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M E M O R A N D U M

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

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

DATE: February 18, 2003

SUBJ: SCAO Administrative Memorandum 2003-03
Friend of the Court Complaint and Grievance Procedure

The Friend of the Court Act (Act) requires the State Court Administrative Office (SCAO), Friend of the Court Bureau (FOCB), to develop and recommend guidelines for conduct, operations, and procedures of the friend of the court (FOC) offices. [MCL 552.519(3)(a)] It further states that “each friend of the court shall take all necessary steps to adopt office procedures to implement . . . the recommendations of the bureau.” [MCL 552.503(6)]

The Act requires the FOCB to recommend procedural changes in response to the type of grievances received by an office. [MCL 552.519(3)(a)(iv)] For several years, the SCAO has been involved in answering calls and letters from litigants who have complaints concerning FOC offices. The SCAO has used this service to gain a better understanding of the various issues and to identify procedural changes that may be necessary in response. However, the litigant complaint process does not provide the SCAO with sufficient useful information. Invariably, this results in the FOC office addressing the complaint without significant review by the SCAO. The litigant complaint process has also encouraged other Michigan agencies to refer complaints to the SCAO, instead of back to the office from which the complaint originated, delaying resolution of the complaints. All FOC complaints are more properly addressed through the statutory grievance process which requires the FOC to investigate and answer grievances. From a review of the grievance and answer, the SCAO can comply with its statutory mandate to review the grievances and to identify systemic issues. This policy is issued to facilitate meaningful review and response to grievances. Grievances must follow the requirements of the attached policy.

The attached policy is established on an interim basis. The SCAO invites comment on the policy. After reviewing comments and assessing the effectiveness of the policy, the SCAO may revise the policy, terminate the policy, or continue its use on a permanent basis. Please address all questions or comments to Steven Capps by phone (517-373-4835) or e-mail (cappss@courts.mi.gov). This policy replaces Friend of the Court Policy and Procedure Memo 1984-3 dated September 13, 1984.

Friend of the Court Complaint and Grievance Procedure

The Friend of the Court Act (Act) provides that a friend of the court office (FOC) is created in each judicial circuit under the direction of an individual designated as the “friend of the court.” [MCL 552.503] The chief judge of the circuit court is responsible for directing and supervising the conduct and operations of the FOC. [MCL 552.503] Parties to domestic relations matters who have a grievance concerning FOC office operations or employees may use a grievance procedure to insure that their complaints come to the attention of the friend of the court director or the chief judge. [MCL 552.526] The Act provides that the State Court Administrative Office (SCAO) will review FOC operations through the grievance process, and determine when it is necessary to create or modify FOC policies. [MCL 552.519(3)(a)(iv)]

A. Grievances Defined

Grievances are:

1. Any writing the FOC receives from a party alleging misfeasance or malfeasance of an FOC employee or that an office operation is improper, **whether or not it is filed on a form designed for that purpose.**
2. A written complaint by a party alleging misfeasance or malfeasance of an FOC employee or that an office operation is improper filed on form FOC 1a.
3. A written complaint by a party alleging misfeasance or malfeasance of an FOC employee or that an office operation is improper which is forwarded to the FOC by the SCAO, an office of the executive branch, or a legislative office.

B. General Complaints Compared to Grievances

FOC offices regularly receive complaints. Complaints may involve anything from a litigant’s dissatisfaction with an outcome in the case to a specific allegation of an error by an employee or dissatisfaction with the results of a procedure in a case. When these complaints are made to ask the FOC to take corrective action in the case, they are not grievances. The office should attempt to resolve the problem or address the concern. If the complainant is not satisfied with the office’s efforts to resolve the complaint, or if the office is not certain whether the complainant is satisfied with its efforts to resolve the problem or address the concern, the office shall advise the person calling of the statutory grievance procedure. Subsequent action by the litigant concerning a complaint becomes a grievance. The complainant should be advised that the grievance procedure is designed to ensure that complaints about a policy, a process, a procedure, or wrongdoing by an employee are brought to the attention of the individuals responsible for office operations. The complainant should further be advised that the grievance procedure cannot be used to accomplish any of the following:

1. to change a court order;
2. to change a judge’s or referee’s decision;

3. to change an FOC recommendation concerning custody, parenting time, or support;
4. to complain that a decision by a judge, referee, or FOC employee should have been different.

C. Making Grievance Forms Available

Standard grievance forms must be made available in a prominent place within the FOC office so that an individual desiring to obtain a form need not ask for it. The standard form includes instructions regarding when a grievance can and cannot be used. Forms are also available on the Michigan's One Court of Justice website at:

<http://courts.michigan.gov/scao/complaints/index.htm>.

D. Responding to Grievances

Grievances should not be considered adversarial. The purpose of a grievance is to assure litigants that their concerns have been presented to the persons responsible for determining whether action must be taken concerning an employee or office policies.

