



## Michigan Supreme Court

State Court Administrative Office

### Friend of the Court Bureau

Michigan Hall of Justice

P.O. Box 30048

Lansing, Michigan 48909

Phone (517) 373-4835

Steven D. Capps  
Director, Friend of the Court Bureau

#### MEMORANDUM

DATE: August 3, 2017

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

FROM: Steven D. Capps  
Director, Friend of the Court Bureau

RE: SCAO Administrative Memorandum 2017-02  
Administrative Abatement or Redirection of Child Support  
Rescinds SCAO Administrative Memorandum 2005-04

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Michigan law provides a process for administratively abating or redirecting child support payments when a child no longer lives with the custodial parent. The law allows the friend of the court (FOC) to abate the support obligation or redirect the support payments to the person *who is providing the actual care, support, and maintenance* for the child. This represents a change from previous Michigan law that allowed the FOC to redirect support only to a person legally responsible for the child. The law also assigns child support to the state when a child enters foster care. MCL 552.605d. This memorandum examines the law and its administrative implications and rescinds administrative memorandum 2005-04.

If a judge, court administrator, or FOC has questions, please contact Timothy Cole at [colet@courts.mi.gov](mailto:colet@courts.mi.gov) or 517-373-9663.

## A. Introduction

Michigan law creates a streamlined process to allow FOCs to administratively redirect or abate child support payments under certain conditions when a child no longer resides with the child support recipient. The law is designed to address circumstances in which custody changes without court intervention. When a court is directly involved in the child's living arrangements, such as a removal and placement of a child in a child welfare case, and the court has jurisdiction to address support directly, the court should address support immediately to avoid the 21-day delay.<sup>1</sup>

## B. Necessary Provisions in Support Order

### 1. Orders entered after June 1, 2003<sup>2</sup>

[MCL 552.605d](#)(1) requires support orders to include provisions that provide notice advising parties of these administrative processes, and give legal authority to the FOC to take such actions without seeking modification of the order.

#### a. Child in Foster Care

For all new and modified support orders, the order must have substantially the following two statements:<sup>3</sup>

- i. "If a child for whom support is payable under the order is under the state's jurisdiction and is placed in foster care, that support payable under the order is assigned to the department." MCL 552.605d(1)(a).
- ii. "If a child for whom support is payable under the order is under court jurisdiction and is placed in county-funded foster care, that support payable under the order is assigned to the funding county." MCL 552.605d(1)(b).

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<sup>1</sup> See Administrative Memorandum 2008-01 for how the court should address support in a child welfare case.

<sup>2</sup> 2002 PA 570 amended MCL 552.605d effective June 1, 2003. This section has been amended since June 1, 2003, (December 28, 2009 and March 17, 2015) to expand those to whom support may be assigned or redirected. Although the language was amended, the date after which the language was required to be in orders was never changed. Therefore, some orders issued between June 1, 2003, and the date the Uniform Support Order included the newest required language will have slightly different assignment and redirection provisions.

<sup>3</sup> The State Court Administrative Office's Uniform Child Support Order (Form [FOC 10](#)) includes the language.

## **b. Redirection and Abatement**

For a friend of the court case,<sup>4</sup> [MCL 552.605d\(1\)\(c\)](#) requires a support order to have substantially the following two statements that allow support to be redirected or abated:<sup>5</sup>

- i. “The office of the friend of the court may consider the person who is providing the actual care, support, and maintenance of a child for whom support is ordered as the recipient of support for the child and may redirect support paid for that child to that recipient of support, subject to the procedures prescribed in section 5d of the support and parenting time enforcement act, 1982 PA 295, MCL 552.605d.”
- ii. “If the payer resides full-time with a child for whom support is payable under this order, support for that child abates in accordance with policies established by the state friend of the court bureau and subject to the procedures prescribed in section 5d of the support and parenting time enforcement act, 1982 PA 295, MCL 552.605d.”

## **2. Orders entered before June 1, 2003**

Support orders in an FOC case entered before June 1, 2003, are deemed to include the above provisions by operation of law.<sup>6</sup> [MCL 552.605d\(2\)](#).

