



## Michigan Supreme Court

State Court Administrative Office

### Friend of the Court Bureau

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### MEMORANDUM

**DATE:** September 15, 2022

**TO:** Friends of the Court

**CC:** Chief Circuit Judges  
Presiding Family Division Judges  
Circuit Court Administrators  
Family Division Administrators

**FROM:** Steven D. Capps

**RE:** Securing and Processing Bonds for Child Support Payments

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The State Court Administrative Office's (SCAO) Friend of the Court Bureau (FOCB) develops guidelines for the conduct, operations, and procedures of Michigan's friend of the court (FOC) offices. [MCL 552.519\(3\)\(j\)\(i\)](#) directs the FOCB to develop guidelines for posting bonds to secure payment of support. Each FOC must take all necessary steps to adopt office procedures to implement the recommendations of the bureau. [[MCL 552.503\(7\)](#)]

The SCAO developed this memorandum to help FOC offices follow proper procedures for securing and processing bonds to secure future support payments. This memorandum also includes an appendix that provides information that can be given to financial institutions who are interested in creating accounts to hold and process monies for future and overdue child support payments. This administrative memorandum supersedes Michigan Bond and Lien Guideline FAQ 2007-01, Using Cash Bonds to Secure Future Child Support. This Memorandum replaces the *Securing and Processing Bonds for Child Support Payments* Memorandum 2021-01.

Courts or FOCs should contact Management Analyst Tim Cole at [colet@courts.mi.gov](mailto:colet@courts.mi.gov) or 517-373-5975 with questions.

**A. Background**

[MCL 552.625](#) allows the FOC or a support recipient to petition the court to require a payer provide a sufficient bond, security, or other guarantee for payment of past-due support, support due in the future, or both (these will collectively be referred to as “bond” in this policy unless a certain form requires special treatment).<sup>1</sup> FOCs may place a lien against any real or personal property to be held as security for future child support payments. The following are examples of real and personal property the FOC can lien without levying to secure future child support payments: [MCL 552.625a]

- real estate;
- clothing and household furnishings;
- land contracts;
- legal claims;
- annuities;
- stocks;
- patents;
- copyrights;
- insurance claims;
- money to be paid as a distribution from a decedent’s estate;
- a claim for negligence, personal injury, or death;
- an arbitration award;
- a settlement of or judgment issued in a civil action;
- compensation under a worker’s compensation order;
- voluntary overpayment; and/or
- settlements.

For additional information on how to perfect a lien and hold real and/or personal property as security for child support payments see [SCAO Administrative Memorandum 2017-03](#).

In addition, the court may order the payer to post a bond or deliver property or title to property to a person or entity<sup>2</sup> to secure payment of arrearages and future support.<sup>3</sup>

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<sup>1</sup> This policy does not address performance bonds that are set by the court when a payer fails to appear for a contempt hearing.

<sup>2</sup> The person or entity could be anyone under the court’s control with the legal authority to hold the property such as the sheriff, the FOC, the court clerk, or a court appointed receiver. Before entering an order, the court should ensure the person or entity has the willingness and ability to hold the property and that the person or entity is properly insured or bonded (payments made to the owner of the property in the event something happens to the property) to receive and hold the property.

<sup>3</sup> The hearing may be based on a motion to compel the payer to post a bond, security, or other guarantee of payment or the court may impose the requirements pursuant to [MCL 552.633\(2\)\(d\)](#), that states upon a finding of contempt, the court may apply any other support enforcement remedy authorized if the payer's arrearage qualifies and the evidence supports applying that remedy.

**B. Case Criteria**

Petitioning the court for a bond is optional; however, to meet its duty to initiate enforcement on delinquent payers, the FOC should petition for a bond when a bond may be successful in securing past due and/or future child support payments. Consider using a bond when one or more of the following is true:

1. The payer must have an asset that can be used for the bond.
2. The payer is unreliable or inconsistent in making child support payments and has an arrearage of two months of the court-ordered support.
3. The payer has a history of unreliable current support payments and has threatened to reside in a state other than Michigan and/or to sell assets to avoid future support.
4. The payer's payment history shows that the payer cannot be relied upon to keep support payments current, and the payer received or is eligible to receive a severance package or buy-out from a source of income.
5. The payer's arrearages are being collected by income withholding, but the payer's payment history is inconsistent or other conditions listed in this section exist.
6. The payer has made all previous support payments on time, but the FOC has information the payer intends to stop making payments in the future.<sup>4</sup>
7. The payer does not receive income periodically through the year and only pays support when the FOC enforces it or when receiving a large payment.<sup>5</sup>

**C. Situations When the FOC Should Not Seek a Bond**

The FOC should not petition the court for bond if one or more of the following conditions exist:

1. The payer filed for bankruptcy. The FOC should not petition the court for a bond until it has been determined that enforcement action is not stayed,<sup>6</sup> or that any existing stay has been removed.
2. There is an order affecting FOC enforcement. [MCR 3.209\(A\)](#) allows a party to file a motion for suspension of enforcement.
3. The payer is complying with a statutory repayment plan under [MCL 552.605e](#).
4. The payer presents, "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." [[MCL 552.607a](#)]

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<sup>4</sup> If payer's statements imply that payments will stop because the payer's income has changed (e.g., the payer anticipates that he or she will lose his or her job, or the employer is moving to another state) the FOC should conduct a review. [[MCL 552.517](#)]

<sup>5</sup> For example, a farmer may have crops in storage and earn all income for the year when they are sold.