1. Logging the grievance

Grievances should be assigned a number for tracking purposes. Each FOC should develop a system for numbering grievances. The grievance log (form SCAO 28) should be used for logging grievances. It contains instructions that may assist in developing a system for tracking grievances.

2. Investigating the grievance

The complexity of the issues raised in the grievance determines the amount of investigation necessary to respond to the grievance.

a. Factual issues

When the grievance raises factual issues concerning an employee or office operations, the FOC must investigate the facts before answering the grievance. If the grievance involves an employee, the employee should be given an opportunity to provide input as part of the investigation before the office answers the grievance.

b. Process and procedural issues

The FOC should retain records documenting how it develops policies and procedures to facilitate its response to grievances concerning office operations. The SCAO may request copies of the documentation to review in developing SCAO policy.

3. Response Process

- a. Grievances must be answered in writing. There is no standard response that will fit all grievances. However, each grievance should include basic information that is sufficient to respond to the specific issues raised by the grievance and it should contain sufficient information to allow the SCAO to review and understand the issues and their resolution.
- b. Each grievance response should include the following:
 - 1) A brief summary of the grievance.
 - 2) A brief summary of the investigation made to answer the grievance.
 - 3) A brief summary of the facts disclosed by the investigation. If certain facts are in dispute or certain facts are not in dispute, the summary should so indicate.
 - 4) When relevant, a brief statement of statute, court rule, or policy that applies to the grievance.
 - 5) The disposition of the grievance (e.g. acknowledged, acknowledged in part, denied, or nongrievable).
 - 6) A brief summary of the basis for the disposition.
 - 7) A statement of any action taken in response to the grievance.

E. Matters to Avoid in a Grievance Response

The purpose of a grievance is to assure litigants that their concerns have been presented to the persons responsible for determining whether action must be taken concerning an employee or office policies. The grievance is not an adversarial or political process. The grievance response should address only those matters in dispute and confine itself to facts related to the grievance. The grievance is not an opportunity to cast blame on others or to lobby for changes in the law. The grievance may advise the grievant that the solution to a problem lies within the control of others such as the Office of Child Support (OCS) or the legislature. The following should be avoided:

1. Characterizations of a grievant as an adversary.
2. Characterizations of a grievant's state of mind.
3. Expressing frustration concerning the grievant's behavior, except as relevant to the answer (e.g., an answer to a complaint concerning an employee grabbing the grievant could properly reference that the event occurred in an attempt to fend off an attack on that employee).

4. Expressing disagreement concerning a specific statute, court rule, or policy over which the office has no control. (It is, however, appropriate to note the requirements and who has control over those requirements.)
5. Expressing disagreement concerning a system, equipment, process, or other matter controlled by another branch of government. (However, the office may offer to forward concerns to another office.)

F. Time for Response

1. Copies of the FOC's response must be provided to the grievant within 30 days of the date the grievance is filed.
2. If the grievance cannot be answered in 30 days, the FOC must advise the grievant in writing that the grievance cannot be answered within the 30 days and explain why.
3. A copy of the original grievance and the FOC's response (and any statement that the grievance cannot be answered in 30 days) must be sent to the SCAO when the FOC provides its answer to the grievant.
4. If the FOC modifies its response at a later date, the FOC must send the revised response to the grievant and the SCAO.
5. FOCs that have imaging capability may transmit copies of the grievance and response to the SCAO by e-mail.

G. SCAO Grievance Review

1. The SCAO will review all grievances and responses to determine whether issues exist within an FOC office or statewide that require policy modifications. The checklist the SCAO will use to review grievances and responses is attached as Appendix A.
2. The SCAO will audit grievances at random or based on identification of a specific issue that may require statewide policy considerations or review of an FOC's policy or procedure.
3. If the SCAO discovers an improper procedure through standard review or audit of grievances, it will contact the FOC to resolve the issue. If the SCAO is satisfied that the FOC is acting to remedy the problem, the SCAO will take no further action. If the SCAO believes that the FOC's action is insufficient, it will contact the chief circuit judge with its concerns.

H. SCAO Litigant Complaint Policy

It is the policy of the SCAO that all litigants should have equal opportunity to have their concerns reviewed. It is also the policy of the SCAO that the FOC grievance processes established by the legislature should be honored and promoted. In order to promote the most effective review of FOC office operations and procedures, the SCAO will only address litigant complaints using the grievance procedure established in this policy.

1. Phone calls

- a) Litigants contacting the FOCB will hear a recorded message advising them of the process the legislature has established for addressing litigant complaints regarding the FOC. Litigants will be advised that they may stay on the line and obtain a grievance form which must be filed with the FOC and that the FOC's answer will be reviewed by the SCAO in determining policies and procedures for the FOC (the text of the message is attached as Appendix B).

After the recorded message, office assistants will be available to answer routine questions concerning the proper office to contact with various inquiries.