## **C. Support Assigned to the State or County – Child in Foster Care**

1. When a child for whom support is payable is under the state’s jurisdiction and is placed in state foster care, support under the order is automatically assigned to the state. If the child for whom support is payable is placed in county-funded foster care, payment under the order is automatically assigned to the state in MiCSES. The FOC must take the necessary manual steps in MiCSES to have the support assigned to the funding county.<sup>7</sup>

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<sup>4</sup> Michigan law defines “friend of the court case” essentially as a domestic relations case administered by the FOC. Friend of the court cases involving another state’s order may not qualify for administrative abatement and redirection; see section on Interstate Cases, below.

<sup>5</sup> The State Court Administrative Office’s Uniform Child Support Order (Form [FOC 10](#)) effective January 1, 2017, no longer includes “the legal responsibility” language. The notice that precedes a redirection of child support advises the recipient of the new law that is not in the orders predating the new language.

<sup>6</sup> The notice ([Form FOC 106](#)) that must precede a redirection or abatement of support also advises the recipient of this statutory provision.

<sup>7</sup> For additional information about assigning support to county-funded foster care, please see the Michigan IV-D Child Support Manual, Section 5.85, “Agency Placement – Financial,” Subsection 4.2.3 “County-Funded Placement Referrals.”

2. Foster-care assignment has priority over redirection and abatement. [MCL 552.605d\(3\)](#).
3. Unlike abatement and redirection, automatic assignment to the state or county under this section does not require sending the parties notice or waiting 21 days.

#### **D. Abating Child Support Charges in an FOC Case**

1. If the child for whom support is payable resides full-time with the payer, the FOC must abate support charges for that child after following proper notice procedures (See section G, ‘*Procedure to Abate or Redirect Support*’). The FOC should consider the child to be residing full-time with the payer when:
  - a. The payer provides evidence that the child is living with the payer and the change in living arrangement is not in violation of the custody order;<sup>8</sup> and
  - b. The change of residence likely will last longer than one month; and
  - c. The child stays overnight at the payer’s residence.
2. For administratively abating child support charges, “residing full-time” does not include either of the following:
  - a. The payer caring for the child while the payee is at work.
  - b. A court-ordered parenting time arrangement.<sup>9</sup>

#### **E. Redirecting Child Support Payments in an FOC Case**

1. The documentation<sup>10</sup> an office accepts to trigger the administrative redirection process should both support the claim that the new nonparent-custodian “is providing the actual care, support, and maintenance for the child,” as well as collect current information about the nonparent, parents, and child. An office may want to request that the nonparent-custodian complete a IV-D application for

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<sup>8</sup> Proof that the arrangement is not in violation of the custody order does not mean *contrary* to the custody order. Rather, the proof must show that the arrangement does not rise to a violation of the custody order that would justify contempt proceedings. Thus, if a payer shows that the payee has given written consent to the arrangement or provides other information that indicates the payee’s acquiescence to the change of residence (e.g., the recipient has not disagreed to the change of residence and has not filed a parenting time complaint), the arrangement is not in violation of the custody order. There may be some nonconsensual situations in which support should be abated administratively because the FOC would not be able to enforce the custody order (e.g., removal and placement of the child with the payer in a child welfare case when the removing court has not addressed support).

<sup>9</sup> The payer may qualify for a 50 percent parenting time abatement on some older orders. This memo does not affect parenting time abatements where they apply.

<sup>10</sup> Absent other documentation supporting the person’s claim, an office may require the person to provide a verified statement supporting the claim. An office may interpret receipt of public assistance for the child as proof the person is providing for the child.

services for each parent who is a party to the court case, particularly if the nonparent is seeking support from the former payee.<sup>11</sup>

2. The FOC may redirect support to a person who is providing the actual care, support, and maintenance for the child. In determining whether the documentation supports a claim that a person is actually providing care, support, and maintenance for a child, the FOC may consider factors including, but not limited to, the following:
  - The current support recipient does not continue to provide for the child's care;
  - Whether the child stays overnight at the new person's primary residence for at least one month;
  - Whether the new person is the primary provider of food, clothing, medical care, and the other essentials of life;
  - Whether the person makes the majority of the daily decisions concerning the child's care, education, and upbringing;
  - Whether the person has legal authority over the child such as that acquired by a placement in a child welfare case,<sup>12</sup> delegation of parental authority,<sup>13</sup> or guardianship.
3. If the FOC determines that a person who is not currently the support recipient is actually providing care, support, and maintenance for a child and that redirection is appropriate, the office should follow the procedures in Section G, below.

#### **F. Intergovernmental Cases**

The issuing tribunal's law controls the procedures needed to abate or redirect payments.