<sup>6</sup> The FOC should ask for verification of the bankruptcy.

**D. Procedures for FOC When Requesting Bond for Future Support Payments**

The SCAO recommends that FOCs use the following procedures to obtain a court order requiring the payer to post a bond to secure future and/or past support payments:

1. Determine a Bond Amount

When requesting a bond amount, consider the payer's payment history, circumstances surrounding the arrearages, and the number of years left on the child support order. If the payer rarely pays voluntarily or fails to notify the FOC of employment and has sufficient assets to satisfy the child support order, consider an amount equal to the number of months left in the support order multiplied by the current support obligation for those months. The bond should not deprive payers of resources that would prevent them from meeting their basic needs

2. Preparing a Motion

Prepare a motion to require a bond for past and/or future support using [Form FOC 40](#). The motion should request a specific bond amount.

3. Scheduling the Hearing

Schedule a hearing date and serve both the motion for bond and the notice of hearing on the parties by ordinary mail at the last address provided to the FOC. [MCR 3.203](#) and [SCAO Administrative Memorandum 2019-01](#) outline the service of process requirements and define "last known address."

4. Preparing the Bond Order

When the court orders a payer to post a bond, prepare the order for bond using [Form FOC 41](#). The court may order the payer to post a cash bond for future support in a restricted account from which only the FOC may withdraw funds as determined by the court's order. At the court's discretion, the payer may post the cash bond with the clerk of the court under the authority of [MCL 50.101](#), [MCL 600.572](#), [MCL 750.165](#), and [MCR 8.106](#).

5. FOC Receiving and Processing Bonds

When the court orders a payer to post a bond for future or past-due support, the FOC should not hold that bond. Only the clerk of the court or a financial institution can hold the bond. An FOC office could have a bank account to hold bonds deposited with it. Bonds are not support payments until applied as a special instruction payment to the FOC case. When the court orders a bond for future support, the bond amount should first be applied to current support and then to past due support.

**E. Conditional Bonds**

If the court orders a bond the court should determine conditions concerning the bond that will result in it being forfeited or returned and the methods for doing so.<sup>7</sup> The court order must specify all conditions the payer must satisfy to avoid forfeiting the bond and/or conditions for the bond to be used for future support payments. Examples of possible conditions the court could include in the bond order:

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<sup>7</sup> For instance, the court may require a hearing, or it may set forth self-executing terms such as upon a default in payment, the FOC will send notice to the payer and unless the payer requests a hearing the FOC will use the bond. Self-executing terms should be precise to avoid confusion or mistake.

- If the bond is used to pay current support, the FOC may use income withholding to replenish the bond;
- Consistent payments for a specified period (e.g., one year);
- Payer must provide current address and employer information to the FOC;
- Payer must complete a substance abuse program;
- Payer must complete an anger management program; and/or
- Payer must complete a job-training program.

**F. FOC Receiving the Court Order for the Bond**

The FOC should secure a court order for the bond and have a complete understanding of the court's requirements for the bond forfeiture.

**G. FOC Applying the Bond**

When a payer does not comply with the court's requirements, the FOC should seek forfeiture of the bond.

1. To obtain the bond money by forfeiture, the FOC shall file a motion to release the bond.<sup>8</sup> [Form FOC 43](#). For purposes of forfeiture, support is considered late on the first day of the month following the month the support payment was due (e.g., child support due and not paid in November is considered late on the first day of December). [[MCL 552.605c](#)]
2. If the court orders forfeiture of the bond, prepare and file the original order using [Form FOC 44](#) and send copies to the parties at their last known address in accordance with [MCR 3.203](#). If the bond was secured through the clerk's office, [MCL 600.575](#) states that the money, when deposited in a financial institution to the credit of any officer of the court, is not to be paid out by the financial institution until the bank receives an order signed by a circuit court judge.
3. Once the bond has been forfeited, process the bond as a "special instruction payment" to ensure that the money goes to the specific case that gave rise to the cash bond. This restriction will ensure that the cash bond is not distributed among all the payer's active support cases. The bond merely serves to guarantee future payments until the court orders it forfeited and applied to the specific case.

**H. Post Bond Actions**

File a motion to release the bond to the payer<sup>9</sup> when the reasons for requiring the bond no longer exist using [Form FOC 43](#). If the court orders the release of the bond, prepare the order using [Form FOC 44](#). File the original order with the court and send copies to the parties by ordinary mail at their last known addresses in accordance with [MCR 3.203](#).

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<sup>8</sup> If the order is not self-executing.

