



Michigan Supreme Court

State Court Administrative Office

Friend of the Court Bureau

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MEMORANDUM

DATE: January 21, 2020

TO: Friends of the Court

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

FROM: Steven D. Capps

RE: Friend of the Court Case Closure
Rescinds SCAO Administrative Memorandum 2001-09

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

The State Court Administrative Office (SCAO) has developed this memorandum to help FOC offices follow proper procedures for inactivating and closing FOC cases.

This policy replaces SCAO Administrative Memorandum 2001-09, dated August 2001.

Questions should be directed to Tim Cole at ColeT@courts.mi.gov or 517-373-9663.

A. DEFINITIONS

1. “IV-D case” means a case in which a state provides child support services as directed by the state or tribal child support program that is authorized by Title IV-D of the Social Security Act.
2. “Administrative closure” means FOC staff may close cases without a court order in certain circumstances because FOC services are no longer viable or necessary.
3. “Domestic relations matter” means a circuit court proceeding regarding child custody, parenting time, child support, or spousal support that arises out of litigation under a Michigan statute.¹
4. “FOC case” means a domestic relations matter that an FOC office opens as required under the Friend of the Court Act and in which the parties have not properly opted out.² If there is an open FOC case for a domestic relations matter, the FOC office shall administer and enforce the obligations of the parties.
5. “Inactive FOC case” means the FOC is not required to perform activities under the Friend of the Court Act ([MCL 552.501 et seq.](#)), and the Support and Parenting Time Enforcement Act ([MCL 552.601 et seq.](#)), when the case is no longer eligible for federal funding. However, the FOC could activate the case if circumstances change or an enforceable custody and parenting time order remains active and the person requesting enforcement complies with all FOC requests to secure any federal funding that would be available for any aspect of the case.³
6. “Completely closed FOC case” means the FOC has closed its case and there are no circumstances that would result in reopening the case.

B. BACKGROUND

In 2004, the Friend of the Court Act, [MCL 552.503\(6\)](#), was amended and now provides that the FOC is only required to perform federally fundable child support activities under the Friend of the Court Act or the Support and Parenting Time Enforcement Act when a party in that case has requested title IV-D services.

In 2018, [MCR 3.208](#) was amended and established that FOCs are not required to provide services for FOC cases because a party failed or refused to take action to allow the FOC to receive federal funding or the federal child support case is closed. When a IV-D case closes, the local court may decide to inactivate its FOC case, continue to provide child support services, or completely close its FOC case when there is no reason to continue child support services.

¹ [MCL 522-502\(m\)](#).

² [MCL 552.505a\(2\)](#).

³ If no source of funding is available, the FOC is obligated to enforce a valid custody and parenting time order.

The Michigan Child Support Enforcement System (MiCSES) uses the federal case closure criteria in [45 CFR 303.11\(b\)](#) to administratively close IV-D cases when appropriate. Depending on the case closure reason, either MiCSES will automatically close the IV-D cases and will inactivate FOC cases, or the FOC employee must initiate the case closure and inactivation process. When required, MiCSES will generate and send 60-day notices to the parties notifying them that their IV-D case will close, and their FOC case may close at a later date.

The following sections provide reasons the FOC may inactivate or close a case, and lists considerations the FOC may want to review to determine whether inactivation or closure is appropriate. To document reasons FOC cases were inactivated or closed, see case checklists for [inactive](#) and [closed](#) cases.

C. IDENTIFYING NON-IV-D FOC CASES TO INACTIVATE

If the FOC case is no longer eligible for IV-D funding, the FOC may inactivate its case. FOC staff should verify the case is non-IV-D (this would be referred to as an “L” case on the MiCSES system). FOC staff should check to make sure that all previous enforcement actions such as income withholding notices, unserved bench warrants, scheduled show cause hearings, liens, and license suspensions are closed. FOC staff should monitor the inactive cases to know when they become eligible for complete closure. All inactive cases should be appropriately stored and if necessary disposed of in compliance with General Schedule 15 and SCAO’s Record Retention Schedule. See Section F.3.

