

Michigan Supreme Court
State Court Administrative Office
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DATE: August 10, 2001

TO: **ALL CHIEF CIRCUIT JUDGES**
cc: **FAMILY DIVISION JUDGES**
FRIENDS OF THE COURT
FAMILY DIVISION ADMINISTRATORS
CIRCUIT COURT ADMINISTRATORS

FROM: John D. Ferry, Jr., State Court Administrator

SUBJ: **SCAO Administrative Memorandum 2001-08**
Guidelines for Procedures Regarding Payee Retention of Private Collection
Agencies on Friend of the Court Cases

Section 19 of the Friend of the Court Act (MCL 552.519) provides that the State Court Administrative Office, Friend of the Court Bureau, shall develop and recommend guidelines for conduct, operations, and procedures for operation of friend of the court offices. The Friend of the Court Act also requires that each friend of the court take all necessary steps to adopt office procedures to implement the act, supreme court rules, and the recommended policy and procedures of the State Court Administrative Office, Friend of the Court Bureau. MCL 552.503(6).

Private collection agencies have contacted friend of the court offices seeking information from friend of the court files. The agencies may also ask the friend of the court to take specific action on cases pursuant to a power of attorney. Friend of the court offices have asked the State Court Administrative Office for direction on how to respond to these requests.

This policy outlines the steps friend of the court offices should take in dealing with private collection agencies to facilitate their involvement in case collection within legal parameters. This policy also recommends procedures designed to protect the rights of payers and payees of support when private collection agencies are involved. Should you have any questions regarding this policy, you may contact **Steve Capps** at cappss@jud.state.mi.us or (517) 373-4835.

GUIDELINES FOR PROCEDURES REGARDING PAYEE RETENTION OF PRIVATE COLLECTION AGENCIES ON FRIEND OF THE COURT CASES

A. Background.

By statute, Michigan's friend of the court (FOC) offices must collect and disburse child support payments. Private collection agencies have sought to become active in the collection of support. They propose to offer the following services,¹ among others:

- ! Monitor the case for payment
- ! Provide assistance in locating absent parents
- ! Negotiate lump sum settlements with a payer
- ! Place liens on a payer's property
- ! Implement wage withholding
- ! Negotiate a satisfactory arrangement for payment of unpaid child support
- ! Talk to neighbors, creditors, employers and tax assessors to locate absent payers

Private collection agencies may be effective because they can devote individualized services to a single case. However, the services an agency offers and the manner of performance may also raise issues concerning the propriety of their involvement in a case. Many services offered by private collection agencies are services the FOC is required to perform. Some services, such as sending notice of lien, can only be performed by the FOC. Some services, if performed improperly, would interfere with the processing of a case.² Other services should only be performed by a lawyer admitted to practice in the state of Michigan or are regulated by Michigan law that require a license. Still other services require the private collection agency to have access to information that is protected by confidentiality laws.

This policy provides guidelines to FOC offices to authorize the use of private collection agencies by individual payees to collect unpaid balances within the limitations imposed by law.

A. Facilitating Private Collection Agency Requests for FOC Action.

When a private collection agency becomes involved, it may ask the FOC to change payment processing and to provide case information. The following requests should be handled as indicated.

¹Source: Websites of private child support collection agencies.

²For example, lump sum settlements paid directly to a collection agency would not be credited to the payer's account and the FOC would not be able to honor the settlement until it was reduced to a judgment.

1. Request to Change Payee of Support to Private Collection Agency.

The FOC should refuse a private collection agency request that the FOC change the payee from the individual payee to the private collection agency or to the individual payee and the private collection agency jointly. The request should be refused even if it is accompanied by a signed authorization from the payee.

2. Request to Change Payee's Address to Private Collection Agency's Address.

A private collection agency may request an FOC to send payments to the private collection agency's address. An FOC should treat this request as follows:

- a) If the FOC currently accommodates separate payment and residential addresses, the payment address should be changed to the private collection agency's address if the payee has authorized the change.³
- b) If the FOC maintains only one address for a payee in its system, the payee's address should not be changed.
- c) If FOC checks contain confidential information, the request should be refused.⁴

3. The Private Collection Agency Requests Information From FOC Records.

Private collection agencies may need information from FOC records. FOCs should not provide information directly to the agency, but may provide non-confidential records to the payee who can provide the records to the agency. When a private

³FOCs should treat collection agencies like other interested non-parties. An office should not change its operating procedures to accommodate a private business unless the changes are inconsequential or benefit the office as a whole. If the FOC's system accepts separate addresses or the FOC adjusts its records to accept an alternate address for payees to receive payments (such as creating alternate records or accounts), the same efforts should be made for private collection agencies. If the FOC's system does not accept separate addresses, the FOC does not have to take additional steps to accommodate a separate address for the private collection agency. It is contemplated that Michigan's new child support enforcement computer system will accommodate such requests.

