



Michigan Supreme Court

State Court Administrative Office

Friend of the Court Bureau

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MEMORANDUM

DATE: December 18, 2014

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

FROM: Steven D. Capps

RE: SCAO Administrative Memorandum 2014-03
Uniform Support Orders

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 the friend of the court (FOC) offices. Each FOC must take all necessary steps to adopt office procedures to implement the recommendations of the bureau. [[MCL 552.503\(7\).](#)]

This memorandum describes several important changes to the Uniform Child Support Order (USO) forms, and provides additional information about their use. MCR 3.211(D) requires entering child support and spousal support orders on the latest version of the USO approved by the SCAO. SCAO approved new forms for use as child support orders effective January 1, 2015.

If courts or FOC staff have any questions, or would like additional information or clarification regarding this memorandum, please contact William J. Bartels at bartelsb@courts.mi.gov or (517) 373-5975.

A. Background

The Uniform Support Order (USO) forms were designed for the courts' and FOC offices' administrative convenience to place all information in a standard format, as well as to ensure that each support order contains the provisions required by federal and state law.

1. MCR 3.211(D) requires a circuit court to use a USO to order a party in a domestic relations matter to pay child or spousal support.¹
2. SCAO has produced four approved orders.
 - a. Check the *One Court of Justice* webpage for domestic relations forms to ensure that you have the most current USO version:
<http://www.courts.mi.gov/Administration/SCAO/Forms/Pages/Domestic-Relations.aspx>.
 - o Uniform Child Support Order (FOC 10)
 - o Uniform Child Support Order, No Friend of the Court Services (FOC 10a)
 - o Uniform Spousal Support Order (FOC 10b)
 - o Uniform Spousal Support Order, No Friend of the Court Services (FOC 10c)
 - b. Only use USO forms designated as “No Friend of the Court Services” in cases when the parties have opted out and the court’s Order Exempting Case from Friend of the Court Services remains in effect.
 - c. Whenever child support obligations stated on a uniform order do not follow the [Michigan Child Support Formula \(MCSF\)](#), SCAO-approved USO includes the additional pages designated as the [Uniform Child Support Order Deviation Addendum](#) (FOC 10d) completed to record the information required by [MCL 552.605\(2\)-\(3\)](#).² If an ordered obligation deviates from the MCSF and does not include the additional pages or the addendum includes insufficient information, the uniform order will not comply with MCR 3.211(D).
 - d. Because MCR 3.211(D) requires entering child support and spousal support orders on the latest USO version approved by SCAO, any orders submitted to the court for entry after a new USO takes effect should be submitted on the new form.
3. Any judgment or order that does not incorporate a USO by reference must state that one is unnecessary and explain the reason.³

¹ [MCL 552.602\(ee\)](#). Beyond paying for individual needs and care, support may include medical/health care expenses, child care expenses, educational expenses, and provision of health care coverage.

² To avoid including largely unused pages in the majority of child support orders that do not deviate, SCAO decided to assign a separate form number to the addendum and incorporate its additional pages into the USO only when deviation occurred.

³ MCR 3.211(D)(2)(b) and (D)(4)(b). For example, a child support provision in a judgment that explains why a USO is unnecessary could state that “The issue of child support is reserved until defendant is released from prison” or “A support order was previously entered for this child in the Court of Common Pleas in Franklin County, Ohio, and this court lacks jurisdiction to modify that order.” A spousal support provision in a final judgment that explains why a USO is unnecessary could state “Neither party is awarded spousal support, and spousal support is forever barred.”

4. The USO forms only address child support or spousal support. While each can be used alone when the court only addresses support, the form does not include other issues like custody, parenting time, or property division, and should not be adapted to do so.