<sup>9</sup> If the order is not self-executing.

## Appendix Setting up Accounts for Future Child Support Payments

### A. Introduction

[MCL 552.625](#) allows the friend of the court (FOC) or a support recipient to petition the court to require a payer provide a sufficient bond, security, or other guarantee for payment of past-due support, support due in the future, or both. This Appendix suggests how an FOC may want to engage with a Financial Institution (FI) to hold and disburse monies deposited by a payer under an order for a bond to secure support. The selected FI would enter into a contract to manage accounts for child support payments in accordance with a single set of business practices. The FOC should seek an FI that has options that may create efficiencies, make improvements, and take advantage of new, applicable technologies.

The terms and conditions for services should remain valid for a minimum number of years (for example three years). The contract could provide that its terms should renew automatically unless either the FOC or FI cancel by providing 90 days written notice. Upon termination, the FI will follow the FOCs instructions to disburse the funds and, absent direction from the FOC, will return the funds to the person who deposited them.

Any contract between the FOC and FI will need to be approved by the County Board of Commissioners.

### B. Background Information

In Michigan, court-ordered child support is charged on the first day of the month. A support obligation not paid by the last day of the month, in which it accrues, is past due. Unless special circumstances exist, the FOC is required to initiate enforcement when the past-due support is equal to or greater than the monthly support amount. One enforcement option under the Support and Parenting Time Enforcement Act (MCL 552.625) allows the FOC or a support recipient to ask the court to require a payer to provide a sufficient bond, security, or other guarantee for payment of past-due support, support due in the future, or both. The court on its own initiative can also order a child support payer to post a bond for past due and/or future child support payments.

When the court orders a payer to post a bond or a payer agrees to deposit money to pay future support, the FOC should not hold that bond money because FOC offices are not designed to be a repository of funds. An FI should hold the money.

### C. Banking Process: The FI would be responsible for the following processes:

1. For Individuals who want to deposit money to be held to pay future support:
  - a. Establishing accounts for child support payers who voluntarily want to deposit money to pay future support payments.
  - b. Accepting deposits to the account after it opens.
  - c. Sending payments from the account as directed by the FOC to the MiSDU.
  - d. Returning money to child support payers who voluntarily deposit money with the FI at the support payer's request.

2. For individuals who are ordered to deposit money to be held to pay future support or deposit money (either belonging to the payer or a third person depositing money) to secure arrears payments:
  - a. Establishing accounts for child support payers who are ordered to deposit money to secure future support payments if they default.
  - b. Accepting deposits to the account after it opens.
  - c. Sending payments from a payer's deposit as directed by the FOC to the MiSDU or as otherwise directed by court order.
  - d. Returning money to child support payers (or a third-party depositor) if circumstances change, and the payer no longer has a support obligation.

**D. Structural Requirements of Receiving, Securing, and Processing Child Support Payments: The FI should meet the following requirements.**

1. Account set up and payment processing:
  - a. The FI should describe how accounts will be set up. The FI will be provided with all the information necessary for the FI to process either payments of future support, or payments when the payer defaults in payment explaining how to use the deposited funds to make current support payments. The FI should create a relationship between itself and the person who deposits the money as the account holder. Money deposited with the FI must be identified and associated with the first and last name of the child support payer, the circuit court name, court case number, IV-D member ID, county code, and the FOC office, along with any other information the FI needs to identify the source of the funds.
  - b. The information required in the previous paragraph must be provided to the MiSDU when a child support payment is transmitted for the support payer. Payments must be forwarded in compliance with the information provided to the FI.
  - c. The FI should post deposits and withdrawals within two business days of the transaction.
  - d. Security Measures: The FI should provide security measures that comply with 12 CFR § 208.61.
  - e. When requested by the FOC, the FI should provide reports of balances and transaction information. Prior-day reporting should include ledger balance, available balance, summary, and details of credits/debits posted for each payer. The report should include identifying information under which the account is maintained for each account.

**E. Customer Service: The FI should provide the FOC with designated contacts to assist with any accounting and payment processing questions.**

**F. Minimum FI Requirements:**

1. The FI should meet the following minimum qualifications:
  - a. Must be listed as an active qualified depository by the State of Michigan Department of Commerce.
  - b. Must be a Federally or Michigan chartered financial institution and must be able to perform the full range of services required.
  - c. Must be insured by the Federal Deposit Insurance Corporation (FDIC).
  - d. Must be a member of the Federal Reserve System and have access to all services.
  - e. Must be able to initiate and receive Federal Reserve System Wires.
  - f. Must be a member of the National Automated Clearing House Association and be able to initiate and receive Automated Clearing House (ACH) transactions.
  - g. The FI should state a charge for processing each account either as a monthly or yearly amount or on a per transaction basis for the responsibilities described in section D above.
  - h. Customer Service: The FI should provide the FOCs with designated contacts to assist with any accounting and payment processing questions.

- G. Payer's Responsibility:** The individual payer should be responsible for any fees associated with the payer's accounts, which may be withheld from the account balance.