1. For an intergovernmental case in which Michigan issued the support order, the abatement and redirection procedures in MCL 552.605d apply.
2. Because the support order issued by another tribunal would not contain the required language, MCL 552.605d cannot be applied to abate, assign, or redirect support payments.

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<sup>11</sup> A IV-D application will collect updated information about the custodian, both parents, and the children. Opening a IV-D case allows the office to use IV-D locate and enforcement remedies, and helps with funding for the FOC office. [No matter how the court treats the third party's status, the case does not automatically become a IV-D case. If the payer signed a IV-D application, the case continues as a IV-D case. If neither the payer nor the third party payee signed a IV-D application, the case is non-IV-D.]

<sup>12</sup> When a court removes the child in an abuse and neglect case, either the court or the Michigan Department of Health and Human Services will place the child in another person's custody. The FOC could redirect support to that person unless the child is in county- or state-funded foster care, or unless the court orders otherwise. See Administrative Memorandum 2008-01 for how the court should address support orders in child welfare cases.

<sup>13</sup> See MCL 700.5103. There is a six month limit on a delegation of authority unless the delegating parent is serving in the armed forces of the United States and is deployed to a foreign nation. A delegation of a parent serving in the armed forces ends 31 days after deployment to a foreign nation.

3. When another tribunal's order is registered and modified in Michigan, and when the original tribunal's order can properly be modified to allow support payments to be abated or redirected pursuant to Michigan law, the abatement and redirection procedures in MCL 552.605d apply.

#### **G. Procedure to Abate or Redirect Support**

1. Upon receiving a request to abate or redirect support payments, the FOC must determine whether the circumstances fulfill the statutory requirements, as outlined in Sections D and E, above.
2. If the case qualifies for abatement or redirection, the FOC must provide notice of the proposed action to each party and the current recipient, and when redirecting support, to the proposed recipient. The notice must include information on how the parties may object and include the date the proposed action will take effect.<sup>14</sup> The effective date must be at least 21 days after the date the notice was sent to the parties. MCL 552.605d(5).
3. If neither party objects to the proposed action within 21 days, the FOC may abate or redirect support as outlined in the notice. MCL 552.605d(5).
4. If either party objects within 21 days, the FOC cannot abate or redirect support (see Section H, "Objection to Notice"). MCL 552.605d(5).
5. During the objection period, the FOC should continue to process child support payments as directed in the court's most recent order. The FOC has no independent authority to place a hold on child support payments during the objection period.

#### **H. Objection to Notice**

If a party properly objects to the notice of abatement or redirection, the FOC must do one of the following:

1. Begin a support order review under MCL 552.517.
2. Notify the parties, recipient, and proposed recipient of the objection, and that one of them may file a motion to modify support.<sup>15</sup>

#### **I. Amounts to Abate and Redirect**

1. If there is more than one child and support is abated or redirected for fewer than all of the children, determine the amount to be abated or redirected by using the following steps:

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<sup>14</sup> SCAO created form [FOC 106](#) (Notice of Redirection or Abatement of Child Support) for this purpose.

<sup>15</sup> SCAO created form [FOC 107](#) (Notice of Objection to Redirection or Abatement of Support) for this purpose.

- a. If the order specifies an amount is for a particular child, abate or redirect that amount for that child.
- b. If the order specifies an obligation or an added amount is for a particular child, subtract that amount from the total obligation to determine the undesignated portion to abate or redirect for a different child.<sup>16</sup>
- c. Divide any undesignated obligation or balance by the total number of children included in that obligation to determine a child's per capita amount.

*Example:* The order requires the payer to pay \$400 base support for three children. One of the children goes to live with the payer. One child's per capita base support amount is  $\$400/3 = \$133.33$ . The FOC should abate \$133.33. The base support remaining owed to the recipient for the remaining two is \$266.67.

2. Unless the change is effective on the first day of the month, support must be prorated for the partial month using the equation in the Michigan Child Support Formula Manual.<sup>17</sup>

## J. Statutory Support Order Review

Michigan law requires the FOC to review a support order for a number of reasons. MCL 552.517(1). Circumstances that cause assignment, abatement, or redirection under MCL 552.517d may also indicate that the office must review the support order. Often these occur when a child is supported by public assistance, if a party requests a review, or there is a temporary or permanent change in the physical custody that the court has not ordered.<sup>18</sup> Upon determining that there has been an unordered change in a child's physical custody, regardless of whether an assignment, abatement, or redirection of support follows, the FOC should review the order to determine if it should modify child support to fit the present circumstances. However, if the parents are disputing the change in physical custody by way of an active custody case or an enforceable violation of the custody order, the FOC is not required to conduct a review.