The FOC may reopen an inactivated case if circumstances change and child support services can be reinstated.

Reasons the FOC may inactivate a case:

1. If a payer or payer’s assets have not been located in three years,⁴ the FOC may want to inactivate the case if all the following are true:
 - Payer’s location is not known.
 - Payer’s assets are not known.
 - Diligent efforts, including the use of automated locate tools, were used to locate the payer or assets and were unsuccessful.
 - There have been no collections for three years on any of the payer’s cases.⁵

⁴ Support should not be modified to zero when the payer cannot be located; if the payer is later located and the case reopened, the payer should be liable for support during the time the payer could not be located.

⁵ The office should use available location methods to determine whether other jurisdictions have cases on which payments have been made.

2. If a payer resides in a foreign country, the FOC may want to inactivate the case if all the following are true:
 - Payer resides in a foreign country, and payer is a citizen of that foreign country.
 - Payer does not work for the federal government, a company with headquarters or offices in the United States, or has no known employer.
 - Payer does not have any known reachable domestic income or assets.
 - Michigan does not have reciprocity with the country where the payer resides nor is the country a member of the Hague Convention.
 - In the absence of a reciprocity agreement, the country does not accept intergovernmental actions.
3. If the payee is not located,⁶ the FOC may want to inactivate the case if all the following are true:
 - Diligent efforts have been made to locate the payee using all locate resources available.
 - Public assistance is not involved.
 - No current support obligations exist for any child in the case.
 - There are no arrears due to the state.
 - There is no other IV-D request on file.⁷
4. If child support arrears are less than \$500 or child support is unenforceable under state law⁸ or collection is unlikely, the FOC may want to inactivate the case if the following are true:
 - Child support is unenforceable under state law, or
 - The FOC has made a reasonable effort to collect support (no extraordinary effort should be made on these cases, but the file should reflect efforts to locate the payer or

⁶ The FOC office shall suspend or terminate an order of income withholding when the location of the child and custodial parent cannot be determined for a period of 60 days or more, and the FOC case is being closed. Because the child cannot benefit from the support payments when the payee cannot be located, it may be appropriate for the FOC to review the case and modify support to zero or a reservation of support. The modification would also allow the case to satisfy the requirement that there be no support order associated with the case. [MCL 552.619\(2\)](#).

⁷ Some offices obtain IV-D applications from both parties to a case. Additionally, under UIFSA, either party may request intergovernmental support services. When both parties have requested IV-D services, the FOC should not close the case's IV-D status unless both parties' IV-D cases qualify for case closure.

⁸ "Unenforceable under state law" means the court has found the order unenforceable or statutory or court rule provisions bar further action on the order. The statute of limitations is the most likely reason support would be unenforceable. The statute of limitations applies when more than 10 years has passed since the last support payment was due. See [MCL 600.5809\(4\)](#), (the date of the support order may determine whether this version of the statute applies; *Rzadkowolski v Pefley*, 237 Mich App 405 (1999)). A payment may extend the 10-year period (*Alpena FOC ex rel. Paul v Durecki*, 195 Mich App 635 (1992)), or the payment may be tolled by other activity in the case. *Parks v. Niemiec*, 325 Mich App 717 (2018).

the payer's assets), and

- The FOC has attempted to find out whether other offices have any information about the payer and no information was discovered.
5. If the payee requests IV-D case closure, the FOC may want to inactivate the FOC case if all the following are true:
- There has been a request from the payee to close the IV-D case.
 - There is not an assignment to the state of medical support or arrearage, which occurred under a support order.
 - No other IV-D request exists.
 - The request does not appear to be for improper purposes.
 - There are no signs of domestic violence. The FOC should be careful to determine whether there is evidence in the file of domestic violence before honoring the payee's request; if there is evidence of domestic violence, the FOC can refuse to honor the request to close the case.