Judgments or orders that resolve other issues related to the domestic relations matter (divorce, paternity, custody, property division, enforcement proceedings, etc.) should only incorporate an accompanying USO by reference⁴ and not establish or modify a support obligation absent a USO,⁵ nor should they restate the provisions contained in the USO.⁶

B. Terminology

The terms related to child support obligations ordered in the uniform order's provisions 1, 2, and "Other" follow the meanings and obligations described in the MCSF.

C. USO Form Changes

SCAO has approved [new USO forms \(rev. 8/14\)](#) for use on all child support orders entered after December 31, 2014. This section explains the noteworthy changes, and a later section details how to use certain form provisions.

1. Child Information and Overnights Used to Calculate Child Support

Earlier USO forms contained a statement that expressed only one overnight number for all the children. The 2012 revision incorporated the overnights by child to a space that already included children's names and dates of birth.

The updated USO form (rev. 8/14) has a separate line listing each child's name, the child's date of birth, and the overnights that the child will annually spend with the payer.

2. Obligation End Dates

[MCL 552.605b\(3\)](#) requires that any child support order that continues the obligation postmajority "include a provision that the support terminates on the last day of a specified month, regardless of the actual graduation date."⁷

Rather than ending the obligation on a specific date, earlier USO forms contained a static provision continuing postmajority support based on the statutory conditions that courts were to consider when deciding whether to order postmajority support for a child. That conditional language caused additional work for FOC offices to seek information whether

⁴ For example, a divorce judgment's child support provision would not contain any details, but would simply state, "The support obligations contained in the Uniform Child Support Order entered with this judgment are incorporated by reference." SCAO-approved [Order Regarding Custody and Parenting Time \(FOC 89\)](#) also incorporates a USO by reference.

⁵ MCR 3.211(D) requires that support provisions be prepared on the latest USO and must accompany the judgment or order that affects support.

⁶ It is unnecessary to repeat information from a USO incorporated by reference. Pursuant to MCR 3.211(D)(1), the USO governs in any conflict between a USO and an associated order. Repeating information also defeats the purpose of reducing paperwork, and increases the time that the court and FOC will have to take to review and process the order.

⁷ If circumstances regarding when support should end change after entry of a support order, whether done when a friend of the court office recommends changes to ordered amounts or upon a party's motion, the court may modify the obligation end-date.

any obligation-ending conditions occurred, make administrative determinations that an obligation had ended, and manually adjust the accounting records.

The updated USO form (rev. 8/14) alters the provision that expresses specific dates when obligations end. Unless otherwise ordered, a support obligation will end on the last day of the month that the child reaches age 18. If the court determines that a child will be eligible for child support beyond the age of majority and chooses to order it, the USO contains a field for the court to specify the date on which postmajority support ends.

3. **Deviation**

When the court determines applying the MCSF creates an unjust or inappropriate outcome or when parties agree to a different amount, the court may enter an order that deviates from the formula and must record the information required by [MCL 552.605\(2\)-\(3\)](#). The Michigan Supreme Court held that when an order or an agreement deviates from the MCSF, a trial court must carefully articulate the statutory factors to memorialize and explain its decision.⁸

Easily finding detailed information about any given deviation is important because of the following:

- a. When modifying a prior order that deviated, the court must consider whether a party has shown a sufficient change in circumstances to justify modification. To make an accurate determination, the court needs to know whether the prior order follows the MCSF. If the order being modified deviates, the court needs detailed information about what occurred so it can properly determine whether to modify the order or continue deviating.
- b. If an order deviates because the court found that the formula had unjust or inappropriate result in a particular case, the FOC office needs that information when deciding whether to recommend modification. To decide whether to recommend modification, the office must know whether the facts of the case and the reasons for and amount of the prior deviation have changed.
- c. Federal regulations⁹ require each state to consider deviation levels and reasons during the review of its statewide guideline. Michigan's IV-D program requires prosecuting attorney and FOC staff to record detailed information in MiCSES about every child support order issued in Michigan, including orders entered by parties and parties' attorneys.

