



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) 373-5975

MEMORANDUM

DATE: February 11, 2021

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

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\(7\).1](#)]

SCAO developed this memorandum to help FOC offices follow proper procedures for securing and processing bonds to secure future support payments. This administrative memorandum supersedes Michigan Bond and Lien Guideline FAQ 2007-01, Using Cash Bonds to Secure Future Child Support.

Courts or FOCs should contact Tim Cole at 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 to 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.¹ 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 upon which the FOC can place a lien without levying property to secure future child support payments:

- clothing and household furnishings;
- land contracts;
- legal claims;
- annuities;
- stocks;
- shares;
- patents;
- copyrights;
- insurance claims;
- money to be paid as a distribution from a decedent’s estate;
- result of 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;
- settlement; and
- redemption order.

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 entity² to secure payment of arrearages and future support.³

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.

¹ This policy does not address performance bonds that are issued by the court when a payer fails to appear for a contempt hearing.

² The person or entity could be anyone under the court’s control who has 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.

³ 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\(2\)\(d\)](#), which 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.

2. The payer is unreliable or inconsistent with 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 that the payer intends to stop making payments in the future.⁴
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.⁵

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,⁶ 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](#).

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

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 bonds should

⁴ 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](#)

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

⁶ The FOC should ask for verification of the bankruptcy.

not deprive payers from sources of income 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 Court 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](#), [MCL 552.631](#), 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. Bond Conditions

When ordering 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.⁷ 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 are:

- If the bond is used to pay current support, the FOC may use income withholding to replenish the bond.
- Payer must make consistent payments for a specified period (e.g., one year) before the bond will be released back to the payer.
- 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.

⁷ 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.

- 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, file a motion to release the bond.⁸ [[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 of 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 payer⁹ 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](#).

⁸ If the order is not self-executing.

⁹ If the order is not self-executing.