



Michigan Supreme Court

State Court Administrative Office

Family Services

Friend of the Court Bureau

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MEMORANDUM

DATE: January 17, 2008

TO: Friends of the Court

cc: Chief Circuit Judges
Presiding Family Division Judges
Circuit Court Administrators
Family Division Administrators
Juvenile Registers

FROM: Daniel J. Wright

RE: SCAO Administrative Memorandum 2008- 01
Ordering Child Support in Child Protective Proceedings

The State Court Administrative Office (SCAO), and specifically SCAO's Friend of the Court Bureau, develops guidelines for the conduct, operations, and procedures of all friend of the court (FOC) offices. Each FOC must take all necessary steps to adopt office procedures to implement the recommendations of the bureau (see [MCL 552.503\(7\)](#)).

This memorandum provides guidelines for the Family Division of courts on how to implement [MCR 3.973\(F\)\(5\)](#) which allows courts to order child support in certain child protective proceedings.

If court staff have any questions about this memorandum, please contact Angel Sorrells at SorrellsA@courts.mi.gov, Erin House at HouseE@courts.mi.gov, or call (517) 373-5975.

A. Background

On July 1, 2006, [MCR 3.973\(F\)](#) was amended to give courts an option to order child support in child protective proceedings. Pursuant to [MCR 3.901\(B\)\(4\)](#), [MCR 3.973](#) applies only to child protective proceedings. The following language was added to [MCR 3.973\(F\)](#):

(5) Child Support. The court may include an order requiring one or both of the child's parents to pay child support. All child support orders entered under this subrule must comply with MCL [552.605](#) and [MCR 3.211\(D\)](#).

[MCR 3.211\(D\)\(1\)](#) states that child support provisions must be on the Uniform Support Order ([FOC10](#)).

[MCL 712A.18](#) requires the court to order reimbursement when a child is placed or committed for care outside of the child's home. When reimbursement is ordered, the court *may* use the Michigan Child Support Formula Schedules Supplement to calculate the appropriate amount of reimbursement. If child support is also ordered pursuant to MCR 3.973(F), the court *must* use the Michigan Child Support Formula or state on the record why it deviated from it (see [MCL 552.605](#)).

B. Child Support and Reimbursement

There is no rule on when to order reimbursement only and when to order a combination of child support and reimbursement. However, it is expected that a court will order child support when there would likely be a child support order but for the fact that the child is in foster care (e.g., parents are not living together).

Courts are encouraged to rely on the permanency and case service plans when making their decisions. Numerous factors should be considered, such as: the length of stay in a foster home; whether the parents live together or separately; and whether an order for child support is already in place. These circumstances are reflected in the plans and provide insight to the child's needs and the family's future, which the court's order should reflect.

A court has the option of ordering any of the following:

1. Reimbursement only

A court may choose to order only reimbursement when the child is placed outside the home. This may be most appropriate when the parents live together.

2. Reimbursement *and* child support

The permanency plan may call for the child to be placed back in the custody of only one parent. If a child support order does not currently exist, the court may consider ordering child support in addition to reimbursement to help the parent once the child is returned home. The child support order could be set to zero during the placement, and later amended once the child returns to the custodial parent. Or the court could set reimbursement at a nominal amount and also put a child support order in place if one does not exist. The child support will be assigned to the state during the child's stay in

foster care but redirected to the payee once the child is placed back in the home.

The benefits to ordering both include:

- a. Establishing and collecting child support may motivate the parents to decide whether they will abide by the plans (e.g., permanency plan and case service plan). This will help caseworkers know the direction in which the family is heading.
- b. Establishing a child support order ensures that once the child is returned home, the money will be redirected into the home. This allows the parent to provide a safe, stable, and secure home for the child.

If a child support order has already been issued on behalf of the child, see section D.

3. Reserving a child support determination and order until a later time

Courts have the option of not making any decision with regard to child support or an amount. This decision may be reserved and made at a later time when the facts of the case have developed, the situations of the child and parents have evolved, and the case service and permanency plans are evaluated to determine the family's progress and future. Ordering child support in the amount of \$0 does not reserve this right. It actually sets an order in a "sum certain" amount, albeit zero (see [MCL 552.602\[gg\]](#)).

C. Entering Child Support Orders

1. Considering when to order child support in abuse or neglect proceedings

- a. If a child support order currently exists, a new child support order should not be entered unless the previous order is amended or rescinded (refer to section D of this memorandum).
- b. When determining whether to order child support, the court should consider the following:
 - 1) The projected length of time the child may remain away from the home;
 - 2) A parent's ability to pay support given the cost of any treatment ordered for the parents that they will fund to fulfill the requirements outlined in the case service plan (e.g., substance abuse treatment or counseling, parenting classes).

2. Statutory authority

- a. The court must find that the proofs in the case satisfy the requirements for ordering child support, in a protective proceeding, under one of these laws:¹
 - 1) Emancipation of Minors Act;

¹ [MCR 3.201](#) states that these proceedings are covered by Subchapter 3.200 (Domestic Relations Actions) of the Michigan Court Rules as ancillary or subsequent actions. If any of these Acts are applied, then [MCR 3.200](#) applies for purposes of a child support order but not for purposes of the child protective proceeding.

- 2) Paternity Act;
 - 3) Family Support Act;
 - 4) Uniform Interstate Family Support Act; or
 - 5) Divorce Code
- b. The request for a support order can be made in a petition or supplemental petition, or by a separate motion. If no one files a request for a support order, the court may enter a support order on its own motion.
3. When ordering child support
- a. Court rule requirements

[MCR 3.973\(F\)\(5\)](#), by referencing [MCL 552.605](#), requires the court to use the [Michigan Child Support Formula](#) to set the amount of support. Sections 4.01 and 4.02 of the Michigan Child Support Formula provide guidance on setting child support for third party custodians and other special custody arrangements for children. The court has the option to refer the matter to its FOC for assistance in calculating the appropriate amount of support based on the Michigan Child Support Formula. This also puts the FOC on notice that this child support order will be turned back over to the FOC for enforcement.