Prior USO forms required affirmatively selecting whether ordered amounts followed or deviated from the MCSF. When an order deviated, preparers needed to record the statutorily required information at the end of the form. In many instances, those orders contained no information concerning deviation.

To make recording deviation information easier and to place that information where it is easily accessed, the updated USO form (rev. 8/14) added a provision to select whenever its child support obligations deviate from the MCSF. When selected, the uniform order incorporates the [Uniform Child Support Order Deviation Addendum](#) (FOC 10d) as

⁸ *Ghidotti v Barber*, 459 Mich 189 (1999), and *Burba v Burba*, 461 Mich 637 (2000).

⁹ [45 CFR 302.56](#).

additional pages. In instances where a support order's obligations do not precisely follow MCSF, the latest SCAO-approved USO form required by court rule includes a completed addendum that records the information required by [MCL 552.605\(2\)-\(3\)](#). Additionally, the form should indicate deviation has occurred by having both the "Standard provisions have been modified" indicator on Page 1 and the Michigan Child Support Formula Deviation provision on page 3 selected.

D. General Questions About Completing a Uniform Child Support Order

1. Does the indicator that "Standard provisions have been modified" only apply to deviations?

No. By being prominently at the beginning of the order, it alerts the reader to pay close attention when selected. While this indicator is used to identify instances that deviation has occurred, it may also indicate changes not involving deviation stated in "Other" like adding a requirement to assess surcharge, setting a specific arrearage repayment amount, or stating that a temporary order is subject to retroactive modification.

2. How do I record each child's number of overnights with the payer?

- a. The MCSF requires that each order indicate whether it includes a parental time offset as well as the annual number of overnights used in its calculation. The first page of the USO contains a list for recording each child's name, birthdate, and the annual number of overnights used to calculate tiered base-support amounts for that child.¹⁰ Overnights reported on the order can vary for each child.¹¹
- b. In cases when no overnights are used in the calculation (e.g., third-party custodian, or a parent does not regularly exercise parenting time), or when an approximate number cannot be determined, the list must indicate that support was figured using zero overnights so it complies with the MCSF.
- c. Whenever base support is set using an amount that differs from the number determined by applying the MCSF (i.e., the approximate overnights that each parent will likely provide care for a child), the USO should record the number used to figure the order as well as report a deviation.

3. Where on the USO do I record the obligations determined by the Michigan Child Support Formula?

a. Children Supported Table

Insert the monthly obligation amounts into the column tiers for the correct number of children-in-common supported in this case and on the appropriate table rows based on amounts described in the MCSF as follows:

- 1) Record the amount calculated by applying 2013 MCSF 3.02 - 3.03 in the row labeled "Support."

¹⁰ To avoid recalculating support each time the number of children covered by an order changes, 2013 MCSF 1.02(C) requires including tiered amounts for fewer children. The USO has tiered amounts reported in columns for 1 child, 2 children, etc. The parental time offset used to figure base support in each tier uses the average number of overnights for all children included in a tier.

¹¹ 2013 MCSF 3.03.

- 2) In the row labeled “Premium adjust,” record the positive or negative result from health care premium allocation determined by 2013 MCSF 3.05(C).
- 3) Add the “Support” and “Premium adjust” rows in each column, and record the sum in the “Subtotal” row.
- 4) Record the payer’s apportioned monthly share of ordinary medical expenses in the “Ordinary medical” row. 2013 MCSF 3.04(B)(3)(a)(i).
- 5) In the row labeled “Child care,” record the positive or negative result figured by 2013 MCSF 3.06(C).
- 6) Record any monthly social security credit amount figured under 2013 MCSF 3.07 in the “SS benefit credit” row.
- 7) Select the box in the row following the “Total” row if the order reduces support due to a reduction in payer income. The FOC office needs that information for setting a repayment rate using the Arrearage Guideline (2013 MCSF 4.02).

b. Uninsured Health-Care Expense Provision

The order’s Uninsured Health-Care Expenses provision records the parties’ medical expense percentages as well as the annual amounts that a support recipient must exceed before seeking extraordinary expense reimbursement.