1. If support is *administratively abated*, a statutory support review would right-size the order based on the present circumstances (parenting time, incomes, child care costs, etc.). Updating the order could result in the FOC determining if the former recipient-parent should pay support for the child to the other parent, pay for child care, and/or provide health care coverage.
2. If payments are *redirected to a nonparent-custodian*, a review would right-size the order based on the present circumstances and determine the correct amount

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<sup>16</sup> Obligations include amounts for several component parts (base support, medical support, and child care). Sometimes, those amounts can include balances intended for a specific child's care, leaving the remaining undesignated amounts for all children covered by the order. Unless stated in an order, undesignated amounts are divided per capita. 2017 MCSF 1.02(A)-(C).

<sup>17</sup> 2017 MCSF 4.05(C).

<sup>18</sup> I.e., an arrangement that was not considered when the court ordered the present support amounts.

that both<sup>19</sup> parents owe, and who should provide health care coverage for the child.

## **K. Legal Effect of Redirection**

### **1. No Modification of Court Order**

Administrative redirection or abatement does not require changing the order because the provisions that allow it exist in the current order (Section B, above). Administrative *redirection* of support to the nonparent-custodian does not make that person a party to the case. For that person to become a party, someone must file the proper court papers and obtain an order conferring the rights and responsibilities of a party on that individual.<sup>20</sup> An *abatement* of support involves only the current parties, so a new court order is not necessary.

### **2. Modification of Court Order**

The Michigan Child Support Formula establishes support obligations for both parents and apportions obligations between them based on their shares of the family's total income.<sup>21</sup> Between parents, a support order specifies the paying-parent's support obligation because it presumes that the recipient-parent contributes his/her share directly.<sup>22</sup> A motion to require *both* parties to pay is not a material change in the order; rather, it seeks only to quantify both parents' support obligations in the order. However, if the court regards a motion to require both parties to pay support to a third person as a *new adversary proceeding*, it would not be appropriate for the FOC to bring the action because it would be advocating for the third person. In this instance, the third person must file a motion or a new case for a child support order for the second parent.<sup>23</sup> It may also be difficult to require a former payee to pay support in an agency complaint case. This is because unless the payee was actually served or in some other way came under the court's personal jurisdiction, the court may lack the personal jurisdiction to order the former payee to pay support.

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<sup>19</sup> But see exception in K2, *infra*.

<sup>20</sup> Normally, a nonparent-custodian becomes a party by filing papers with the court, or by requesting IV-D services and having a prosecutor represent that person and obtain a new support order. Depending on the nature of the existing support case, the person may file a new case or file a motion to intervene as a party in the existing case. Often, the intervention occurs by implication without a formal recognition of the intervention, when the court grants relief to a third party (orders support paid to the person, or names the individual as custodian).

<sup>21</sup> 2017 MCSF 1.02(D) and 2017 MCSF 3.01(B).

<sup>22</sup> 2017 MCSF 1.02(D).

<sup>23</sup> The Emancipation of Minors Act allows a guardian, a relative within the third degree, or a child who is at least 18 years of age to file an action for support. MCL 722.3. Relations of the third degree include mother, father, sister, brother, grandparent, great grandparent, aunt, uncle, niece, or nephew.



## **L. Death of Custodial Party**

1. Upon receiving notice that the custodial party has died and the child is living with the support payer, the FOC should abate the support obligation effective on the date of the custodial party's death and follow regular procedures to close the case.<sup>24</sup>
2. If the custodial party dies and the child goes to live with a person other than the support payer, the FOC may redirect the support to the person who provides the actual care, support, and maintenance for the child.<sup>25</sup>

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<sup>24</sup> The FOC could continue to collect past due support owed to the State of Michigan. However, the estate of the deceased parent would be responsible for collecting any past due support owed to the decedent. FOCs are responsible for collecting past due support for recipients. MCL 552. 502a, which defines recipient of support, does not include a party's estate.

<sup>25</sup> There is authority for the court to substitute a third party in the case of a deceased parent. Cf., *Bert v. Bert* 154 Mich App 208, 212 (1986). However, even if the third party is entitled to receive support in the original case, it remains unclear if the death of the custodial party terminates the support obligation, or whether the third party must intervene in that case to request support.