- b) In the event a litigant attempts to circumvent the grievance procedure, an office assistant will advise the litigant that the legislature has established a process for review of litigant concerns which allows the FOCB to review policy and procedure. The litigant will then be offered a grievance form.
- c) In the event a litigant continues to attempt to circumvent the grievance procedure, the office assistant will transfer the call to an analyst who will also advise the litigant to use the grievance process for a review of the litigant's concerns and offer a grievance form.

2. Letters and e-mails

- a) Screening by the SCAO

When the SCAO receives a complaint letter or e-mail concerning an FOC office, the SCAO will send a copy of the letter or e-mail to the FOC, advising the FOC to treat the letter as a grievance and respond accordingly. A copy of the letter or e-mail to the FOC will be mailed to the litigant as well.

- b) Complaints to the legislative branch

The legislature will be advised of the grievance procedure and how it will be used by the SCAO in developing policy and procedure and will be encouraged to advise litigants who have FOC concerns to use the grievance process to address those concerns.

c) Complaints to the executive branch

Executive branch offices will be advised of the grievance procedure and how it will be used by the SCAO in developing policy and procedure and will be encouraged to advise litigants who have FOC office concerns to use the grievance process to address those concerns.

I. Reporting

Pursuant to MCL 552.526, each FOC shall maintain a record of grievances received against an employee or office operation, and a record of whether the grievance is resolved or outstanding. If a grievant indicates that the grievance concerns both an employee and office operation, the grievance record should reflect one grievance against an employee and one grievance against office operations.

The grievance record shall be transmitted bi-annually to the FOCB, indicating the type and status of each grievance. This report shall be submitted electronically on form SCAO 28 no later than January 15 of each year to cover the reporting period of July 1 through December 31 and no later than July 15 to cover the reporting period of January 1 through June 30. Upon receipt of this report, the SCAO will provide an annual grievance report to the legislature and to each FOC pursuant to MCL 552.519. The report will contain a summary of the grievances received by each FOC and whether the grievances are resolved or outstanding. Each FOC shall make a copy of the report to the legislature available for public review.

J. Emergency Situations

Most case-specific situations are not of a nature susceptible to resolution by the SCAO. Regardless, several types of situations are frequently brought to the SCAO as emergencies. Primarily, these situations concern: (1) payments not being processed or enforced properly and (2) custody orders being violated. These situations will be addressed as follows:

1. Support Payments

OCS has a central customer service unit (1-866-540-0008; fax 517-335-3030) which is able to view payee account records. As the state transitions to all payments going through the Michigan State Disbursement Unit (MiSDU), the OCS unit, and a customer service unit maintained by MiSDU, will be best situated to determine what has happened with a payment. The OCS has procedures for contacting FOCs when answers to inquiries are not apparent from the computer information. The SCAO will refer all emergencies of this nature to the OCS customer service unit.

2. Support Enforcement

Support enforcement is not an emergency situation. These inquiries will be treated in accordance with the previous sections of this policy.

3. Custody and Parenting Time Enforcement

These are not emergency situations unless abuse and neglect or kidnaping are allegedly occurring. The SCAO will refer persons alleging abuse or neglect to the protective services unit of the county where the activity is allegedly occurring. Persons alleging kidnaping will be informed of the FOC's responsibilities to enforce custody and parenting time orders. The person will also be advised to file any allegations of kidnaping as a report to a local police agency.

4. Systems or Processing Failure

When a number of calls are received concerning the same issue (for instance a number of different calls reporting problems accessing an FOC's phone system), the SCAO will contact the FOC involved to find out if there are systems problems or other problems that have generated the calls. In this manner, FOCs can be made aware of an unusually large volume of calls and can determine if problems exist that require additional action to resolve.

Appendix A – Checklist for Grievance Review

Name and Case Number: _____

County: _____

Type: operations; employee; gender bias; mixed; nongrievable

Major area of complaint: support enforcement; support amount; parenting time;
 custody; investigation; payment processing; other: _____

Did the FOC investigate? yes; no; unknown

Does the complaint involve a local FOC policy? yes no

Is there anything in the local policy that appears to contradict statutes, court rules, or
SCAO policy?

yes (explain)

no

Does the policy appear fair (on its face)?

yes

no (explain)

Does the complaint involve an issue that is likely to recur? yes no

What further action does the analyst recommend?

None

mail audit

in person audit

develop policy

Appendix B - Telephone Message

The State Court Administrative Office/Friend of the Court Bureau does not oversee the daily operations of friend of the court offices and does not have information concerning individual cases. The bureau reviews a complaint about a friend of the court office through the grievance process established by the legislature.

If you have a complaint about a friend of the court, you may obtain a grievance form from our website at <http://www.courts.michigan.gov/> by clicking on the “Complaints” link, or by pressing ____ on your telephone key pad [this should take the person to a place where a voice mail message to request a form can be left].

To learn more about the friend of the court, go to our website at <http://courts.michigan.gov/> and click on “About Courts”.

If your call does not concern complaint against the friend of the court, please press ____ on your telephone key pad [this should go to an office assistant].