⁴Many FOCs print confidential account information on the support check stub. This information should not be provided to non-parties. When an FOC has decided that this information operates as a service beneficial to payees, and when the information cannot be printed selectively, the FOC should not send checks to a non-party.

collection agency requests access to FOC records, the FOC should send a request to access records form (FOC 72) to the payee and advise the payee of the following:

- That the FOC cannot provide information directly to the agency
- That Michigan court rules make provisions for the payee's reasonable access to non-confidential FOC records that the payee may share with the agency
- That there will be a charge for copies (if applicable)

C. Protecting Payer and Payee Rights When Private Collection Agencies Become Involved.

1. Protecting the Payee's Rights in Bargaining for Private Collection Agency Services.

Payees are entitled to receive FOC enforcement services free of charge. These services usually result in support collection. In some instances, a payee employs a private collection agency but the services that result in support collection are FOC services. When a private collection agency receives a fee for services performed by the FOC, the payee and the minor children are deprived of support that would have been paid notwithstanding the involvement of the private collection agency.

The FOC has no mandate to determine the value of services performed under a payee's contract with a private collection agency. When a private collection agency contacts the FOC, the FOC should advise the payee of the support services FOCs perform in order to assist the payee in making informed decisions concerning the value of the private collection agency's services. The FOC should also advise the payee of the grievance procedure for resolving complaints regarding an FOC, in the event the payee believes required services are not being provided.

2. Protecting the Payer's Rights When a Private Collection Agency is Involved.

Sometimes agencies collect money, generate liens, or settle a case and do not inform the FOC. When this happens, payers may find that the FOC continues to pursue support collection activities after the support has been paid.

To protect a payer's rights when a private collection agency becomes involved, the FOC, upon becoming aware of an agency's involvement, should advise the parties and the agency that settlement agreements must be reduced to orders to be valid, and that all payments must be made through the FOC to be recognized.

3. Protecting Both Parties' Rights When Private Collection Agencies Are Involved.

FOC staff should be vigilant to see that those dealing with the court and its agencies do so legally. Collection agencies doing business in Michigan are regulated by MCL 339.901 *et. seq.* Corporations must be registered to do business in Michigan [MCL 450.2011]. When a private collection agency becomes involved, the FOC should advise the agency and the parties that the collection agency may need to be registered and licensed with the state of Michigan.

Collection agencies that generate and file documents in the state or seek legal documents under a power of attorney may be engaging in the unauthorized practice of law when the agencies attempt to assist an individual within the court system or prepare and file papers an attorney is required to prepare.

In cases involving private collection agencies or any other person or entity, the FOC should report unauthorized attempts to engage in business without a license to the Attorney General, and should report any attempt to engage in the unauthorized practice of law to the State Bar of Michigan.

D. Communication With Parties and Collection Agencies.

Attached as Appendix A is a model letter that incorporates the advisory requirements of this policy. The letter should be sent to the payee. Copies should be sent to the payer and to the private collection agency.

Appendix A - SAMPLE LETTER

To: [payee]

[name of agency] contacted this office concerning collection of support in your case. Collection of child support is very important. We want to help you collect the support that is due to you. We value any assistance that you, or your collection agency can provide in collecting that support. When you use the services of a private collection agency, there is important information you should know.

- Friend of the court offices have an obligation to attempt to collect child support. Remedies the friend of the court uses when a payer does not pay support include:
 - Implementing income withholding when a source of income is discovered;
 - Submitting information to state and federal locator services to attempt to locate income and assets from which support can be paid;
 - Scheduling contempt of court hearings when payments are not made as ordered;
 - Applying surcharges on unpaid support;
 - Report the case so that the support can be paid from the payer's tax refunds;
 - Seeking suspension of the payer's occupational, drivers, and recreational licenses;
 - Implementing liens on the payer's property.
- If you believe that the friend of the court has not carried out its responsibilities under the law, you have the right to address those concerns to the friend of the court. The friend of the court will investigate your concerns and provide a response.
- This office is prohibited from providing information concerning your case directly to your collection agency. Michigan Court Rules provide that a party can have reasonable access to friend of the court records. You may request information from this office and share it with your collection agency. A form is attached for this purpose for your convenience. There [may/will] be a charge for some copies.
- If your collection agency makes any agreements with the payer in your case, these agreements must be put into an order before the friend of the court can honor the agreement. You may need to hire an attorney licensed in the state of Michigan to obtain an order. Until there is a new order, the friend of the court must enforce the support as originally ordered despite any agreement the parties may reach.
- Corporations doing business within the state of Michigan are required to register with the state. Collection agencies doing business within the state of Michigan are required to be licensed by the state.
- This office [will/will not] change your address to the address of the private collection agency. Michigan law requires that this office continue to send all notices to your residential or mailing address.

cc: [Payer]
[Agency]