When a payee wants to close his or her IV-D case:

- The FOC may need to request a court order to stop charges so that arrearages do not accrue⁹ or,
 - The payee should apply to opt out of FOC services. [MCL 552.505a](#).
6. If good cause to end services¹⁰ is determined, the FOC may want to inactivate the case.
7. Michigan is the responding state for a registration of a foreign order for enforcement and the initiating state has closed its IV-D case.

D. PROCEDURES FOR FOC INACTIVE CASES

1. Modification review:

- When circumstances have changed to make a support order improper, notwithstanding the case's IV-D status, the FOC should exercise its discretion under

⁹ A support obligation cannot be suspended except by order of the court. [MCR 3.209\(A\)\(2\)](#). If the support obligation continues, but the FOC closes its IV-D case and inactivates its case under this criteria, the court will need to change the support order to prevent a springing support arrearage from potentially occurring in the future.

¹⁰ The Michigan Department of Health and Human Services will establish good cause when there is danger to child support payees or their children. When good cause is determined, child support payees are not required to participate in the child support program and the IV-D case is closed. If the FOC believes the payee or child is in danger, and the payer applies for IV-D services, the FOC may consider filing a motion to close the FOC case.

[MCL 552.517\(b\)](#) to file a motion to modify the support amount to zero when that is the appropriate amount, or to have a decision on the amount of support reserved.¹¹

2. Child support enforcement:

- Family division judges may require child support enforcement of the court order after the IV-D case has been closed. However, when the IV-D case is closed, the county does not receive IV-D reimbursement for support-related activities on the case, and IV-D closure limits the use of the MiCSES system for enforcement procedures.¹²

3. Custody and parenting time enforcement:

- Because funding is no longer available to provide services when a IV-D case closes, the FOC is not required to enforce custody and parenting time violations if a party seeking those services:
 - 1) Fails or refuses to provide information or,
 - 2) Fails or refuses to take some other action to reinstate funding for child support services the FOC is still providing in the case.

However, if a party files a custody or parenting time complaint and signs a IV-D application, the FOC may have to resume custody and parenting time enforcement.

4. Steps to inactivate an FOC case:

- Make sure the IV-D Case Type field on the Case Member Details (CASE) screen is set to “L – Non IV-D Case.”
- Save any information that may be needed should the FOC case become active (e.g., financial information), either by moving copies of the information to the physical or digital file or making a case note in MiCSES.
- Discontinue all open enforcement activity.
- File a [Certificate of Inactivation](#) in the FOC and court files.
- Follow all record retention and case file destruction requirements. Please refer to Section F.3 of this Memo.

5. Parties’ responsibilities:

- Parties to an inactive FOC case are expected to provide information to the FOC as required by [MCL 552.603](#).

6. Reopening inactive cases:

¹¹ The facts that made the IV-D case eligible for closure may indicate the support should be modified. The FOC may want to modify the case before closing its IV-D status.

¹² As of the date of this memorandum, the following enforcement remedies were available on the MiCSES system for non-IV-D cases: income withholding order (excluding spousal support only cases), credit reporting, scheduling show cause hearings, and license suspensions.

- The FOC case may be reopened if there is a change of circumstances that could lead to enforcement of the support order, including when contact is reestablished with the payer or payee. If the IV-D case was also closed when the FOC case became inactive and a party signs a new IV-D application, the FOC must activate the FOC case.

E. COMPLETELY CLOSED FOC CASES

The FOC may completely close its case when there is no reason for the FOC to be involved and no reasonable circumstances could develop that would result in reopening the FOC case. For some cases, it may be necessary to obtain an order to suspend a support obligation.

