



Frequently Asked Questions

(And Answers from
State Court Administrative Office
Friend of the Court Bureau)

FAQ 2007-02

February 15, 2007

Prisoner Account Withholding for Support

This FAQ answers common questions and clarifies the policies related to SCAO Administrative Memorandum 2006-05, which explains how the Michigan Department of Corrections (MDOC) withholds funds from prisoner accounts to pay child support obligations. If court or friend of the court staff have any questions or would like additional information or clarification, please contact William Bartels at bartelsb@courts.mi.gov or (517)373-5975.

#1 Q: Where can I find a copy of SCAO Administrative Memorandum 2006-05 and the SCAO-approved form order to remit prisoner funds (FOC 112)?

A: You can find the *Withholding Child Support from Prisoner Account Funds* memorandum at: <http://courts.michigan.gov/scao/resources/other/scaoadm/2006/2006-05.pdf>.

You will find the SCAO-approved *Order to Remit Prisoner Funds for Child Support* form at: <http://courts.michigan.gov/scao/courtforms/domesticrelations/support/foc112.pdf>.

#2 Q: How can I get information about a prisoner's account?

A: FOC offices should send a letter requesting a *12-month Certificate of Prisoner Account Activity* to "Prisoner Accounting" at the MDOC institution that currently houses the payer.

#3 Q: What authority does the court have to order the withholding of prisoner account funds?

A: The Support and Parenting Time Enforcement Act requires that every support order entered or modified include provisions authorizing immediate *income* withholding. [MCL 552.604](#). That act defines "income" as encompassing more than "wages." [MCL 552.602\(n\)](#). However, given the unique character of prisoner funds, something other than an income withholding notice was needed because of MiCSES design constraints and MDOC policy requiring a court order before MDOC will withhold support.

Circuit courts have the power to enter an order to fully effectuate their jurisdiction and judgments.¹ Domestic relations cases are equitable in nature, and courts of equity are permitted to mold the relief to fit the case and conclude a matter.²

#4 Q: How do I get an order to remit?

A: Unless otherwise permitted by law or court rule, securing this type of court order requires following the usual civil procedure and motion practice rules. The motion need not be complicated. After showing that the prisoner owes current or past-due support and that the support order includes income withholding language, a motion would simply ask the court to enforce its withholding order by entering an order requiring MDOC to remit payments. The court order should use the SCAO-approved order form (FOC 112).

Civil procedure rules require notice to parties and an opportunity to have a hearing. [MCR 2.004](#) requires that prisoner-withholding petitions filed with the court state that the party is incarcerated. The motion’s caption must state that a telephonic hearing is required by the court rules. MCR 2.004 covers a telephone call to determine the extent and means of the inmate’s involvement in future proceedings. [MCR 3.210](#) and [MCR 3.215](#) permit inmate participation in domestic relations hearings by telephone or other reliable electronic means.

Domestic relations rules permit the entry of an *ex parte* order only under exigent circumstances in which the court is satisfied by a verified pleading that irreparable loss or damage will result from the delay required to provide notice, or that the notice will precipitate adverse action before an order can be issued. [MCR 3.207\(B\)](#).

#5 Q: Must I use the SCAO approved order form (FOC 112)?

A: Yes. To allow the collection of child support debts from prisoners, the SCAO negotiated with MDOC and reached agreement on a process for withholding funds from prisoners’ accounts. Under that agreement, MDOC will recognize only the approved SCAO form for remitting support from prisoner accounts. Additionally, the Friend of the Court Act requires FOC offices to implement the policies recommended by the FOCB.

#6 Q: Can I change any of this form’s provisions (e.g., have money sent to an FOC office instead of MiSDU, or increase the percentage to be withheld, etc.)?

A: No. Changing any provision in form FOC 112 result in the form no longer being a “SCAO-approved” form.³ Furthermore, the agreement between the SCAO and MDOC does not require MDOC to recognize unapproved or altered forms.

¹ MCL 600.611. Further, “A court possesses inherent authority to enforce its own directives.” *Greene v Greene*, 357 Mich 196, 202 (1959).

² Domestic relations cases are equitable in nature, and “a court of equity molds its relief according to the character of the case; once a court of equity acquires jurisdiction, it will do what is necessary to accord complete equity and to conclude the controversy.” *Walworth v. Wimmer*, 200 Mich App 562, 563-565 (1993).

³ [Michigan Court Administration Reference Guide 8-06-D](#).

The approved form incorporates and assures compliance with Michigan’s child support laws and federal IV-D requirements. Having payments sent to a location other than MiSDU is contrary to [MCL 400.236](#), which makes MiSDU the single place where support and fee payments must be sent. Sending payments from a prisoner’s account to the FOC office exceeds the limited circumstances in which the FOC is allowed to accept payment.⁴

#7 Q: Must the FOC send copies of the order to the parties?

A: Yes. [MCR 2.602\(D\)](#) requires that the party who secures the signing of a judgment or order must serve copies on all the parties within seven days of entry, and file a proof of service with the clerk.

#8 Q: What should an FOC office do after receiving a complaint or request to stop the withholding?

A: If there is no mistake of fact, and the prisoner does owe current or past-due support, then just as with any other party seeking relief from a judgment or order, the FOC office should notify the prisoner that pursuant to MCR 2.612, a party seeking relief from a court order may move for relief from a judgment or order.

If there is a mistake of fact, the friend of the court should seek to rectify the mistake, or move to correct or set aside the order. The order to remit permits MDOC to discontinue withdrawing funds upon receiving written notification to stop from an FOC office.

#9 Q: Can the form be sent to agencies other than the Michigan Department of Corrections (MDOC), for example a prison in another state?

A: No. The form was intended to cover only the special agreement between the SCAO and MDOC. The order only directs the “department of corrections” to collect and remit prisoner account monies. Further, Michigan courts do not have jurisdiction over other states’ corrections departments, and thus cannot order that monies be withheld in another state.

⁴ Under [MCL 552.509](#) after MiSDU was implemented in a circuit, the FOC office must forward payments to MiSDU, and to notify the remitter to send all future payments to MiSDU.