- 1) Record plaintiff’s and defendant’s medical support percentages determined by 2013 MCSF 3.01(B)(2). When the payee is a third-party custodian and not a parent, 2013 MCSF 4.02 may cause the parent-party’s medical support percentage to be 100 percent or the sum of the percentages to be less than 100 percent.
- 2) Because annual expenses include all the qualifying medical expenditures for all the children covered by the order, as well as the MCSF requiring that obligations be stated as tiered amounts, annual ordinary medical amounts must be stated in tiered amounts for all children.¹²

c. Insurance Provision

- 1) Select the appropriate party to designate which parent was determined responsible to maintain health care coverage for the children by applying 2013 MCSF 3.05(B) and 2013 MCSF-S 3.02. Ordering both parents to maintain coverage is a deviation that must be recorded in the order.
- 2) When appropriate, 2013 MCSF-S 3.02(A)(2) permits allowing a parent to provide coverage through alternative means, like when insurance is available through a parent’s spouse or other family member. The parent must be required to secure other coverage immediately if coverage through the alternative means

¹² An order for three children that uses the amounts from [2013 Michigan Child Support Formula - Supplement’s \(MCSF-S\) Ordinary Medical Expense Averages Table](#) would state, “The annual ordinary medical amount is \$1,072 for three children, \$715 for two children, and \$357 for one child.”

Annual ordinary medical amounts should not be stated as a single “per child” amount. For example, an order for three children that states “The annual ordinary expense amount is \$357 per child” is not tiered and reduces the obligation for multiple children.

stops. When permitting a party to use an alternative means, in addition to completing this provision the USO must indicate on page 1 that “Standard provisions have been modified” and outline the alternative terms in the “Other” provision.¹³

- 3) State the reasonable cost limit determined by 2013 MCSF 3.05(A) that the party required to provide insurance coverage should pay as either a monthly dollar amount or a percentage of income. Percentages other than 5 percent represent a deviation.

4. **How do I know when to end each child’s obligation?**

Support obligations continue as ordered by the court. Selecting a future end-date requires evaluating current information to decide if a child will be eligible for postmajority support and if so, choosing a prospective date that a child’s obligation ends.¹⁴

- a. Unless a child emancipates by operation of law, [MCL 722.3\(1\)](#) and [MCL 552.605](#) require courts to order that parents support their minor children. The USO ends an obligation the month each child attains the age of 18, unless the “Postmajority Support” provision is selected and the provision indicates the child’s name and a postmajority end date that an obligation ends.
- b. While courts generally must order support for minor children, judges have discretion whether to require payment for a child past the age of majority (not to exceed the child attaining age 19 years and 6 months). Courts may order that an obligation continues postmajority for a child, provided that the child has a reasonable expectation to complete sufficient high school credits to graduate,¹⁵ and that after reaching age 18 the child will:

¹³ For instance, if plaintiff’s present spouse agreed to maintain insurance for the children and the court ordered plaintiff to provide coverage, the court would likely include the following in the “Other” provision: “At the option of the plaintiff, plaintiff may maintain health-care coverage by purchasing it from a private company or by enrolling the child(ren) in coverage available through a family member.”

¹⁴ As support obligations are monthly, each should end on the last day of the month. [MCL 552.605b\(3\)](#) requires that any orders that continue support postmajority “include a provision that the support terminates on the last day of a specified month, regardless of the actual graduation date.” Once the court has set the date, changing when an obligation ends requires a new order.