1. When the child is emancipated, the FOC should close the FOC case when there are no arrears and when:
 - The child reaches the age of majority, and there is not an order for post-majority support.
 - The child marries.
 - The child enters the military.
 - The child reaches age 18, there is an order in place with post majority support provisions, and the payee does not provide documentation of continuing eligibility to receive child support.
 - The child reaches age 18 when the support order does not provide for post-majority support or the current support obligation has ceased for some other reason.
 - A child older than 18 years (age of majority) no longer meets the requirements for post majority support conditions.
2. If the payer is incapacitated or incarcerated for the duration of the support order, the FOC may want to close the case if:
 - The payer has a medically-verified total and permanent disability, is institutionalized in a psychiatric facility and the institutionalization expected to last for the duration of child(ren)'s minority, or will be incarcerated without the chance of parole during the child(ren)'s minority. These reasons are sufficient only if there is no other income and/or assets available for levy or attachment for support. See [SCAO's Administrative Memorandum 2019-03](#).
3. If the payer is deceased and no further action can be taken, including levying against the estate, the FOC may want to close the case:
 - When only Michigan assets exist for a payer who has died (or a payer without assets dies in Michigan) the case can be closed at the earliest of:
 - Four months from the notice of claims for the payer's estate.
 - One year after the payee is notified of the right to open an estate.
 - Three years from the date of death.
 - When the FOC obtains a death certificate or other evidence of the payer's death, a claim should be filed against any estate that may have been opened.

- All claims are barred after four months from the date of the notice pursuant to [MCL 700.3801](#). If no estate has been opened, or if the FOC is unsure of the status of any estate, the payee should be contacted as soon as possible and advised to file a claim against the estate should one exist or be opened in the future. The payee should also be advised that the payee might attempt to open an estate if one is not opened. Under most circumstances, someone (other than the FOC) should have opened an estate within forty-two days of the date of death. In the event an estate is not opened within forty-two days, a creditor may file to open an estate. When the payee has been notified of the right to open an estate and no estate has been opened within one year of the date of the payer's death, the case should be closed. When money is owed to a governmental entity, the appropriate county public administrator should be contacted after forty-two days from the date of the payer's death and asked to open an estate.¹³ If the county public administrator is unable to open an estate, the case should be closed.
 - When the payer dies a Michigan resident and there are no known assets in other states that would require probate, the case should be closed at the earlier of three years from the date of death if there is no open estate, or upon closure of the estate. No claim can be filed after the estate has been closed. All claims are barred after three years. [MCL 700.3803](#).
 - When the deceased payer lived out of state at the time of death, or, when there are assets in another state requiring probate in that state, an action under the Uniform Interstate Family Support Act (UIFSA) should be initiated to file any necessary claims [MCL 552.2102\(q\)](#). If FOC staff cannot confirm the payer's death, then they should not close the FOC case.
4. If the payee dies and a third party has no legal right to receive the child support, the FOC may close the FOC case when the FOC secures a copy of the death certificate or other verification of the payee's death.
 5. When an adoption is finalized, the FOC may close the case if the court signed the order for the adoption.
 6. When the case is transferred pursuant to [MCR 3.212](#), the FOC may close the case if:
 - The receiving court agrees to take the case, and the FOC has secured a copy of the court order transferring the case.

¹³ Contact the county public administrator in the county in which the decedent lived at the time of decedent's death, or if the decedent lived out of state, in a Michigan county where the decedent's property is located. [MCL 700.3201](#).

- The IV-D case does not close but the FOC case in the original jurisdiction should be closed once the transfer has been completed. See [SCAO's 2007-04 Administrative Memorandum on Case Transfer](#).
7. When paternity is revoked, the FOC may close the FOC case if:
 - The court has set aside the acknowledgement of parentage, order of filiation, or the paternity of the presumed father and no arrearage is due.
 8. If current support or support arrearage is due, the FOC may close the FOC case if an intervening event occurs to extinguish the debt or make it inappropriate to collect.¹⁴
 9. When an initiating state in an intergovernmental case is uncooperative, the FOC may close the FOC case if all the following are true:
 - A request for information or action was sent to the initiating state and that state failed to respond.¹⁵
 - The initiating state did respond initially, but failed to provide additional information.
 - No response or additional information was provided on or before the due date and the information has not been provided.
 10. If an intergovernmental registration for modification of support only was filed, the FOC may close the FOC case if an order was signed by the Michigan court modifying the order and the time for appeal has passed.
 11. A tribal court assumes jurisdiction of a domestic relations case.¹⁶
 12. When Michigan has an existing child support case or is the responding state for intergovernmental registration, the FOC may close the FOC case if all of the following are true:
 - The order has been registered in another state.
 - Neither party nor any child on the case remains in the state.