By referencing [MCR 3.211\(D\)](#), the rule also requires the court to use SCAO's Uniform Support Order, Form [FOC 10](#), which includes all statutory requirements for support orders.
 - b. Obtaining IV-D services

A child whose foster care services are paid for by the state or county automatically qualifies for IV-D services. An exception is when a child is placed with an unlicensed relative who does not receive any public assistance. In that situation, if IV-D services are to be provided, an application for those services must be submitted. SCAO recommends that the court or the lawyer guardian ad litem, acting on behalf of the child, apply for those services.
 - c. Assignment and redirection

When a child support order already exists in a domestic proceeding, [MCL 552.605d](#) requires the child support to be assigned to the state for the duration of the child's stay in foster care. Upon the child's return home, that support will be redirected to the custodial parent.² Although the support will be assigned to the state while the child is in foster care to cover the cost of caring for that child, the child support will be administratively redirected to the custodial parent once the child returns home without additional court action.

² If the court orders both parents to pay child support while the child is in foster care, and the child returns to the home of only one parent, the noncustodial parent's support payments will be redirected to the custodial parent.

4. Enforcing the child support order

If child support is ordered, the order should be filed with the FOC. To assist the FOC with enforcing the order, the court may wish to direct the parties or the LGAL to file a Domestic Relations Judgment Information form ([FOC 100](#)) with the FOC. The completed form will provide enforcement information to the FOC such as names, addresses, social security numbers, and employers of the parties.

The FOC will enforce the child support order pursuant to [MCL 552.509\(6\)](#). Certain administrative remedies are available exclusively to the FOC. This includes consumer credit reporting, state and federal tax offsets to collect arrears, and passport denial when arrears reach a certain threshold.

D. If a Child Support Order Currently Exists

If the court learns of an existing child support order, the court has several options:

1. Notify the FOC so that it can redirect the support to the state because the child is in foster care and the state is legally responsible for the child (see [MCL 552.605d](#));
2. If the court has jurisdiction over child support matters, amend the order (e.g., set the support amount to zero or some other amount because reimbursement is a more appropriate option);³
3. Rescind the order.

E. Michigan Child Support Enforcement System (MiCSES) Implications

1. MiCSES

MiCSES is the statewide computer database that manages the enforcement of child support orders, much of which is automated. The Office of Child Support (OCS) in the Michigan Department of Human Services oversees the system, and FOCs use it for daily operations.

When support is ordered in a child protective proceeding, OCS will provide directions for the mechanics of entering order information into MiCSES.

2. Form [FOC 10](#) contains traditional case identifiers (e.g., “plaintiff” and “defendant”). MiCSES recognizes cases captioned as plaintiff and defendant. For those cases captioned as an “In re:” the court needs to list one person as a plaintiff and one as a defendant.
 - a. SCAO recommends naming the State of Michigan as the plaintiff because the child is in foster care. If the support is intended to be payable to a parent who is subject to a case service plan (with the other parent paying support), the payee parent may be listed as the plaintiff or the state may be listed on behalf of that

³ SCAO recommends a judge with jurisdiction over child support matters amend the current order unless the judge consolidates the cases or administratively works them together. Judges may apply the Michigan Child Support Guidelines themselves if they choose and are not required to have their FOCs do it.

parent. If the disposition order returns a child to one parent and requires the other to pay support, the caption could show the payee as plaintiff and the payer as defendant.⁴

- b. SCAO recommends showing the payer as the defendant.
 - c. If both parents are required to pay support, the state should be listed as the plaintiff (on behalf of the payee) with either parent listed as defendant. SCAO recommends including the parent not listed in MiCSES as the payer in case notes because the familial dynamic and payment schedules are likely to change under the circumstances.
3. Reimbursement orders must not be entered into MiCSES. The only orders to be entered into MiCSES are child support orders pursuant to [MCR 3.973\(F\)\(5\)](#) that are issued on the form [FOC 10](#).
 4. The protocol for entering a child support order into the system can be found in the [MiCSES Customer Information Guide, DHS Foster Care IV-D Case Establishment](#).

F. Funding Considerations

1. When child support is ordered
 - a. In order for the case to receive all FOC enforcement services, and for the county to be reimbursed for 66 percent of the costs of enforcing the child support order, the case must receive the IV-D designation.
 - b. When child support is collected for a child in foster care, it is sent to either the state or court as reimbursement for the cost of foster care services provided on behalf of the child.⁵

Child support is *not* reimbursement pursuant to [MCL 712A.18](#). When the court receives a child support payment assigned to it and then reimburses the county for the costs incurred in providing child care, that payment may be deposited in the appropriate fund(s) and account(s) pursuant to policy. If the case is a IV-D case and the FOC is enforcing the child support order, the FOC's collection costs will be reimbursed at the federal reimbursement rate of 66 percent.

2. When reimbursement is ordered

Reimbursement orders are enforced by the court. 25 percent of reimbursement money collected is credited to the appropriate fund of the county to offset the administrative cost of collections (see [MCL 712A.18\(2\)](#)).

⁴ A new form could not be created for purposes of child support in child protective proceedings because MiCSES would not be able to identify the format.

⁵ Foster care services for a child, if not funded through the federal IV-E program, will either be funded by the state (for children who are state wards) or by the county through its county child care fund.