¹⁵ In an unpublished case, the Michigan Court of Appeals stated that the meaning of MCL 552.605b(1) was clear:

As long as a child is regularly attending high school on a full-time basis and there is a reasonable expectation of his completing sufficient credits to graduate while residing full time with the recipient of support, support may be awarded beyond the child’s 18th birthday. However, in no case can such support be extended beyond the age of 19½. . . . There is no requirement . . . that there must be a reasonable expectation that the child will graduate from high school by the time the child is 19 years and six months old. [*Cross v Cross*, unpublished opinion *per curiam* of the Michigan Court of Appeals, entered 11/25/2008 (Docket No. 279286).]

- o regularly attend high school full time,¹⁶ as well as
 - o continue living full time with the support recipient or in an institution.
- c. Most children who qualify for postmajority support can complete school in thirteen years (kindergarten through 12th grade). Normally, it takes children four years to finish the coursework necessary to receive a high school diploma, or attend less than full time.¹⁷

Because of the financial ramifications to the parents and the adult child, the scrutiny needed to differentiate between educational programs, as well as the legal finding whether a specific child's situation qualifies for postmajority support, a court should make the determination whether a support obligation continues beyond a child's fourth year of high school.

- d. Unless the court establishes that an obligation for a child ends on another date, apply the facts to the following criteria to set the dates when child support obligations end:
- 1) Absent credible information showing that circumstances have changed regarding when an obligation should stop, end support on the dates set in the last order.
 - 2) Child-care obligations end on August 31 following the child's 12th birthday.¹⁸
 - 3) End support any month postmajority, as agreed by the parties.
 - 4) When shown that a child is unlikely to complete the courses necessary to receive a diploma or is not expected to complete sufficient high school credits to graduate, end support the month the child reaches age 18.¹⁹
 - 5) If it appears that a child will, prior to reaching the age of majority, either complete the high school courses necessary to graduate, attend high school less than full time, or stop living full time with the recipient or in an institution, end support the month the child attains age 18.

¹⁶ In *Rowley v Garvin*, 221 Mich App 699 (1997), an 18-year-old child had dropped out of the regular high school curriculum and was attending adult education classes at night. The Michigan Court of Appeals held that when determining if a child attends school full time and whether postmajority support continues, the State School Aid Act controls, and not each local school district's definition. That Act defines a full-time "member" (student) as one who attends a specific number of class hours per year. In *Rowley*, the court held that a child enrolled in a school completion program [funded by the School Aid Act], but attending high school classes far fewer hours than what the State School Aid Act considered as attending full time was not eligible to continue receiving postmajority support.

¹⁷ Some high schools add college courses and delay graduation until a fifth year to allow the student to earn college credits or an associate's degree before graduating from high school. No appellate court has ruled on whether a dual high school/college curriculum constitutes attending high school full time. The FOCB recommends that FOC offices propose ending support at the end of the fourth year of high school because it treats all college-bound students the same. Any objections to an office's recommendation can be addressed judicially based on the facts.

Because a home-schooled child's graduation is determined by a parent who may have a financial incentive to receiving support for an additional year, the FOCB recommends that, unless the parties were to agree to the extension, that FOC offices propose ending support at the end of a child's fourth year of high school. Any objections to an office's recommended dates can be addressed judicially, based on the facts of the case.

¹⁸ 2013 MCSF 3.06(D) additionally permits continuing based on a child's health or safety needs.

¹⁹ *Cross, supra*. The statute does not permit ordering postmajority support absent a reasonable expectation that the child will graduate from high school, unless the parties were to agree.

- 6) For each child who appears to meet the criteria for postmajority support (i.e., the preceding considerations to end support at age 18 do not apply), end support as follows:
 - a) For a child who has not started first grade or its equivalent, end support the month that the school year ends (e.g., June 30) immediately following the child's 18th birthday.
 - b) For a child attending school, but prior to starting high school, end support on the month that the school year ends of the year estimated to be the child's fourth year of high school based on the child's present grade-level equivalent, or if sooner, the month the child reaches age 19 years and 6 months.
 - c) For a child who is in high school or an equivalent, end support at the end of the child's fourth year of high school, or if sooner, the month the child reaches age 19 years and 6 months.

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