¹⁴ This may be because all children have reached the age of majority, the children have otherwise emancipated, or the current support obligation has ceased for some other reason; (examples include death or adoption of the person for whom support is paid and reconciliation of the parties). Depending on the circumstances, an order may be necessary or desirable to stop the charges. This includes cases in which an arrearage is shown as due to a party to the case, no arrearage is due to the state or a third party and the parties marry or remarry [*Sierra v Minear*, 341 Mich 182 (1954) (marriage extinguishes wife's premarital debt to husband)], or a judgment of divorce is entered without preserving arrears from a family support action. Depending on the circumstances, an order may be necessary or desirable to dismiss the arrearage.

¹⁵ If support action can be taken without the information, the case cannot be closed.

¹⁶ "Assumes jurisdiction" means that the Michigan court ceases to exercise its jurisdiction in a case and that tribal court begins to exercise its jurisdiction. Two state laws, UIFSA and UCCJEA, recognize that child support, custody and parenting time might be more properly exercised by another jurisdiction.

- Payments have been redirected and are no longer paid through Michigan.¹⁷
- There is no arrearage due to the state of Michigan and either no other arrearage is owed or the state of current registration has incorporated the arrearage and is enforcing it.

13. When Michigan is the initiating state in an interstate case to establish a support order or paternity, the FOC may close the FOC case if all of the following are true:

- The order has been registered in another state.
- Neither party nor any child on the case remains in Michigan.
- Payments have been redirected and are no longer paid through the state.
- There is no arrearage due to the state of Michigan and either no other arrearage is owed or the state of current registration has incorporated the arrearage and is enforcing it.
- There is a provision within a Michigan paternity or family support order that allows Michigan to close its case when the initiating state closes its IV-D case.¹⁸

F. PROCEDURES FOR COMPLETELY CLOSING FOC CASES

1. Continued income withholding.

- When appropriate, continue with active income withholding until all arrearages, service fees, and processing fees are paid in full.

2. Determine if a review for modification is necessary.

- When circumstances have changed to make a support order improper, the FOC should exercise its discretion under [MCL 552.517\(b\)](#) to file a motion to modify the support amount to zero when that is the appropriate amount, or to have a decision on the amount of support reserved.

¹⁷ If Michigan entered the support order, Michigan should remain the state that processes support payments. However, the case should be closed if continuing to exercise enforcement jurisdiction would interfere with the processing of the case in other jurisdictions. Care should be taken to keep the case file in a condition to permit the Michigan court to fulfill its obligations as custodian of the records to provide an accounting based on its records or information based on its knowledge of non-modifiable aspects of its original judgment. The case should not be closed unless notice is given to all parties and to all other jurisdictions. The FOC should verify that all appropriate steps have been completed before it initiates closing the FOC case.

¹⁸ FOC staff should work closely with their prosecutor's office to ensure that there is a provision within paternity and family support orders that allows Michigan to close its FOC case when the initiating state closes its IV-D case.

3. Record retention.

- Closed FOC cases should be maintained in a manner that facilitates destruction of the records when the retention periods required by [General Schedule #15](#) – Circuit Courts have been reached. To assist in this decision-making process, refer to Sections 3.1.2.2 and 3.1.2.3 of the [Michigan Trial Court Records Management Standards](#). FOC offices should annually dispose of eligible records as prescribed by the records retention and disposal schedule. To help identify records eligible for destruction, generate a case closure report¹⁹ using the retention periods in [General Schedule #15](#) – Circuit Courts as the date parameters. Details on the disposal process are specified in Section 4 of the Michigan Trial Court Records Management Standards.
- A permanent record of the financial history must be retained in a viewable format. In the alternative, the case records may be moved to any location on the MiCSES system that does not count the support case for statistical purposes.

¹⁹ Effective December 2019, FOC staff can run self-service reports for closed cases using end date (the date the FOC case was closed) as a parameter for deciding if the FOC case can be destroyed.