentive - Reinvestment, 12  
Income Withholding, 29, 41  
    Arrears, 30  
    Employer Charging Fees, 42

Employer Liability, 42  
Improper, 30  
Incarcerated Parent, 30  
Interstate, 37  
    Maximum, 30  
Income Withholding Amount, 30  
Interstate  
    Support Review, 28  
Interstate Enforcement, 36  
Interstate Income  
    Withholding, 37  
Investigation  
    Custody, 48  
    Support, 24

## J

Joint Meetings, 26, 51  
Judgment Information Form, 20

## L

LAO Procedure, 8  
Lawsuits Against FOC, 17  
Lawsuits against FOC office, 14, 15  
Legal Advice, 9  
Legal Representation, 14  
Legal self help, 6  
Legislative Branch, 1  
LEIN  
    Law Enforcement Information Network, 35, 36  
Leins, 35  
Liability Protection, 14  
License Suspension, 32, 33  
Local Administrative Order  
    LAO, 8  
Local Court Rule, 8  
Local Policy, 8

## M

Mandated Reporter, 17  
MCSF. *See* Michigan Child Support Formula  
Media Relations, 6  
Medical Support, 37  
    Enforcing Coverage, 38  
    Uninsured Expenses, 38  
Michigan Child Support Formula  
    Mandated, 23  
MiCSES  
    Calculator, 23  
    Mandated Use, 22  
Military, 40  
    Nat'l Guard Enforcement Exemption, 40  
Model Code of Conduct Employees, 8

## N

Nepotism, 11  
Nontraditional hours, 5



# New FOC Directors and Leaders Orientation

---

## O

Oath of Office, 17  
OCS Reports, 18  
Office Equipment  
    General, 59  
Office of Child Support  
    Function, 2  
Opt Out, 19  
Order to Show Cause, 31

## P

Parent Locate, 36  
Parenting Time  
    Make-up, 54  
Parenting Time Abatements, 46  
Policy  
    LCR, 8  
Prisoner  
    Orders to Remit, 30  
    Support Credit, 46  
Probation, 32  
Public Information, 5

## R

Records  
    FOC, 21  
    IV-D, 21  
    Maintenance, 21  
    MiCSES Mandated Use, 22  
    Retention/Destruction, 22  
Redirect  
    Support Charges, 47  
Referee, 55  
    Procedural Requirements for Hearings, 56  
Relatives, Employing, 11  
Relief from Judgment not allowed, 28  
Reports  
    Annual Statutory Review, 19  
    Criminal Background Plan, 18  
    DHS 820, 18  
    DHS-286, 18  
    Grievances, 18  
    OCS, 18  
    SCAO 41 - Stats, 19  
    Support Investigation, 24  
    Support Review, 26  
Retroactive Arrears, 40  
Retroactive Correction, 28  
Retroactive Modification, 27

Permissible Exceptions, 28  
Review and Modification, 24

## S

Sanctions  
    Contempt, 32  
SCAO 41 Report, 19  
Show Cause, 31  
Social Media, 60  
Source of Income  
    Responsibilities, 41  
Staff Conduct, 8  
Statistical Report, 19  
Statute of Limitations, 39, 40  
Supervision by FOC, 32  
Support  
    Conditions when Review Required, 24  
    Enforcement, 29  
    Incarceration Credit, 46  
    Interstate Review, 28  
    Investigations, 24  
    Modification after Review, 26  
    Modification Incarcerated Party, 27  
    Retroactive Correction, 28  
    Retroactive Modification, 27  
    Reviews, 24  
Support Collection Correction, 18  
Support Collection Refund, 18  
Surcharge, 33  
    Abatement or Discharge, 39

## T

Tax Offsets, 34  
Training, 10

## U

Unauthorized Practice of Law, 9  
USO, 20

## V

Verified Statement, 20

## W

Website, 60  
Work Station  
    Equipment, 59